TEXAS REGISTER

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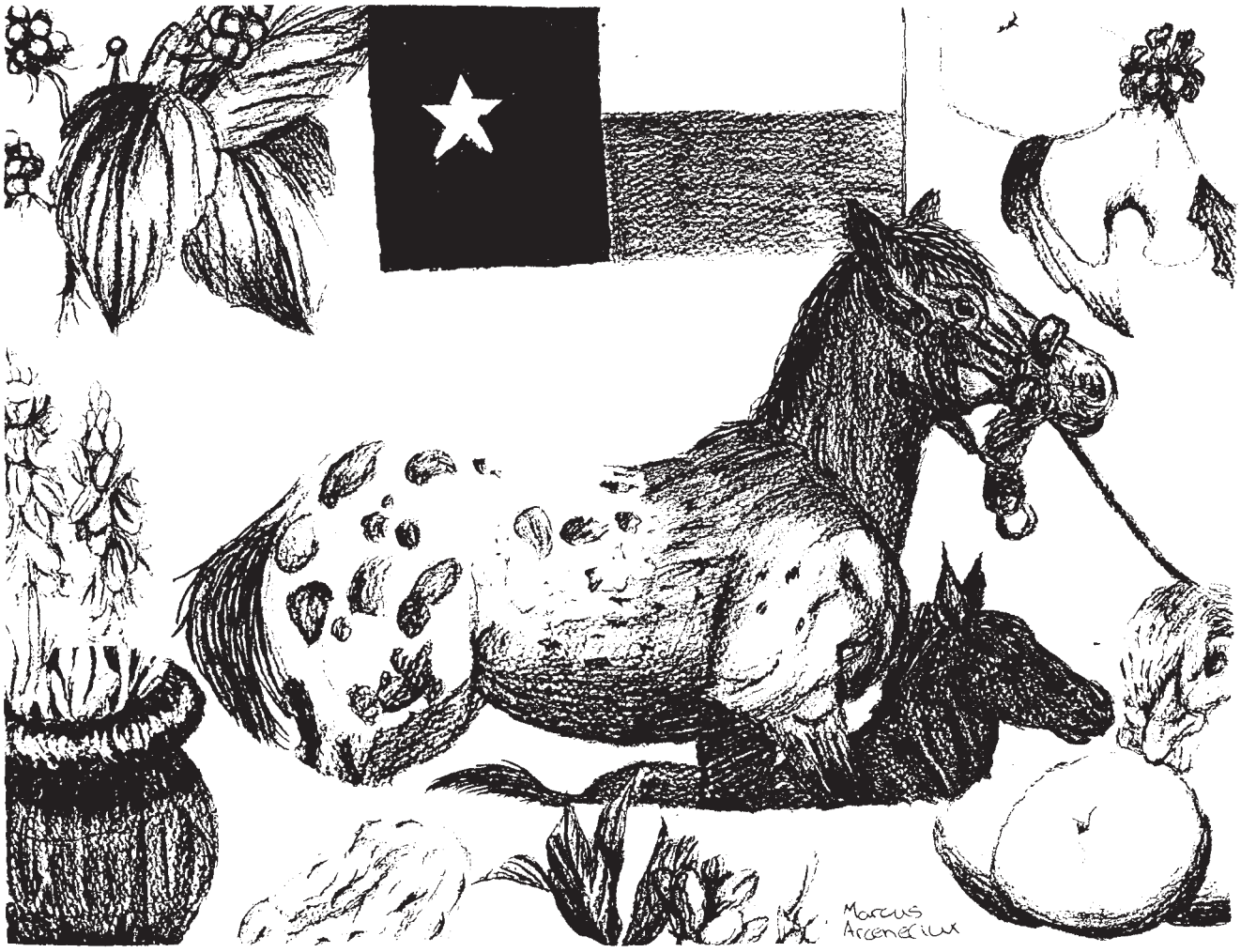

This month's front cover artwork:

Artist: *Marcus Arceneaux*

7th Grade

Johnston Middle 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.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

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.*

For more information about the student art project, please call (800) 226-7199.

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GOVERNOR

ATTORNEY GENERAL

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IN ADDITION

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments Made June 15, 1999

To be members of the Texas Commission for the Deaf and Hard of Hearing for a term at the pleasure of the Governor: Eva Williams of Houston will be replacing Timothy Rarus of Austin, who is no longer a member of the commission and terms will expire January 31, 2005: Paul A. Locus, M.D., 1109 Patterson Lane, Austin, Texas 78733, who is replacing Larry Correu of San Antonio who resigned; Beverly Sue Hill, 304 Ember Glen Drive, Arlington, Texas 76018, who is replacing Delores Erlandson of Big Spring who resigned.

To be members of the State Independent Living Council for terms to expire October 24, 2000: Donald R. Eubanks, 2108 Firestone Drive, League City, Texas 77573, who is being reappointed; Richard A. Palacios, 3737 Marion, Corpus Christi, Texas 78415, who is being reappointed; Barbara M. Rolland, 2406 East 22nd, Amarillo, Texas 79103, who is being reappointed; Salli B. Phillips, 7803 County Road 168, Alvin, Texas 77511, who is replacing Lana Sosenka of San Antonio who resigned and terms to expire October 24, 2001: G. Joan Knoll, P.O. Box 183, Fort Hancock, Texas 79839, who is being reappointed; Morgan Talbot, 1521 Xanthisma, McAllen, Texas 78504, who is replacing Wayne Pound of Fort Worth who resigned and a term to expire October 24, 1999: Paula Jean Margeson, 7928 Hook Drive, Plano, Texas 75025, who is replacing Martha Bagley of Dallas who resigned.

Appointments Made June 18, 1999

To be Judge of the 334th Judicial District Court, Harris County, until the next General Election and until his successor shall be duly elected and qualified: Jesse W. Wainwright, 4228 Lehigh, Houston, Texas 77005. Mr. Wainwright will be replacing Judge Russell Lloyd of Houston who resigned.

Appointments Made June 22, 1999

To be a member of the Texas Board of Protective and Regulatory Services for a term at the pleasure of the Governor: Catherine Clark Mosbacher of Houston, who will be replacing Jon Martin Bradley of Dallas as presiding officer. Mr. Bradley will remain on the board.

Appointments Made June 28, 1999

To be members of the Texas State Board of Medical Examiners for terms to expire April 14, 2005: Jose Manuel Benavides, M.D., 7150 Oakridge Drive, San Antonio, Texas 78229-3612, who is replacing Dr. Carlos Campos of New Braunfels whose term expired; David E. Garza, D.O., 117 Crenshaw, Laredo, Texas 78045, who is replacing Dr. William Pollan of Ballinger whose term expired, Joyce A. Roberts, M.D., Route 1 Box 353, Mt. Vernon, Texas 75457, who is replacing Dr. Charles W. Monday of Huntsville whose term expired, Paulette Barker Southard, 1804 Clare, Alice, Texas 78332, who is replacing Ann Sibley of Garland whose term expired; Nancy Meredith Seliger, 3810 DeAnn Drive, Amarillo, Texas 79121, who is replacing Connie Navar-Clark of El Paso whose term expired.

George W. Bush, Governor of Texas

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

JC-0076. (RQ-946) The Honorable Rene O. Oliveira, Chair, Ways and Means Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910. Re: Whether a transit authority created under chapter 451 of the Transportation Code may purchase a railroad line, part of which extends beyond the transit authority's territory, and related question

S U M M A R Y. A metropolitan transit authority may purchase property beyond its service area if the authority determines that the acquisition is "necessary, convenient, or useful" to providing mass transit to persons in its service area. Likewise, a transit authority may purchase a rail-freight-common-carrier obligation if the authority has determined that the acquisition is "necessary, convenient, or useful" to providing mass-transit services.

JC-0077. (RQ-1228) The Honorable Florence Shapiro, Chair, Committee on State Affairs, Texas State Senate, P.O. Box 12068, Austin, Texas 78711. Re: Whether a van-access aisle adjacent to a van-accessible parking space is an "architectural improvement designed to aid persons with disabilities" for purposes of §681.011(c) of the Transportation Code.

S U M M A R Y. Parking a vehicle so as to block a van-access aisle is an offense under §681.011(c) of the Texas Transportation Code.

JC-0078. (RQ-1166) Mr. Wayne Thorburn, Administrator, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. Re: Whether chapter 37 of the Business and Commerce Code applies to unsolicited telephone calls by licensed residential service companies to consumers for the purpose of selling residential service contracts and related questions.

S U M M A R Y. Chapter 37 of the Business and Commerce Code applies to unsolicited telephone calls made by a residential service company for the purpose of selling residential service contracts. Accordingly, the rights of a consumer and the obligations of a licensed residential service company with respect to notice, cancellation, and refund are as set out in chapter 37 if an amount is to be charged to the consumer's credit account. However, an unsolicited telephone call to sell a new contract to a consumer who held or holds such a contract is excepted from chapter 37's requirements dealing with when and how consumer telephone calls must be made.

Chapter 39 of the Business and Commerce Code applies to residential service contract solicitations by a licensed real estate broker or salesperson at a home being listed or shown if (1) the broker or salesperson is acting as the agent for the residential service company, and (2) the purchaser agrees to purchase the services at the home or a place other than the merchant's place of business. However, such a transaction may be excepted from chapter 39 if the parties engaged in prior negotiations at a fixed business establishment.

If a transaction is subject to chapter 39, the residential service contract must include the notice and cancellation form as required by section 39.004. A residential service contract subject to chapter 39 that provides a cancellation period greater than three days would not violate chapter 39. A residential service contract subject to chapter

39 that does not include the statutorily required language with respect to the return of goods sold would violate chapter 39.

JC-0079. (RQ-0002) The Honorable Michael P. Fleming, Harris County Attorney, 1019 Congress, 15th Floor Houston, Texas 77002-1700. Re: Whether a commissioners court may set a maximum speed limit on certain county roads below 30 miles an hour, and related questions.

S U M M A R Y. Pursuant to §545.355 of the Transportation Code, a commissioners court may lower the speed limit on a county road or highway, but not to less than thirty miles an hour absent an engineering and traffic investigation.

JC-0080. (RQ-1226) The Honorable James Warren Smith, Jr., Frio County Attorney, 500 East San Antonio Street, Box 1, Pearsall, Texas 78061-3100. Re: Whether under article III, §52 or article XI, §3 of the Texas Constitution a county may pay registration fees for a county official or county employee to attend a state association conference, either mandatory or voluntary, and related questions.

S U M M A R Y. Neither article III, §52 nor article XI, §3 of the Texas Constitution precludes a county commissioners court from paying a county official's or county employee's registration fee to attend a conference, or for lodging while the official or employee attends the conference, so long as the commissioners court determines that the expenditures will serve a public purpose and attaches conditions to the expenditure to ensure the accomplishment of the public purpose. Likewise, neither article III, §52 nor article XI, §3 prohibits a county from paying a publisher in advance to publish public notices in the local newspaper, so long as the county commissioners court determines that the expenditure serves a public purpose and attaches sufficient conditions to the expenditure. A county commissioners court may pay officials' and employees' salaries before the regularly scheduled payday if the county has received all services it is due in consideration of the payment. But the county may not, under article III, §52 and article XI, §3 of the Texas Constitution, pay officials' and employees' salaries in advance of the services being rendered unless it finds that some public benefit will derive from doing so and that the early payment is sufficiently conditioned to ensure that the public purpose will be accomplished.

JC-0081. (RQ-0003) The Honorable Carole Keeton Rylander, Comptroller of Public Accounts, Lyndon B. Johnson Building, 111 E. 17th Street, Austin, Texas 78701. Re: Whether a local government must collect sales taxes on beach user fees charged pursuant to chapter 61 of the Natural Resources Code and General Land Office rules.

S U M M A R Y. Beach user fees charged by a local government under chapter 61 of the Natural Resources Code and General Land Office rules, see 31 Texas Administrative Code §15.2, §15.8 (1998), are not subject to sales tax under chapter 151 of the Tax Code.

TRD-9904258
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: July 14, 1999

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Requests for Opinions

RQ-0079. Requested by: The Honorable Bill Moore, Johnson County Attorney, 2 North Main Street, Cleburne, Texas 76031. Re: Whether interest from the Motor Vehicle Inventory Tax Fund may be used to supplement the salaries of county employees, and related questions (Request Number 0079-JC). Briefs requested by August 6, 1999.

RQ-0080. Requested by: The Honorable Judith Zaffirini, Chair, Human Services Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711. Re: Constitutionality of a requirement of the Laredo Civil Service Commission that a municipal fire fighter be a citizen of the United States (Request Number 0080-JC). Briefs requested by August 7, 1999.

RQ-0081. Requested by: The Honorable Michael P. Fleming, Harris County Attorney, 1019 Congress, 15th Floor Houston, Texas 77002-1700. Re: Municipal designation of a reinvestment zone (Request Number 0081-JC). Briefs requested by August 7, 1999.

TRD-9904145
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: July 9, 1999

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RQ-0082. Requested by: The Honorable Bob Hunter, Chair, State Federal and International Relations, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910. Re: Transfer of matching endowment funds to the National Geography Society (Request Number 0082-JC). Briefs requested by August 13, l999.

TRD-9904259
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: July 14, 1999

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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 1. ADMINISTRATION

Part XV. Health and Human Services

Chapter 361. Children's Health Insurance Program

1 TAC §361.001

The Health and Human Services Commission submits proposed new §361.001 in new chapter 361, Children's Health Insurance Program, concerning the definition of significant traditional providers in the Children's Health Insurance Program (CHIP). Section 62.155(b) of the Health and Safety Code, added by Senate Bill 445, 76th Legislature (1999), directs the Health and Human Services Commission to define significant traditional providers in the Children's Health Insurance Program by rule. New section 361.001 contains the new proposed definition.

Mr. Don Green, Chief Financial Officer, has determined that for the first five-year period that the section is in effect, there will be no net fiscal implications as a result of administering §361.001. There will be no fiscal implications for local governments.

Mr. Green has also determined that for the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing the section will be the inclusion of providers who have traditionally served a majority of the recipients in the Medicaid program and enrollees in Texas Healthy Kids Corporation's program. There will be no costs to small businesses or persons complying with the section as proposed. There will be no impact on local employment.

Comments may be submitted in writing to Jason Cooke, Associate Commissioner for Children's Health, Texas Health and Human Services Commission, 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, (512) 424-6568, or e-mail at Jason.Cooke@hhsc.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new rule is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority and under Texas Health and Safety Code, chapter 62, §62.051(d), which authorizes the commissioner to adopt rules necessary to implement the child health plan for certain low-income children.

The new rule implements Health and Safety Code, §62.155(b).

§361.001. Definition of Significant Traditional Provider.

In the Children's Health Insurance Program, significant traditional provider (STP) means:

(1) all hospitals receiving disproportionate share hospital funds in State Fiscal Year 1999; and

(2) all other providers in a county that, when listed by provider type in descending order by the number of recipient or enrollee encounters, provided the top 80 percent of recipient or enrollee encounters for either the Texas Medicaid Program in State Fiscal Year 1997, as previously determined by the Texas Department of Health or the Texas Healthy Kids Corporation in State Fiscal Year 1999, as determined by the Texas Healthy Kids Corporation for each provider type.

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 July 12, 1999.

TRD-9904182
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 424–6576

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter D. Requirements for Participation in the Eradication Program and Administrative Penalty Enforcement

4 TAC §3.80, §3.81

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

The Texas Department of Agriculture (the Department) proposes the repeal of §3.80 and §3.81, concerning procedures for placing and perfecting liens on harvested cotton under the boll weevil eradication program. The sections are proposed for repeal in order for the department to adopt new lien procedures and other related requirements in accordance with statutory changes made to the Texas Agriculture Code, §74.115 by Senate Bill 631, 76th Legislature, 1999. The new lien procedures are being filed in a separate submission, as proposed new Chapter 3, Subchapter I.

Glenna Rhea, Director of Budget and Planning, 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 repeal.

D. Matt Brockman, special assistant for producer relations also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to allow for the department to develop a more efficient and timely process for the enforcement of liens for nonpayment of assessments under the boll weevil eradication program. There will be no effect on small businesses or to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Matt Brockman, Special Assistant for Producer Relations, Texas Department of Agriculture, P.O. Box 12847, and Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §74.120, which provides the Commissioner of the Texas Department of Agriculture with the authority to adopt rules necessary to carry out the purposes of the Code, Chapter 74, Subchapter D.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 74, Subchapter D.

§3.80. Placing Lien on Harvested Cotton.

§3.81. Judicial Action and Foreclosure of Lien.

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 July 12, 1999.

TRD-9904180
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–7541

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Subchapter I. Compliance Certificate Program Rules

4 TAC §§3.500–3.509

The Texas Department of Agriculture (the department) proposes new Chapter 3, Subchapter I, §§3.500-3.509, concerning compliance certificate program rules for the boll weevil eradication program. The new sections establish compliance certificate program rules in accordance with the Texas Agriculture Code, §74.115, as amended by Senate Bill 631, 76th Legislature, 1999 (Senate Bill 631). Senate Bill 631 provides that the Texas Boll Weevil Eradication Foundation Inc.(the foundation) may develop a compliance certificate program, subject to department rules, to manage the payment and collection of assessments levied on cotton growers under the Code, Chapter 74, Subchapter D. In addition, Senate Bill, 631 provides for an assessment lien in favor of the foundation in the amount of an assessment that is due and unpaid. The new sections, as proposed, provide definitions; provide for notice of the assessment to growers and notice of the lien to buyers of cotton; provide for payment of the assessment, including incentives for early payment and payment of a late fee for late payment; establish the obligation of buyers of cotton and growers in relation to the lien, including provisions for when first purchasers/buyers of cotton take free of the lien, and the status of the lien as to subsequent buyers; establish priorities of liens and provide for release of the liens.

Glenna Rhea, Chief Financial Officer, 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. The department anticipates that there will be some costs associated with implementing the compliance certificate program, however, those costs will be borne by the Texas Boll Weevil Eradication Foundation, Inc., not the department.

D. Matt Brockman, special assistant for producer relations, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to assure the financial support for boll weevil eradication programs in Texas by cotton growers who are most affected by the eradication of the boll weevil and to help protect the public's investment in boll weevil eradication by ensuring that cotton growers within each active program honor, in a timely manner, their financial commitments to the program and the foundation. Moreover, cotton growers in eight cotton-growing regions of the state of Texas have determined that eradication of the boll weevil will have a positive impact on the cotton industry in Texas. Therefore, effective collection procedures are necessary to help ensure success of the program. There will be an effect on small businesses and to persons who are required to comply with the rule as proposed. It is anticipated that there will be some minimal administrative costs to buyers, and possibly to lenders of cotton growers, primarily in the verification of payment by a grower and/or, in the case of lenders, with the documentation of the existence of a priority lien. The department believes that those costs will be minimal, primarily because the type of verification/documentation required by these sections is already kept as a regular practice by most buyers and lenders. There will also be an anticipated cost to growers who will be issued checks that are made out to the department as a joint payee. This cost should primarily be related to additional effort and time taken by growers to seek endorsement of a check by the department or release of the lien

by the foundation. It is not possible to determine the amount of this cost, however, the department and the foundation are making every effort to establish procedures that minimize this cost to growers.

Comments on the proposal may be submitted to D. Matt Brockman, Special Assistant for Producer Relations, 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 in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §74.115, as amended by Senate Bill 631, 76th Legislature, 1999, which provides the Texas Department of Agriculture with the authority to adopt rules for implementation of a compliance certificate program to manage the payment and collection of an assessment paid by cotton growers in active eradication zones including: rules that establish and relate to the obligations of growers, buyers and others involved in the purchase of cotton produced in an active eradication zone; rules allowing incentives in the form of discounts for growers who pay assessments within a prescribed period of time; rules establishing penalties and interest against growers who pay assessments after a prescribed time period; and other provisions the Commissioner of Agriculture may determine are proper; and the Code, §74.120, which provides the Commissioner of Agriculture with the authority to adopt rules necessary to carry out the purposes of the Code, Chapter 74, Subchapter D.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 74, Subchapter D.

§3.500. Statement of Purpose/Authority.

The Texas Agriculture Code (the Code), Chapter 74, Subchapter D, 74.115, as amended by Senate Bill 631, enacted by the 76th Legislature, 1999 (Senate Bill 631), provides that the Texas Boll Weevil Eradication Foundation, Inc. (the foundation) may develop a compliance certificate program to manage the payment and collection of an assessment levied under the Code, Chapter 74, Subchapter D, and, subject to rules adopted by the Texas Department of Agriculture (the department) and the Commissioner of Agriculture (the commissioner), may issue a compliance certificate for cotton for which an assessment has been paid. In addition, 74.115(d), as amended, provides for an assessment lien in favor of the foundation in the amount of an assessment that is due and unpaid. A cotton buyer takes free of the assessment lien if the buyer receives a compliance certificate issued by the foundation that certifies that the assessment has been paid to the foundation or if the buyer pays for the cotton by a check on which the department is named as a joint payee.

§3.501. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 74, Subchapter D, the following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Active eradication zone - A boll weevil eradication zone established under the Texas Agriculture Code, Chapter 74, Subchapter D, in which cotton growers by referendum have approved their participation in a boll weevil or pink bollworm eradication or suppression program and have approved an assessment to fund costs of implementing the program, and in which the Foundation has begun operations.

(2) First buyer of cotton - A buyer who buys cotton from a cotton grower and disburses funds to the grower for the purchase of cotton.

(3) Department - Texas Department of Agriculture

(4) Due and unpaid- An assessment is due and unpaid if it has not been paid after the due date set by the commissioner for payment, and no written agreement has been made with the foundation to pay the assessment.

(5) FSA - The Farm Service Agency of the United States Department of Agriculture

§3.502. Approval of Assessment Rates and Collection Dates.

(a) Each year, the foundation shall recommend assessment rates, the date a notice of assessment will be sent, and assessment due dates for each active eradication zone to the department for consideration by the commissioner.

(b) The Commissioner will review these proposals and determine the assessment rates and due dates for each zone.

§3.503. Notice of Assessment to Grower.

(a) The Foundation shall send notice of assessments to each cotton grower in each active zone who has certified cotton acreage with the FSA or has reported cotton acreage to the foundation. Notice shall be sent at least 30 days before the date set by the commissioner as the due date for assessments in that zone.

(b) If special circumstances prevent the Foundation from meeting this deadline, the foundation must receive a written waiver from the Commissioner.

(c) The notice of assessment shall include the grower's farm number(s) or the foundation's field ID number if the acreage has not been certified with the FSA, counties in which farms are located and identification number (such as social security number or taxpayer identification number) and shall inform the grower of the following:

(1) the date the assessment is due;

(2) the full amount of their assessment;

(3) information relating to an early payment discount;

(4) information relating to payment after the due date; and

(5) that an automatic lien will attach to the cotton grown on the acreage which is the subject of the assessment and perfect 60 days after the date of the notice of assessment unless the assessment is paid by that date, or written arrangements are made with the foundation by that date to pay the assessments.

§3.504. Payment of Assessments, Incentives for Early Payment; Penalties for Late Payment; Website.

(a) All assessments are due in full, postmarked to the foundation on or before the due date set by the commissioner each year.

(b) Any grower who pays the full amount of the assessment 15 or more days before the due date will be entitled to a reduction in the total amount of their assessment of not less than 2.0%.

(c) Any grower who has not paid the amount of the assessment by the due date will be charged a late fee not to exceed 1.5% per month of the total amount due to the foundation.

(d) Assessments not paid 30 days or more after the due date may be referred to the department for assessment of administrative penalties in accordance with the Texas Agriculture Code§74.115, as amended by Senate Bill 631 and §3.74 of this title (relating to Penalties for Non-payment of Assessment and Failure to Timely Report Acreage).

(e) The foundation shall maintain a limited-access website that is Y2K compliant. This website shall list by zone growers whose assessments are due and unpaid beginning the date that the assessment lien established by the Code, §74.115 attaches and is perfected. Any grower whose name does not appear on this listing on the date the first buyer of cotton disburses funds to the grower, shall be considered as having paid the assessment in full. The specific information on this website shall include all of the information required to be included on a compliance certificate as described in §3.505 of this title (relating to Compliance Certificates) and any other information deemed necessary by the department. The website shall be updated as information is received by the Foundation, but at least daily during normal business hours. Access to the website shall be provided to known first buyers of cotton including cotton merchants, cotton marketing cooperatives, cotton gins and lenders. Access to the website may also be provided to others, as appropriate..

§3.505. Compliance Certificates.

(a) When a grower has paid all assessments in full for the current crop year, the foundation shall issue a compliance certificate to that grower.

(b) This compliance certificate shall include the following information:

(1) The name of the grower;

(2) The grower's identification number. This shall be either a social security number or tax identification number;

(3) All farm numbers on which the grower has an interest in cotton and the full assessment has been paid. This shall include a listing of the county and the farm number as certified by the FSA, or the foundation's identification number for that farm in the event that the farm is not certified with FSA.

(c) A compliance certificate shall be issued and mailed by the foundation within 5 working days of the date the full amount of assessment is received by the foundation.

(d) In addition to the document described in subsection (b) of this section, the following shall also serve the same purpose as a compliance certificate and shall be accepted by first buyers of cotton as proof of payment of an assessment, in the same manner as a compliance certificate:

(1) payment information obtained from the foundation's limited access website including a download or printout of payment information relating to individual growers;

(2) a receipt issued by the foundation evidencing payment of the assessment on the acreage on which the cotton was grown as long as the receipt contains the same information required to be included on the compliance certificate; or

(3) a faxed copy of the compliance records of the foundation.

§3.506. Attachment of Lien on Harvested Cotton.

(a) An assessment lien established under the Texas Agriculture Code, §74.115, as amended by Senate Bill 631 (assessment lien) attaches and is perfected 60 days after the date the foundation mails notice of an assessment due and owing by a cotton grower certifying or reporting cotton production within an active eradication zone.

(b) The assessment lien attaches to cotton produced and harvested from acreage subject to the assessment that assessment year for the amount of the assessment which is due and unpaid, as defined by §3.501 of this title (relating to Definitions), for that assessment year.

(c) The assessment lien attaches only as to the first buyer of cotton and subsequent buyers take the cotton free of the assessment lien.

(d) A first buyer of cotton takes free of the assessment lien if the buyer receives a compliance certificate or other acceptable documentation as described in §3.505 of this title (relating to Compliance Certificates).

(e) A first buyer of cotton also takes free of the assessment lien if the buyer pays for the cotton with a check naming the department as a joint payee, or writes a separate check for the full amount of the unpaid assessment naming the department as the sole payee.

(f) In the event a check is issued naming the department as a joint payee:

(1) The grower may contact the department or the foundation for instructions on how to proceed to obtain an endorsement of the check and a release of lien.

(2) If a check is issued to a lender or other entity as well as the department and the grower, and the lender or other entity is entitled to all or a portion of the proceeds from the sale resulting in only a partial or no payment of the assessment, the grower must provide documentation adequate to establish the amount of the lien owed to the lender or other entity, prior to endorsement of the check by the department and release of the assessment lien by the Foundation.

(3) In addition to paying the assessment owed in full or providing documentation that a superior lien holder has claim to all or a portion of the proceeds from sale of the cotton, before the department will release an endorsed check to the grower and the foundation issues a release of lien, the grower shall verify that no other liens exist as to the cotton which is the subject of the assessment lien by executing an affidavit to that effect.

§3.507. Notice to Buyers.

Notwithstanding any other provisions of this subchapter:

(1) Once a lien is perfected and attaches in accordance with the Texas Agriculture Code, §74.115, as amended by Senate Bill 631, the lien established will be solely against cotton growers and first buyers of cotton, as defined by §3.501 of this title (relating to Definitions), and will be subject to and pre-empted by the Food Security Act of 1985 (7 USCA 1631), and the lien notice provisions thereof to first buyers of cotton, to be given by the foundation.

(2) The lien established by § 74.115 is not effective or enforceable against a first buyer of cotton until the written notice described in paragraph (1) of this section is received by the buyer.

§3.508. Lien Priority.

An assessment lien placed in accordance with this section is not a priority lien, and does not have superior status to prior liens on the harvested cotton to which the lien is attached under this subchapter and the Texas Agriculture Code, §74.115, as amended by Senate Bill 631.

§3.509. Release of Lien.

The foundation will issue a release of lien to the grower:

(1) once the assessment has been paid in full, or adequate documentation has been provided to establish that a prior lienholder is entitled all or a portion of proceeds of the sale of cotton that would go towards the assessment; and

(2) the grower has executed an affidavit verifying that no other lienholders are entitled to the proceeds of the cotton, which is subject to the assessment lien.

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 July 12, 1999.

TRD-9904181
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–7541

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Chapter 26. Texas Agricultural Finance Authority: Linked Deposit Program

4 TAC §§26.1, 26.3, 26.5-26.10

The Board of Directors (the board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture proposes amendments to §§26.1, 26.3, and 26.5-26.10, concerning the Authority's Linked Deposit Program.

The amendments are proposed in order to provide an expansion of the linked deposit program available through the Authority in accordance with statutory changes made to the Texas Agriculture Code, Chapter 44, by the enactment of House Bill 3050 by the 76th Texas Legislature, 1999. Other changes are also made throughout the sections to make them consistent with House Bill 3050. The proposed amendments to §26.1 add a definition for alternative crops produced in the state; add a definition for the commissioner of agriculture; update from 1995 to 1997 the reference to the publication compiled by the Texas Agricultural Statistics Service providing information on customarily grown crops; clarify the linked deposit agreement between the state and the lender in regard to the maximum rate to be charged to the eligible borrower; and delete the definition of administrator. The proposed amendment to §26.3 expands the purpose of the program to include the creation and enhancement of value-added businesses and providing assistance for disaster relief projects. The proposed amendment to §26.5(b) clarifies that the eligible borrower is to notify the Authority's office in Austin upon the receipt of loan proceeds. The proposed amendment to §26.6(5) changes the maximum interest rate to be charged to an eligible borrower by a lender from the current market rate plus four percent to the linked deposit rate plus four percent. The proposed amendment to §26.6(6) clarifies that the application may be sent by facsimile transiever to the Authority in Austin. The proposed amendments to §26.7(a) and (b) clarify the application review process by stating the staff of the Authority will review the applications. New subsection (c) provides that the board will approve or deny any and all applications, provided that such authority may be delegated to the commissioner by the board. The proposed amendments to §26.8(b) and (c) clarify the actions of the comptroller regarding an application. The proposed amendment to §26.9(a) expands the use of loan proceeds for the program to include any agriculture-related operating expense, including the purchase or lease of land or fixed asset acquisition or improvement, as identified in the application and further provides that a loan under this program may be applied to existing debt for an eligible applicant. The proposed amendment to §26.10(1) expands the program to $25 million from $15 million. The proposed amendment to §26.10(3) expands the eligibility criteria to include the finance of crops declared eligible for natural disaster relief to $250,000. The proposed amendments to §26.10(11) update the listing of customarily grown crops that are not eligible for participation in the program by adding broilers, green peppers, peaches, sunflowers, and fresh tomatoes, and deleting broccoli and oats. The proposed amendments to §26.10(12) update the listing of alternative crops eligible for participation in the program by adding broccoli, farm chickens, and oats, deleting peaches, and sunflowers. The proposed amendment to §26.10(13) provides criteria for projects eligible for natural disaster relief under the program and the term of eligible participation in the program by a disaster relief applicant.

Robert Kennedy, Deputy Assistant Commissioner for Finance, has determined that for the first five-year period that the proposed amendments are in effect there will be no anticipated fiscal implication to state or local government as a result of enforcing or administering the proposal.

Mr. Kennedy has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be the provision of financial assistance to more agricultural businesses in the state and to provide more efficient financial assistance programs. There is no anticipated effect on small businesses, except that eligible businesses that are granted financial assistance under the Authority's programs will benefit from that assistance. There will be no anticipated economic costs to persons required complying with the proposals other than regular costs associated with the application process for those seeking financial assistance from the Authority.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance, 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 in the *Texas Register*.

The amendments are proposed under the Texas Agricultural Code (the Code), §44.007, which provides the Authority with the authority to promulgate rules for the loan portion of the linked deposit program; the Code, §58.022, which provides the Authority with authority to adopt rules and procedures necessary for the administration of its programs including the setting and collection of fees in connection with the program; and. the Code, §58.023, which provides the Authority with authority to adopt rules to establish criteria for eligibility of applicant and lenders under the financial assistance programs.

The Texas Agriculture Code, Chapters 44 and 58 are affected by the proposal.

§26.1. Definitions.

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

(1) Act–The Texas Agriculture Code, §§44.001-44.010.

(2) Alternative agriculture crops–Crops not customarily grown in this state but that could feasibly be produced in the state. [~~Administrator–The person employed by the Texas Department of Agriculture designated by the commissioner of agriculture to administer the linked deposit program.~~]

(3)-(8) (No change.)

(9) Commissioner–The Commissioner of the Texas Department of Agriculture.

(10) [~~(9)~~] Crop–A product or derivative of any product that is produced or bred on a farm or ranch including: agricultural, arboricultural, floricultural, horticultural, viticultural, apicultural, aquacultural, livestock, maricultural, poultry, wild game, or other animal products or derivatives.

(11) [~~(10)~~] Current market rate–The rate of interest on a United States treasury bill or note, the maturity date of which most closely matches the maturity date of the loan, or the end of the next biennium of the state, whichever is sooner, as determined by reference to the United States treasury bill or note section of the Wall Street Journal published on the day the loan is priced.

(12) [~~(11)~~] Customarily grown–Crops produced in this state that utilize conventional management systems, and have cash receipts equal to or exceeding $5 million as listed in the 1997 [~~1995~~] Texas Agricultural Cash Receipts by Commodity, compiled by the Texas Agricultural Statistics Service for the period ending December 1997 [~~1995~~], except for experimental varieties of these crops.

(13) [~~(12)~~] Default–The failure to perform an obligation established by the loan agreement, these rules or agreement.

(14) [~~(13)~~] Department–The Texas Department of Agriculture and the Texas Agriculture Commissioner.

(15) [~~(14)~~] Eligible borrower–A person who is in the business or entering the business of:

(A) processing and marketing agricultural crops in this state;

(B) producing alternative agricultural crops in this state;

(C) producing agricultural crops in this state, the production of which has declined [~~markedly~~] because of natural disasters;

(D) producing agricultural crops in this state using water conservation equipment for agricultural production purposes; or

(E) financing of water conservation projects.

(16) [~~(15)~~] Lender–A financial institution that makes commercial loans, agrees to participate in the linked deposit program and is certified as a state depository by the Comptroller.

(17) [~~(16)~~] Linked deposit–A time deposit governed by a written deposit agreement between the state and the lender that provides that:

(A) the lender pay interest on the deposit at a rate that is not less than the greater of:

(i) the current market rate minus 2.0%; or

(ii) 1.5%;

(B) the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(C) the eligible lending institution agree to lend the value of the deposit to an eligible borrower at a maximum rate that is the linked deposit [~~current market~~] rate plus a maximum of 4.0%.

(18) [~~(17)~~] Loan–The note or other evidence of indebtedness entered into between the eligible borrower and the lender under the program.

(19) [~~(18)~~] Person–An individual, corporation, cooperative, organization, government or a governmental subdivision or agency, business trust, trust, partnership, association, or any other legal entity.

(20) [~~(19)~~] Program–The Linked Deposit Program authorized by the Act, §44.007.

(21) [~~(20)~~] Staff–The staff of the department designated by the commissioner of agriculture as performing duties for the Authority.

§26.3. Purpose.

The purpose of the program is to encourage private commercial loans for the enhancement of [~~enhanced~~] production, processing, and marketing of certain agricultural crops , the creation and enhancement of value- added businesses, providing assistance for disaster relief projects, and for the financing of water conservation projects or equipment for agricultural production purposes. These sections are adopted to provide standards of eligibility and procedures for obtaining financial assistance under the Act.

§26.5. Application Procedures for Applicant.

(a) (No change.)

(b) The eligible borrower shall notify the Authority's office [~~Authority~~] in Austin in writing upon receipt of the loan proceeds indicating the amount received, date received, and the total amount of loan drawn to date.

§26.6. Application Procedures for the Lender.

A lender must comply with the following procedures to obtain approval of an application for participation in the program.

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

(5) A loan, while under the program, shall be set at a rate of interest established according to the prescribed linked deposit formula under the Act. The linked deposit rate will be recalculated at the end of the fiscal biennium. The eligible borrower's loan rate shall not exceed the linked deposit [~~current market~~] rate plus 4.0%.

(6) A lender shall forward the original completed and approved application to the Authority [~~or the administrator~~]. The application may be sent by facsimile transceiver (FAX) to the [~~Texas Agricultural Finance~~] Authority [~~or the administrator~~] in Austin upon review and approval by the lender with the original remitted by next day United States mail.

(7)-(11) (No change.)

§26.7. Procedure for Review.

(a) Upon receipt of the application, the Authority staff shall review the application and determine:

(1)-(5) (No change.)

(b) The Authority staff shall notify the applicant and the lender of any deficiencies in the application within ten business days after receipt of the application. The applicant and the lender may amend the application to comply with the Authority's comments or withdraw the application.

(c) The Board will approve or deny any and all applications under this chapter, provided that the board may delegate such authority to the Commissioner.

(d) [~~(c)~~] The Authority staff shall retain a copy of the application and forward a duplicate copy of the application with the Authority's recommendation to the comptroller.

§26.8. Acceptance and Rejection Procedures.

(a) (No change.)

(b) If the comptroller does not accept [~~disagrees with~~] the Authority's recommendation, the comptroller and the Authority shall meet to resolve the disagreement.

(c) Unless the comptroller declines to act on the application [~~disagrees with the Authority~~], upon receipt of the completed application, 105% collateralization of the linked deposit by the lender, and written notice of funding of the loan from the Authority, the comptroller will wire the linked deposit to the lender in immediately available funds the same day, provided written notice that funding of the loan is received by noon. The comptroller will then provide the Authority confirmation of the linked deposit.

(d)-(i) (No change.)

§26.9. Use of the Loan Proceeds.

(a) Loan proceeds under the program may [~~shall~~] be used for any agriculture-related operating expense, including the purchase or lease of land or fixed asset acquisition or improvement, as identified in the application. A loan under this program may be applied to existing debt for applicants eligible to participate under this program. [~~the purchase or lease of land, equipment, seed, fertilizer, direct marketing facilities, processing facilities, payment of professional services and for financing of water conservation projects or equipment for agricultural production purposes. No other use of proceeds is permitted. Professional services may include but are not limited to legal, accounting, marketing, production or pest management, or engineering services. Financing provided for eligible water conservation projects or equipment may be applied to existing debt resulting from the financing of water conservation projects or equipment for agricultural purposes.~~]

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

§26.10. Program Limitations.

In addition to the limitations already set forth in these rules, the following limitations apply.

(1) Not more than $25 [~~$15~~] million, of which $10 million may only be used to finance water conservation projects, may be placed concurrently in linked deposits under the Act.

(2) (No change.)

(3) The maximum amount of a loan to finance production of a crop declared eligible for natural disaster relief [~~produce crops which have declined markedly because of a natural disaster~~] is $250,000.

(4) (No change.)

(5) The maximum amount of a loan to process and [~~or~~] market agricultural crops is $500,000.

(6)-(10) (No change.)

(11) The following customarily grown crops are not eligible for participation in the production financing for alternative crops portion of the program: bell peppers, [~~brocolli,~~] broilers, cabbage, cantaloupe, carrots, cattle, celery, corn, cotton, cottonseed, cucumbers, eggs, grapefruit, green peppers, certain greenhouse or nursery products, hay, hogs, honeydew melons, lambs, cow's milk, mohair, [~~oats,~~] spring and summer onions, peaches, peanuts, pecans, potatoes, poultry, quarter horses, rice, sheep, soybeans, sorghum grain, spinach, sugarbeets, sugarcane, sunflowers, sweet potatoes, fresh tomatoes, turkeys, watermelons, wheat, and wool.

(12) The following alternative crops that are not customarily grown in this state are eligible for participation in the production financing portion of the program: aloe vera, barley, beets other than sugar, blueberries, broccoli, buffalo, canola, cashmere goats, catfish, cauliflower, crambe, crawfish, cut flowers, dairy goats, eggplant, emu, experimental varieties of customarily grown crops, exotic game species for venison, farm chickens, table and wine grapes, greens, herbs, honey, thoroughbred horses, jalapenos, jojoba, kenaf, llamas, lean and natural beef, lettuce, longhorn cattle, mesquite, mushrooms, native plants, oats, oriental vegetables, [~~peaches,~~] oranges, ostrich, pinto beans, pistachios, pumpkins, quail, rabbits, redfish, rhea, rye, shrimp, snap beans, squash, strawberries, [~~sunflowers,~~] sweet corn, tilapia, turnips, Christmas trees, wildflowers, and any other crops not currently produced in the state. The Authority may, on a case by case basis, approve for program participation crops which are not listed in this paragraph.

(13) A project eligible for natural disaster relief [~~An agricultural crop produced~~] in this state [~~, the production of which~~] is a project that resides in an area of the state that has declined [~~markedly~~] because of a natural disaster, and [~~which shall be eligible for participation in the production financing portion of the program, is any crop produced in the state which~~] has been declared in a state of disaster by the United States Department of Agriculture or the President of the United States. [~~, with~~] The [~~the~~] term of eligibility for participation in the program is [~~being~~] dependent upon [~~the maturity or growing cycle of the type of crop~~] the effect of the [~~being declared eligible for~~] natural disaster [~~assistance~~] and the asset being financed.

(14)-(15) (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-9904179
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-4075

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Chapter 30. Texas Agricultural Finance Authority: Young Farmer Loan Guarantee Program

The Board of Directors (the board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture proposes amendments to §§30.1-30.14 of Chapter 30, Subchapter A, §§30.51-30.54 of Chapter 30, Subchapter B, and §30.60, and §§30.62-30.63 of Chapter 30, Subchapter C, concerning the Authority's Young Farmer Loan Guarantee Program.

The amendments are proposed in order to provide an expansion of the young farmer loan guarantee program available through the Authority in accordance with statutory changes made to the Texas Agriculture Code (the Code), Chapter 58, by the enactment of House Bill 3050 by the 76th Texas Legislature, 1999. The proposed amendment to §30.1 expands authority for the program by adding the enhancement of a farming or ranching operation or an agricultural-related business and

deleting references to a first independent operation. The proposed amendment to §30.2 expands the purpose of the program to the enhancement of a farming or ranching operation and the establishment of an agricultural-related business. The proposed amendments to §30.3 update the reference to the authority for the young farmer loan guarantee program from Chapter 253 of the Code to Chapter 58 of the Code; delete the definition of an agricultural science teacher, a county agent, a district based agricultural economist, a first farm or ranch operation, and a lender; add a definition for a commercial lender to include a chartered state of federal institution, a credit union, or a Farm Credit System institution, add a definition for the commissioner to be the commissioner of agriculture; clarify the definition of an eligible applicant to be a person applying who is at least 18 years of age but less than 40 years of age and who complies with the application procedures of the program rules; clarify the definition of interest rate; clarify the definition of loan as a loan made by a commercial lender and approved for guarantee by the board or the commissioner in accordance with the program rules; clarify a lender to be a commercial lender; change the loan guarantee amount for the program from the lesser of $100,000 or 90% of the total loan to the lesser of $250,000 or 90% of the total loan; change the definition of plan from a cash flow, production, or management plan to the documentation submitted to the lender in support of the application; and clarify the definition of project from a first farm or ranch operation, which would further the production of agricultural products, to an enterprise that establishes or enhances a farming or ranching operation or an agricultural-related business, which furthers Texas agriculture. The proposed amendment to §30.4 clarifies the application process and criteria for the applicant to submit the application to the commercial lender for the program. The proposed amendment to §30.5(a) expands the eligible cost under the program to include the provision of working capital for operating a farm or ranch, including the lease of facilities and the purchase of machinery and equipment, or for any agriculture- related business purpose, including the purchase of real estate for the agricultural-related business, as defined in the plan. The proposed amendment to §30.5(b) clarifies those costs that are ineligible for the program to be any cost that is not identified in the plan and the purchase of real estate exclusively for agriculture production purposes. The proposed amendment to §30.6(a) and (b) changes the term lender to commercial lender. The proposed amendment to §30.6(c) clarifies the lender as a commercial lender and deletes the requirement of any comments from the county agent, agricultural science teacher, or district based agricultural economist who reviewed the plan. The proposed amendments to §30.6(d) add the commissioner in the review and approval process, if such authority is delegated by the board; and change the reference to the Act from the Code, §253.004 to §58.054 regarding the application determination criteria used by the board or the commissioner. The proposed amendment to §30.6(e) clarifies the notification of approval procedure and changes the term lender to commercial lender. The proposed amendment to §30.6(f) clarifies the process for denial of an application and changes the term lender to commercial lender. The proposed amendment to §30.6(h) clarifies the reporting requirement of staff to the board incorporating any applications approved by the commissioner, if approval authority is so delegated by the board. The proposed amendment to §30.7 clarifies the information to be presented to a commercial lender by an applicant for the program to be the application form provided by the Authority, the plan submitted to the lender for the proposed operation, the completed application from a commercial lender which identifies how the proceeds of the loan will be used to implement the applicant's plan, and the signed statement of the commercial lender that a guarantee is required for approval of the application. The proposed amendment to §30.8(a) clarifies that the board or the commissioner will consider the application upon completion of the review by staff. The proposed amendment to §30.8(b) clarifies that the application approval is subject to the availability of funds in the young farmer loan guarantee account. The proposed amendment to §30.9(a) changes the limitations for the program from the lessor of $100,000 or 90% of the total loan to $250,000 or 90% of the total loan. The proposed amendment to §30.9(b) includes the commissioner, if delegated by the board, in the decision process. The proposed amendment to §30.9(c) changes the lender to the commercial lender. The proposed amendment to §30.9(e) changes the maximum amount of participation by the program to not exceed the lesser of 90% of the total loan or $100,000 to the lesser of 90% of the total loan or $250,000. The proposed amendments to §30.9(g) and §30.10(a) change the term lender to commercial lender. The proposed amendments to §30.10(b) change the term lender to commercial lender, add a requirement that the commercial lender notify the Authority of the payment of all personal property taxes by the borrower, and renumber the paragraph (3) to (4). The proposed amendment to §30.11 changes the term lender to commercial lender. The proposed amendment to §30.12(a) clarifies the approval criteria used by the board or the commissioner when approving an application for the program. The proposed amendment to §30.12(b) changes the term lender to commercial lender and clarifies that the commissioner can decline an application. The proposed amendment to §30.12(c) clarifies where copies of the credit policy and procedure document may be obtained. The proposed amendments to §30.13 and §30.14 change the term lender to commercial lender.

The proposed amendment to §30.51 clarifies that voluntary assessments will be remitted to the comptroller for deposit in the Texas agricultural fund for the purpose of making loan guarantees under the young farmer loan guarantee program. The proposed amendments to §30.52 change the Fund to the Account identified as the Young Farmer Loan Guarantee Account within the Texas Agricultural Fund and correct the reference to the statutory authority for the assessments. The proposed amendment to §30.53(c) corrects the identity of the state treasury to the comptroller. Other proposed amendments to §30.53 correct the identity of the state treasury to the comptroller, change the general revenue fund to the Texas agricultural fund, and correct the reference to the statutory authority for the assessments. The proposed amendment to §30.54(c) deletes the subsection, as it is no longer needed. The proposed amendments to §30.60 update the reference to the authority for the young farmer loan guarantee program from Chapter 253 of the Code to Chapter 58 of the Code, add the establishment of an agricultural-related business as criteria for assistance under the Young farmer program, and delete the first farm or ranch requirement. The proposed amendment to §30.62 changes the definition of the young farmer loan guarantee account from an account in the general revenue of the state to an account within the Texas Agricultural Fund. The proposed amendment to §30.63(a) clarifies that the interest rate established under the interest reduction program is to be fixed rate for the term of the guarantee. The proposed

amendment to §30.63(b) clarifies the calculation of the interest reduction payment to the borrower under the interest reduction program. The proposed amendment to §30.63(d) changes the term lender to commercial lender for consistency with other sections. The proposed amendments to §30.63(e) and (h) change the term lender to commercial lender for consistency with other sections.

Robert Kennedy, Deputy Assistant Commissioner for Finance, has determined that for the first five-year period that the proposed amendments are in effect there will be no anticipated fiscal implication to state or local government as a result of enforcing or administering the proposed amendments.

Mr. Kennedy has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be the provision of financial assistance to more agricultural businesses in the state and to provide more efficient financial assistance programs. There is no anticipated effect on small businesses, except that eligible businesses that are granted financial assistance under the Authority's programs will benefit from that assistance. There will be no anticipated economic costs to persons required to comply with the proposals other than regular costs associated with the application process for those seeking financial assistance from the Authority.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance, 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 in the *Texas Register*.

Subchapter A. General Procedures

4 TAC §§30.1-30.14

The amendments to §§30.1-30.14 are proposed under the Texas Agricultural Code (the Code), §58.022, which provides the Authority with authority to adopt rules and procedures necessary for the administration of its programs including the setting and collection of fees in connection with the program; and the Code, §58.023, which provides the Authority with authority to adopt rules to establish criteria for eligibility of applicants and lenders under the financial assistance programs.

The code affected by the proposal is the Texas Agriculture Code, Chapter 58.

§30.1. Authority.

Through action of the Texas Legislature, the Texas Agricultural Finance Authority is authorized to establish the Young Farmer Loan Guarantee Program to provide financial assistance to eligible applicants who are establishing or enhancing their farming [~~first farm~~] or ranching [~~ranch~~] operation or an agricultural- related business.

§30.2. Purpose.

The Young Farmer Loan Guarantee Program is to provide financial assistance in the form of loan guarantees to eligible applicants who desire to establish or enhance their [~~first~~] farm or ranch operation or establish an agricultural-related business, when the board considers such financial assistance presents a reasonable risk and has a sufficient likelihood of repayment. These rules establish standards of eligibility and application procedures for the program.

§30.3. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 58 [~~253~~], as amended, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Act–Texas Agriculture Code, Chapter 58, Subchapter E [~~253~~], as enacted with the passage of House Bill 3050 by the 76th Texas Legislature, 1999[~~amended~~], the Young Farmer Loan Guarantee Program.

[~~(2) Agricultural science teacher–An individual employed by a Texas school district for the purpose of teaching agricultural science and technology.~~]

(2) [~~(3)~~] Applicant–A young farmer or rancher who is applying for assistance under the Act and this chapter.

(3) [~~(4)~~] Application–An application, including supporting documentation and schedules as required by the Authority, that must be completed by an applicant and submitted by the applicant's lender to staff in order to seek participation in the program and to determine an applicant's eligibility.

(4) [~~(5)~~] Authority–The Texas Agricultural Finance Authority.

(5) [~~(6)~~] Board–The board of directors of the Texas Agricultural Finance Authority.

(6) [~~(7)~~] Borrower–An eligible applicant approved for a loan guarantee by the board.

(7) [~~(8)~~] Business day–A day on which the department is open for business. The term shall not include Saturday, Sunday, or a traditional holiday officially observed by the state. The department's normal business hours are from 8:00 a.m. to 5:00 p.m. each business day.

(8) Commercial lender–A commercial lending institution chartered by the state or federal government, including a savings bank, a credit union, or a Farm Credit System institution.

(9) Commissioner–The Commissioner of the Texas Department of Agriculture.

(10) [~~(9)~~] Department–The Texas Department of Agriculture.

[~~(10) District-based agricultural economist–A district agricultural economist employed by the Texas Agricultural Extension Service.~~]

(11) Eligible applicant–A person applying for a loan guarantee who:

(A) is at least 18 years of age but younger than 40 years of age;

[~~(B) has a minimum of four years of practical farm or ranch experience, with not more than two years of participation in a 4-H or vocational agriculture program counting as practical farm or ranch experience;~~] and

(B) [~~(C)~~] complies with the application procedures prescribed by these rules.

(12) Equity–The applicant's contribution to a project in the form of cash, land, or other depreciable property which is unencumbered [~~by debt, mortgage, pledge, or any other security interest~~].

[~~(13) First farm or ranch operation–An independent operation:~~]

[(A) in which the applicant as owner/operator provides substantially all of the management and labor for the operation; and]

[(B) in which the applicant as owner/operator provides or directly arranges for the financing of the operation.]

(13) [(14)] Interest rate–The interest rate on a guaranteed loan as determined by the participating lender and approved by the board on a project-by-project basis.

[(15) Lender–A state or nationally chartered commercial lending institution, savings and loan association, credit union, or Farm Credit System institution in the state.]

(14) [(16)] Loan–A loan made by a commercial lender and approved for a guarantee by the board or the commissioner in accordance with the requirements and criteria set forth in the Act and in this chapter.

(15) [(17)] Loan guarantee agreement–An agreement between the Authority and the commercial lender which defines the responsibilities of the parties.

(16) [(18)] Loan guarantee amount–With respect to a loan made by a lender, a sum measured in terms of United States dollars that the Authority agrees to pay in the case of default by the borrower, not to exceed the lesser of $250,000 [$100,000] or 90% of the total loan.

(17) [(19)] Plan– The documentation submitted to the lender in support of the application. [A cash flow, production, or management plan.]

(18) [(20)] Program–The Young Farmer Loan Guarantee Program.

(19) [(21)] Project–An enterprise that establishes or enhances a farming or ranching operation or an agriculture-related business, which furthers Texas agriculture. [A first farm or ranch operation which would further the production of Texas agricultural products.]

(20) [(22)] Qualified application–A completed application, including all documentation and information required by the Authority, submitted by the applicant and the commercial lender for a project.

(21) [(23)] Staff–The staff of the department assigned to the Authority.

(22) [(24)] State–The State of Texas.

§30.4. Applicant Requirements.

An applicant may submit an application to the commercial lender for the program [Authority] if the applicant meets the following requirements:

(1) [applicant] is a United States citizen and a resident of the State of Texas;

(2) [applicant] provides evidence of the fact that the applicant's farm or ranch operation will be located within the state;

[(3) applicant provides evidence that the proposed project is his or her first farm or ranch operation;]

(3) [(4) applicant] provides evidence of a minimum [of 5.0%] equity in the [first] farm or ranch operation; and

(4) [(5) applicant] is an eligible applicant as set forth in the Act and this chapter.

§30.5. Project Costs.

(a) Eligible costs. Financing received under this program may be used [only] to provide working capital for operating a [the] farm or ranch , including the lease of facilities and the purchase of machinery and equipment, or for any agriculture-related business purpose, including the purchase of real estate for the agricultural-related business, as defined in the plan [identified in the application].

(b) Ineligible costs. Use of financing received under this Program for any costs other than those identified in the plan [working capital for the farm or ranch operation] shall be considered ineligible costs. The purchase of real estate exclusively for agriculture production purposes is an ineligible cost for this program. A loan guarantee is voidable by the board or the commissioner if the borrower uses loan proceeds for any [ineligible] costs not identified in the plan.

§30.6. Filing Requirements and Consideration of Applications.

(a) Application forms. A [An applicant or] commercial lender seeking a loan guarantee from the Authority must use the application forms provided by the Authority and must include all information requested.

(b) Submission of application. All applicants are required to obtain a preliminary commitment from a commercial lender before applications will be accepted by the Authority. Staff will be available prior to submission of the qualified application to assist applicants and commercial lenders in determining project eligibility.

(c) Staff review. Staff will review the application for completeness and will notify the commercial lender of any additional information required. When all required information has been received, staff will conduct a credit review, evaluate the project, and examine its benefits for Texas agriculture, economic growth and job creation in the state. [The staff may request and consider comments of the county agent or the agricultural science teacher who reviewed the Plan. A district-based agricultural economist may be requested to provide assistance in reviewing the plan.]

(d) Board or commissioner review. The staff shall submit a credit memorandum to the board or the commissioner, which shall include a recommendation for approval or denial for each qualified application received by the program. The board , or the commissioner upon delegation of authority by the board, will approve or deny the qualified application . [by a majority vote of a quorum of the board,] The determination for the application will be based upon the information presented in accordance with the Act and this chapter, the credit memorandum, and the factors set forth in §58.054 [§253.004] of the Act, as implemented by this chapter. The board or the commissioner may impose additional terms and conditions as part of its approval.

(e) Notification of approval. Upon conditional approval of the qualified application [by the board], staff will notify the commercial lender and the applicant in writing identifying the terms and conditions of the loan guarantee. [The board may set certain] Certain time limits will be set regarding the acceptance of loan commitments by the applicant and the commercial lender; however, in no event shall the time period exceed 30 days from date of notification unless previously approved [by the board]. The commercial lender will prepare the written agreements and documents necessary to close the loan in accordance with the terms and conditions set forth in the notice of conditional approval. The Authority staff will send the commercial lender and the applicant final notice of guarantee approval after review of the closing documents. The commercial lender will disburse the loan according to the terms and conditions of the note and/or loan agreement.

(f) Denial of application. If the [~~qualified~~] application is denied [~~by the board~~], the Authority staff will notify the eligible applicant and the commercial lender in writing, identifying the reasons for denial. Applicants who have been denied may re-apply to the loan guarantee program.

(g) (No change.)

(h) Reporting to the board. Staff shall report to the board at each board meeting the status of loans [~~and current financial commitments~~] of the Authority and any applications approved by the commissioner under the program since the last meeting of the board.

§30.7. Contents of the Application.

[~~Required information.~~] The applicant must present to the commercial lender the information necessary to determine if the applicant is an eligible applicant and is qualified to receive a loan guarantee under the program. Such information will include [~~, at least,~~] the following:

(1) the [~~an~~] application form [~~,~~] of the program provided by the Authority; [~~, which shall include the following information and attachments:~~

[~~(A) the applicants name and address;~~]

[~~(B) the applicant's current valid driver's license number;~~]

[~~(C) the applicant's resume which identifies the agricultural experience of the applicant;~~]

[~~(D) two credit references and two unrelated personal references;~~]

[~~(E) information and/or letters of commitment regarding other funding sources, if applicable;~~]

[~~(F) disclosure of any and all business affiliations of the applicant with members of the board, employees of the department, the staff and/or lender which could present a conflict of interest;~~]

[~~(G) any other information which the applicant, the lender or the Authority decide may be useful in the determination of the applicant's eligibility and/or creditworthiness; and,~~]

[~~(H) financial statements provided in accordance with generally accepted accounting principles. They should be typed or written in ink, dated (no more than three months old) and signed by the applicant and spouse, if applicable. Printed forms of other lending institutions will be accepted. A financial statement will be required from each person/entity who will become personally liable on the loan.~~]

(2) the plan, as submitted to the lender, for the applicant's proposed farm or a ranch operation or agriculture-related business to be financed that includes a budget for the proposed operation [~~a cash flow, production, or management plan for the period comparable to the term of the guarantee not to exceed three years~~];

(3) a completed application for a loan from a commercial lender on which an eligible applicant has indicated how the loan proceeds will be used to implement the applicant's plan [~~a letter from an agricultural science teacher in the applicant's school district, or the county extension agent in the area where the farm or ranch is located, stating that he/she has reviewed and approved the plan~~]; and

(4) the [~~a~~] signed statement of a loan officer of the commercial [~~participating~~] lender that a loan guarantee is required for approval of the loan application.[~~;~~]

[~~(5) a completed application for a loan from a commercial lender, including all attachments and other supporting documentation, on which the applicant has indicated that the loan proceeds will be used to implement the applicant's plan. If available, the loan application must include four years of historical financial statements of any previous farming or ranching activity of the applicant, including balance sheets, income statements and cash flow statements, and applicant's complete federal income tax returns for the four years preceding the date of the application.~~]

§30.8. Application Process.

(a) A qualified application will be considered by the board or the commissioner at the first available meeting of the Authority [~~,~~] or when the [~~provided that~~] staff has had sufficient time to complete its review of the qualified application.

(b) Approval [~~Authority approval~~] of qualified applications will be subject to the availability of funds in the young farmer loan guarantee account.

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

§30.9. General Terms and Conditions of Authority's Financial Commitment.

(a) Maximum amount of loan guarantee. The Authority shall not provide a loan guarantee to borrower, including its affiliates, that at any one time exceeds the lesser of $250,000 [~~$100,000~~] or 90% of the total loan. A loan guarantee is voidable by the board if the borrower uses loan proceeds for any use other than those allowed under the Act and this chapter. The total loan guarantees authorized at any one time are limited to two times the amount available in the young farmer loan guarantee account.

(b) Security. Financial commitments approved under this program must be secured by a first lien on collateral of a type and value which, when considered with other criteria, in the judgment of the board or the commissioner affords reasonable assurance of repayment of the loan.

(c) Closing of the loan. The commissioner of agriculture or her [~~his~~] designee may attend the verification and signing of such closing documents at the time, date, and location determined by the commercial lender.

(d) (No change.)

(e) Co-participation. An applicant may seek co-participation in financial assistance from other private and governmental sources. In any event, the Authority's maximum guarantee in the credit may not exceed the lesser of 90% of the loan or $250,000 [~~$100,000~~] with the commercial lender remaining at risk for at least 10% of the loan.

(f) (No change.)

(g) Interest rate. The interest rate on the guaranteed loan (not including guarantee fees) shall be the rate charged by the commercial lender and approved by the Authority.

§30.10. Reporting Requirements.

(a) Each recipient of a loan under this program shall provide financial and cash flow statements as required by the commercial lender and approved by the Authority, no less frequently than annually.

(b) Each commercial lender shall report in writing to the Authority as follows:

(1) (No change.)

(2) quarterly monitoring reports indicating loan balance, repayment status, and any credit changes reported to the commercial

lender as indicated on the prescribed form to be supplied by the Authority; [and]

(3) notification to the Authority of the payment of all personal property taxes; and

(4) [(3)] notification in the event of any breaches or defaults in the terms, conditions, or covenants of the note, loan agreement, or other loan documents.

(c) (No change.)

§30.11. Repayment Schedule.

The commercial lender shall establish a repayment schedule for each approved loan taking into consideration the repayment schedule submitted by the borrower in the qualified application and the reasonableness of the projected financial information. Failure to make any payment as scheduled shall be considered an event of default on the loan and shall constitute grounds for demand for full and immediate repayment of the loan, with approval of the commercial lender and the Authority.

§30.12. Criteria for Approval of a Loan Guarantee.

(a) Criteria for an eligible applicant. The board or the commissioner shall consider the following factors in deciding whether to approve an application for a loan guarantee:

(1) (No change.)

(2) the eligible applicant's qualifications [, including:]

[(A) credit history and financial condition of the eligible applicant;]

[(B) historical financial statements of the eligible applicant;]

[(C) the management experience and ability of the eligible applicant];

(3) the feasibility of the eligible applicant's plans [, including:

[(A) evidence of the manner, means, and security for repayment of the loan by the eligible applicant;]

[(B) the reasonableness and completeness of the plan;]

[(C) the projected cash flow of the project;]

[(D) the collateral and other sources of guaranty or insurance securing the loan; and]

[(E) the existence of crop insurance and life insurance on the eligible applicant];

(4) other funding sources available to the eligible applicant [. The Authority shall consider whether the desired project financing appears to be available to the eligible applicant on reasonable terms from other lenders. The Authority may direct the eligible applicant to other sources for co-particiaption in the credit]; and

(5) (No change.)

(b) Eligibility of the commercial lender. The commercial lender originating a loan must have a continuing ability to evaluate, perform, and service the loan; to make the necessary reports as identified in the rules of the program; and to collect the loan, if requested by the Authority, upon default. The commercial lender must agree to exercise due diligence in the servicing, maintenance, review, and evaluation of performance without regard to the existence of participation by the Authority or any other limitation of risk. The board or the commissioner [Authority] reserves the right to decline a loan guarantee to a commercial lender which [, in the judgement of the Authority,] does not present sufficient evidence that they have the capacity or interest to appropriately make and service the loan.

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the loan guarantee review and approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from the Finance and Agribusiness Division [Development Program], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 475-1619.

§30.13. Loan Administration.

The commercial lender shall service the loan and receive all payments of principal and interest, including assessment of any late charges, if applicable, in accordance with its loan guarantee agreement with the Authority, which agreement shall, among other things, obligate the lender to service the loan even after an event of default.

§30.14 . Eligible Commercial Lender.

(a) Letter of request. Each commercial lender is required to qualify [itself] for participation in the program by submitting a letter of request, accompanied by its most recent audited financial statements, if available, and the designation of the individual(s) within the lender who will be responsible for working with the Authority.

(b) Investigation. As a condition to participation, a commercial lender must agree to make such investigation as it considers necessary to determine the applicant's viability, the economic benefits to be derived, the prospects for repayment, and other factors that it considers necessary to determine whether participation by the applicant is within the purposes of the program.

(c) Commitment letter. A commercial lender interested in making a loan guaranteed under the program must submit a qualified application along with a commitment letter to the Authority outlining the terms and conditions of the proposed loan. The letter will show the name of the eligible applicant, purpose of the loan, amount and use of the funds, proposed closing date, and collateral for the loan.

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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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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Subchapter B. Rules for Deposition and Refund of Assessment Fees

4 TAC §§30.51–30.54

The amendments to §§30.51-30.54 are proposed under the Texas Agriculture Code (the Code), §58.022, which provides the Texas Agricultural Finance Authority with authority to adopt rules and procedures necessary for the administration of its programs including the setting and collection of fees in connection with the programs; the Code, §58.023, which provides the Authority with authority to adopt rules to establish criteria for eligibility for applicants and lenders under the financial assistance programs;

and the Transportation Code, §502.174, as amended by House Bill 3050, 76th Legislature, 1999, which provides for a voluntary assessment for young farmer loan guarantees and provides the Authority with authority to establish procedures for the collection and refund of such assessments.

The Codes affected by the proposal are the Texas Agriculture Code, Chapter 58 and the Transportation Code, Chapter 502.

§30.51. Purpose and Application of Rules.

The purpose of this subchapter is to provide for the administration of the collection of assessments for the young farmer loan guarantee account by county tax assessor-collectors and the remittance of such assessments to the comptroller [~~state treasurer~~] for deposit in the Texas agricultural [~~general revenue~~] fund for the purpose of [~~use in~~] making loan guarantees under the Young Farmer Loan Guarantee Program.

§30.52. Definitions.

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

(1) Account –The young farmer loan guaranty account within the Texas Agricultural Fund.

(2) [~~(1)~~] Assessment – A voluntary fee paid on each commercial motor vehicle registered under the Transportation Code, §502.174 [~~Texas Civil Statutes, Article 6675a-6a~~].

(3) [~~(2)~~] Authority –The Texas Agricultural Finance Authority.

[~~(3) Fund – The young farmer loan guaranty account.~~]

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

§30.53. Collection of Funds by County Tax Assessor-Collector and Remittance to Comptroller [~~State Treasurer~~].

(a) Each county tax assessor-collector shall collect the voluntary assessment required by the Transportation Code, §502.174 [~~Texas Civil Statutes, Article 6675a-17~~].

(b) (No change.)

(c) The assessments collected shall be remitted by each county tax assessor-collector to the comptroller [~~state treasurer~~], by way of the Authority, on a monthly basis due on or before the 15th of the following month.

(d) The assessments collected shall be remitted by check made payable to the "Texas Agricultural Finance Authority". The remittance shall be mailed to the Authority at the post office box designated on the Remittance Advice form, and shall be deemed paid when deposited by the comptroller [~~state treasurer~~] in the Texas agricultural [~~general revenue~~] fund to the credit of the young farmer loan guarantee account.

(e) (No change.)

§30.54. Refunding of Assessments.

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

[~~(c) Assessments paid after August 30, 1993, up to and including the effective date of these rules shall be deemed to have been paid as of the effective date of these rules and shall be eligible for refund for a period of 30 days after such effective date.~~]

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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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Subchapter C. Interest Reduction Program Rules

4 TAC §§30.60, 30.62, 30.63

The amendments to §§30.60 and 30.62, 30.63 are proposed under the Texas Agriculture Code (the Code), §58.022, which provides the Texas Agricultural Finance Authority with authority to adopt rules and procedures necessary for the administration of its programs including the setting and collection of fees in connection with the programs; the Code, §58.023, which provides the Authority with authority to adopt rules to establish criteria for eligibility for applicants and lenders under the financial assistance programs; and the Code, §58.052, as enacted by the passage of House Bill 3050 by the 76th Texas Legislature, 1999, which provides for a reduced interest rate for young farmer loan guarantees and provides the Authority with authority to adopt rules to implement an interest reduction program.

The Code affected by the proposal is the Texas Agriculture Code, Chapter 58.

§30.60. Authority.

The Texas Agricultural Finance Authority is authorized by the Texas Agriculture Code (the Code), Chapter [~~Chapters~~] 58 [~~and 253~~] to promulgate rules and procedures to establish the Young Farmer Loan Guarantee Program. Such rules, found in this chapter, include criteria by which financial assistance will be provided to eligible borrowers who are establishing their [~~first~~] farm or ranch operation or establishing an agricultural-related business. The Code, at §58.052 [~~§253.002~~], further provides for the Authority to establish an interest reduction program in which a payment from the Account may be provided to an approved applicant for a reduction in the amount of interest paid.

§30.62. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Account - The young farmer loan guarantee account within [~~in~~] the Texas Agricultural Fund [~~general revenue fund of the state of Texas~~].

§30.63. Interest Reduction Program Requirements and Procedures.

(a) The interest rate charged by a lender to an approved applicant under the interest reduction program shall be set at the date of closing at no more than low Wall Street Journal prime plus three percent , fixed, for the term of the guarantee provided by the Authority.

(b) The interest reduction payment to an approved applicant shall be equal to three percent divided by the interest rate charged on the guaranteed loan times [~~the guarantee percentage provided by the Authority on the loan (with the guaranteed percentage calculation rounded down to the nearest hundredth of a percent) times~~] the actual interest paid to lender by the approved applicant.

(c) (No change.)

(d) The [~~An~~] applicant and the commercial lender must meet and agree to all the criteria for the Program found in Subchapter A of this chapter (relating to Young Farmer Loan Guarantee Program General Procedures).

(e) [~~For loans not yet approved by the Authority, the~~] The applicant and commercial lender must indicate on the Program application form their desire to participate in the interest reduction program and must execute an agreement of such participation. For an existing, eligible loan, the applicant and lender must submit a written request for participation in the interest reduction program and execute a participation agreement. The agreement, provided by the Authority and which is separate and apart from the loan guarantee agreement for the Program, will provide the general terms and conditions of the guarantee commitment and the terms and conditions of the interest reduction payment.

(f)-(g) (No change.)

(h) Verification of interest payment(s) shall be by the submission of one or more of the following to the Authority:

(1) A payment remittance advice from the commercial lender that identifies the amount of the interest paid by the approved applicant on the guaranteed loan;

(2) A copy of the commercial lender's transaction history for the loan identifying the application of the payment; or

(3) (No change.)

(i)-(k) (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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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 101. General Administration

7 TAC §101.3

The State Securities Board proposes an amendment to §101.3, concerning application of Board rules. The amendment renders the section gender neutral, eliminates archaic language, and clarifies that conflicts between industry and the investing public will be resolved in favor of the investing public.

John R. Morgan, Deputy Securities Commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Morgan also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be will be to inform the public and industry of the policies underlying the application of the Board's rules and conform the section with other Board rules and statutes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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

Statutes and codes affected: none applicable.

§101.3. Application.

(a) Generally. All rules shall be applied collectively, to the extent relevant, in connection with specific adjudications made by the Commissioner in the course of his or her regulatory functions. The Commissioner will make his or her determination on the basis of specific characteristics and circumstances of the individual adjudications under consideration and in light of the basic statutory purposes for regulation in the particular area. The Commissioner may, in his or her discretion, waive any requirement of any rule in situations where, in his or her opinion, such requirement is not necessary in the public interest or for the protection of investors. The captions of the various rules are for convenience only. Should there be a conflict between the caption of a rule and the text of the rule, the text will be controlling. Material denoted by a cross reference caption is not a rule or part of a rule.

(b) Investor protection standard. Within the confines of statutory authority, conflicts [~~Conflicts~~] between the industry [~~investment banker~~] and the best interest of the investing public will be resolved in favor of the investing public. Likewise, conflicts between existing securities holders and the best interest of the prospective investor will be resolved in favor of the prospective investor.

(c) Precedent. Because rules cannot adequately anticipate all potential application requirements, the failure to satisfy all regulatory standards of the Board will not necessarily foreclose the possibility of a favorable disposition of the matter pending before the Commissioner, and, similarly, the satisfaction of all such regulatory standards will not necessarily preclude an unfavorable disposition if the specific characteristics and circumstances so warrant. For this reason, the nature of the disposition of any particular matter pending before the Commissioner is not necessarily of meaningful precedential value, and the Commissioner shall not be bound by the precedent of any previous adjudication in the subsequent disposition of any pending matter [~~pending before him~~].

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-9904191
Denise Voigt Crawford
Securities Commissioner
State Securities Board

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

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Chapter 113. Registration of Securities

7 TAC §113.2

The State Securities Board proposes an amendment to §113.2, concerning registration of securities by coordination. The proposal clarifies that registration by coordination under the Texas Securities Act, §7.C, is not available when an offering is already effective with the U.S. Securities and Exchange Commission.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to inform issuers and their counsel that the coordination process requires that registration at the federal and state levels is to be accomplished contemporaneously. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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

The proposed amendment affects Texas Civil Statutes, Article 581-7.

§113.2. Registration by Coordination.

(a) Time to file. Applications for registration under the Texas Securities Act, §7.C, should be filed contemporaneously with the Securities and Exchange Commission ("SEC") registration application. Delayed filings will jeopardize coordination effectiveness. Applications filed after effectiveness with the SEC are not eligible to use §7.C.

(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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Denise Voigt Crawford
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8300

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7 TAC §113.11, §113.12

The State Securities Board proposes amendments to §113.11, concerning shelf registration of securities, and §113.12, concerning applicability of guidelines to exempt offerings. The amendments remove cross-references to a chapter that has been repealed and a section that is being concurrently proposed for repeal.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the elimination of obsolete cross-references. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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

The proposed amendments affects Texas Civil Statutes, Articles 581-5 and 581-7.

§113.11. Shelf Registration of Securities.

(a) Applicability.

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

(3) Where appropriate, the provisions of Chapters 117, [~~119,~~] 121, 129, 141, and 143 of this title (relating to Administrative Guidelines for Registration of Real Estate Programs; [~~Publicly Offered Cattle Feeding Programs;~~] Administrative Guidelines for Registration of Oil and Gas Programs; Administrative Guidelines for Registration of Asset-Backed Securities; Administrative Guidelines for Registration of Equipment Programs; and Administrative Guidelines for Registration of Real Estate Investment Trusts), [~~§135.5 of this title (relating to Registration of Bonds),~~] and other provisions of this chapter also will be applied.

(b) (No change.)

§113.12. Applicability of Guidelines to Exempt Offerings.

This chapter and the guidelines listed in this section do not apply to offerings made pursuant to an exemption under either the Texas Securities Act, §5 or §6, or an exemption by Board rule pursuant to the Texas Securities Act, §5.T, or to an offering of federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions). In other words, the requirements contained in one of the following guidelines would apply only to an offering for which an application for registration is filed with the Securities Commissioner:

(1) (No change.)

[(2) Chapter 119 of this title (relating to Publicly Offered Cattle Feeding Programs);]

(2) [(3)] Chapter 121 of this title (relating to Administrative Guidelines for Registration of Oil and Gas Programs);

(3) [(4)] Chapter 129 of this title (relating to Administrative Guidelines for Registration of Asset-Backed Securities);

[(5) §135.5 of this title (relating to Registration of Bonds);]

(4) [(6)] Chapter 141 of this title (relating to Administrative Guidelines for Registration of Equipment Programs); and

(5) [(7)] Chapter 143 of this title (relating to Administrative Guidelines for Registration of Real Estate Investment Trusts).

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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Denise Voigt Crawford
Securities Commissioner
State Securities Board
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Chapter 114. Federal Covered Securities

7 TAC §114.4

The State Securities Board proposes an amendment to §114.4, concerning filings and fees for federal covered securities. The change to subsection (b)(4) clarifies that verification of SEC reporting requirements is to be made by an issuer making a notice filing for secondary trading and the addition of paragraph (f)(5) reflects that the period of effectiveness for federal covered securities in SEC Regulation D, Rule 506 offerings extends from the time the notice filing is made with this Agency until the time that the offering is completed or terminated.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to assure that the party making a secondary trading notice filing has authority to act on behalf of the issuer and to recognize that securities sold in SEC Regulation D, Rule 506 offerings may be sold for indefinite periods. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

The proposed amendment affects Texas Civil Statutes, Articles 581-5 and 581-7.

§114.4. Filings and Fees.

(a) (No change.)

(b) Special circumstances.

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

(4) Secondary trading. A registered dealer or issuer that [who] chooses to comply with the Texas Securities Act, §5.O(9), by filing a form, [that] shall provide to the Securities Commissioner, prior to the sale of the securities in this state:

(A) (No change.)

(B) a consent to service of process signed by the dealer or issuer, if such a consent to service has not previously been filed with the Securities Commissioner;

(C) (No change.)

(D) a written statement from the issuer [confirming] that the issuer of such securities is in compliance with the reporting requirements of the Securities Exchange Act of 1934, §13 or §15(d), as applicable.

(5) (No change.)

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

(f) Period of effectiveness.

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

(5) For SEC Regulation D, Rule 506 offerings issued under special circumstances in subsection (b)(1) of this section, the period of effectiveness extends from the date of the notice filing until the offering is completed or terminated.

(g)-(i) (No change.)

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

Filed with the Office of the Secretary of State, on July 12, 1999.

TRD-9904194
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 305–8300

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Chapter 135. Industrial Development Corporations and Authorities

7 TAC §§135.1-135.5

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

The State Securities Board proposes the repeal of Chapter 135, §§135.1-135.5, concerning securities issued by industrial development corporations and authorities, so that it may be replaced by a new chapter that is being concurrently proposed.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Northcutt also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to eliminate confusing and unnecessary provisions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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

The repeal affects Texas Civil Statutes, Articles 581-5 and 581-7, and Texas Civil Statutes, Article 5190.6.

§135.1. Scope.

§135.2. Definitions.

§135.3. General.

§135.4. Exemptions from Registration Requirements.

§135.5. Registration of Bonds.

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 July 12, 1999.

TRD-9904195

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: August 22, 1999

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

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7 TAC §§135.1-135.3

The State Securities Board proposes a new Chapter 135, §§135.1-135.3, concerning securities issued by industrial development corporations and authorities. The new provisions create an exemption from securities registration for bonds of industrial development corporations issued under the Texas statute and reminds issuers that the dealer registration and antifraud provisions of the Texas Securities Act apply when they utilize the exemption. The proposed new chapter would replace the existing chapter, which is being concurrently proposed for repeal.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to provide a simple, distinct exemption for these securities that are presently being offered under other exemptions, rather than registered. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new rules are proposed under Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

The new rules affect Texas Civil Statutes, Articles 581-5 and 581-7, and Texas Civil Statutes, Article 5190.6.

§135.1. Exemption.

The State Securities Board, pursuant to the Texas Securities Act, §5.T, exempts from the securities registration requirements of the Act, securities issued pursuant to the Development Corporation Act of 1979, Texas Civil Statutes, Article 5190.6.

§135.2. Dealer and Agent Registration.

Any person who acts as an agent of the issuer in connection with a sale to any prospective purchaser in a transaction exempt from securities registration by virtue of this section shall be registered as either a dealer or agent under the Texas Securities Act, as applicable.

§135.3. Anti-fraud Provisions.

Nothing in this section relieves issuers or persons acting on their behalf from the duty to disclose to prospective investors information to satisfy the anti-fraud provisions of the Texas Securities Act.

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 July 12, 1999.

TRD-9904196

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: August 22, 1999

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

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Chapter 137. Administrative Guidelines for Regulation of Offers

7 TAC §137.3

The State Securities Board proposes an amendment to §137.3, concerning use of a preliminary prospectus. The amendment

updates the reference to the federal regulation describing language approved for use on a preliminary prospectus and makes a uniform reference to the Texas Securities Act.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to apprise issuers of language approved for use on a preliminary prospectus. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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

The proposed amendment affects Texas Civil Statutes, Article 581-22.

§137.3. Preliminary Prospectus.

The language adopted by the Securities and Exchange Commission in paragraph (b)(10) [~~(c)(8)~~] of Item 501 of Regulation S-K (17 Code of Federal Regulations ˘229.501) meets the requirements of the Texas Securities Act, §22.A(4)(b), and is approved for use on preliminary prospectuses in Texas.

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 July 12, 1999.

TRD-9904197
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 305-8300

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TITLE 16. ECONOMIC REGULATION

Part VI. Texas Motor Vehicle Board

Chapter 101. Practice and Procedure

The Texas Motor Vehicle Board of the Texas Department of Transportation proposes amendments to §§101.2, 101.3, and 101.7 in Subchapter A, general rules relating to agency operations. The Board also proposes amendments to §§101.42, 101.43, 101.45, 101.60, and 101.61 in Subchapter C, relating to Adjudicative Proceedings and Hearings.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) requires that each state agency review and consider readoption of each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board conducted its review of Chapter 101 at its November 12, 1998, meeting. As a result of its review, the Board determined that these sections should be amended and such amendments were adopted at the Board's March 4, 1999, meeting and published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2301). Further examination of the amended sections revealed some typographical errors and a need for further amendment of some sections.

In Subchapter A, the proposed change to §101.2 expands the definition of "governmental agency". The proposed amendment to §101.3 conforms the section to the requirements of the Public Information Act. Proposed changes to §101.7 add the requirement that complaints alleging violations of the Motor Vehicle Commission Code or the Transportation Code be filed in the same manner as petitions for relief and eliminate the requirement that petitions for relief or complaints be under oath.

Proposed amendments to §101.42 and §101.43 correct punctuation errors. Since administrative appeals made be filed in district court or the Court of Appeals under the Motor Vehicle Commission Code, the specific reference to district court is proposed to be removed from §101.45. Proposed changes to §101.60 correct language pertaining to gender. The proposed amendment to §101.61 removes unnecessary restrictive language.

Brett Bray, director, Motor Vehicle Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bray has also determined that for each year of the first five years the sections are in effect, the anticipated public benefit of the amendments will be to simplify the Board's hearing procedures and conserve the time and resources of the agency and entities appearing before it. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the sections as proposed. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the sections.

Comments (15 copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P. O. Box 2293, Austin, Texas 78768, (512) 416-4910. The Motor Vehicle Board will consider adoption of the amendments at its meeting on September 9, 1999. The deadline for receipt of comments on the proposed amendments is 5:00 p.m. on August 23, 1999.

Subchapter A. General Rules

16 TAC §§101.2, 101.3, 101.7

The amendments are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code §§1.02, 1.03, 3.02, 3.03, 3.05, 3.08, and 7.01 are affected by the proposed amendments.

§101.2. Definitions; Conformity with Statutory Requirements.

The definitions contained in the Texas Motor Vehicle Commission Code and Chapter 503 of the Texas Transportation Code are hereby adopted by reference. All matters of practice and procedure set forth in the codes shall govern and these rules shall be construed to conform with the codes in every relevant particular, it being the intent of these rules only to supplement the codes and to provide procedures to be followed in instances not specifically governed by the codes. In the event of a conflict, the definition or procedure referenced in the Texas Motor Vehicle Commission Code shall control.

(1) "Party in interest" means a party against whom a binding determination cannot be had in a proceeding before the Board without having been afforded notice and opportunity for hearing.

(2) "Governmental agency" means all other state and local governmental agencies [~~of the State of Texas~~] and all agencies of the United States government, whether executive, legislative, or judicial.

§101.3. Formal Opinions.

(a) General. Any person may request a formal opinion from the Board on any matter within the jurisdiction of the Texas Motor Vehicle Board. It is the policy of the Board to consider requests for formal opinions and, where practicable, to inform the requesting party of the Board's views; provided, however, that a request will be considered inappropriate for a formal opinion where the request involves a matter which is under investigation or is the subject of a current proceeding by the Board or another governmental agency, or where the request is such that an informed opinion thereon can be given only after extensive investigation, research, or collateral inquiry.

(b) Procedure. Requests for formal opinions are to be submitted to the Board in writing and shall include full and complete information on the matter with respect to which the formal opinion is requested. The request must affirmatively state that the matter involved is not the subject of an investigation or other proceeding by the Board or any other governmental agency. The submission of additional information may be required by the Board.

(c) Formal opinions rendered without prejudice. Any formal opinion so given is without prejudice to the right of the Board to reconsider the matter and, where the public interest requires, to modify or revoke the formal opinion. Notice of such modification or revocation will be given to the party who originally requested the opinion so that he may modify or discontinue any action which may have been taken pursuant to the Board's formal opinion. The Board will not proceed against such party with respect to any action taken in good faith reliance upon the Board's formal opinion where all relevant facts were fully, completely, and accurately presented to the Board and where such action was promptly discontinued or appropriately modified upon notification of the Board's modification or revocation of the formal opinion.

(d) Publication. Texts or digests of formal opinions of general interest will be made available to any person upon written request to the Board, subject to statutory and other restrictions against disclosure [~~, and to meritorious objections by the person who requested the formal opinion~~].

§101.7. Petitions.

Petitions for relief under the codes or complaints filed alleging violations of the codes [~~code~~] other than those specifically provided for in these rules shall be in writing [~~and under oath~~], shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought, and shall cite by appropriate reference the article of the code or other law relied upon for relief and, where applicable, the proceeding to which the petition refers.

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 July 7, 1999.

TRD-9904053
Brett Bray
Division Director
Texas Motor Vehicle Board
Proposed date of adoption: September 9, 1999
For further information, please call: (512) 416–4899

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Subchapter C. Adjudicative Proceedings and Hearings

16 TAC §§101.42, 101.43, 101.45, 101.60, 101.61

The amendments are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code §§1.02, 1.03, 3.02, 3.03, 3.05, 3.08, and 7.01 are affected by the proposed amendments.

§101.42. Notice of Hearing in Adjudicative Proceedings.

(a) In any adjudicative proceeding before the Board, the notice of hearing shall state:

(1) the name of the party or parties in interest;

(2) the time and place of the hearing;

(3) the docket number assigned to the hearing;

(4) any special rules deemed appropriate for such hearing; and

(5) a clear and concise factual statement sufficient to identify with reasonable definiteness the matters at issue. This can be satisfied by attaching and incorporating by reference the complaint or amended complaint.

(b) Notice of hearing shall be served upon the parties in interest either in person or by certified mail, return receipt requested, addressed to the parties in interest or their agents for service of process.

(c) Notice of hearing shall be presumed to have been received by a person if notice of the hearing was mailed by certified mail, return receipt requested, to the last known address of any person known to have legal rights, duties, or privileges that could be determined at the hearing.

(d) Notice of hearing may be amended at the hearing or at any time prior thereto.

§101.43. Reply.

Within 20 days after service of notice of hearing, or within 10 days after service of amended notice of hearing, a responding party may file a reply thereto in which the matters at issue are specifically admitted, denied or otherwise explained.

(1) Form and filing of replies. All replies shall include a reference to the docket number of the hearing and shall be sworn

to by the responding party or his attorney of record. The original of the reply shall be filed with the Board, and one copy shall be served upon other parties to the proceeding, if any.

(2) Amendment. A responding party may amend his reply at any time prior to the hearing, and in any case where the notice of hearing has been amended at the hearing, a responding party shall be given an opportunity to amend his reply.

(3) Extension of time. Upon the motion of a responding party, with good cause shown, the Board may extend the time within which the reply may be filed.

(4) Default. All allegations not so answered shall be deemed admitted by any party who does not appear at the hearing on the merits.

§101.45. Recording and Transcriptions of Hearing Cost.

(a) Except as provided in §107.6 of this title (relating to Hearings), hearings in contested cases will be transcribed by a court reporter or recorded electronically at the discretion of the hearing officer. Any request regarding recording or transcription must be made to the hearing officer at least two days prior to the hearing.

(b) In those contested cases in which the hearing is transcribed by a court reporter, the costs of transcribing the hearing and for the preparation of an original transcript of the record for the Board shall be assessed equally among all parties to the proceeding, unless ordered otherwise by the Board.

(c) Copies of tape recordings of a hearing will be provided to any party upon written request and upon payment for the cost of the tapes.

(d) In the event a final decision of the Board is appealed to the [~~district~~] court and the Board is required to transmit to the court the original or a certified copy of the agency record, or any part thereof, the appealing party shall, unless waived by the Board or Director, pay the costs of preparation of the record that is required to be transmitted to the court.

§101.60. Filing of Exceptions.

Any party in interest may, within 20 days after the date of service of the hearing officer's report and recommended decision and order, file exceptions to such report and recommended decision and order. Requests for extension of time within which to file exceptions shall be filed with the hearing officer and a copy of such request shall be served on all other parties in interest. The hearing officer shall promptly notify the parties of his or her [~~its~~] action upon the request and shall allow additional time only in extraordinary circumstances where the interest of justice so requires.

§101.61. Form of Exceptions.

Exceptions to findings of fact, conclusions [~~of law~~] or to any other matters of law in any report and recommended decision and order of a hearing officer shall be specific and shall be stated and numbered separately. When exception is taken to a statement of fact, specific reference must be made to the evidence relied upon to support the specification of error and a statement in the form claimed to be correct must be suggested. When exception is taken to a particular finding or conclusion, whether of fact, law, or a mixed question of fact and law, the evidence, if any, and the law relied upon to support the specification of error must be suggested.

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 July 7, 1999.

TRD-9904054
Brett Bray
Division Director
Texas Motor Vehicle Board
Proposed date of adoption: September 9, 1999
For further information, please call: (512) 416–4899

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Chapter 107. Warranty Performance Obligations

16 TAC §§107.1-107.11

The Motor Vehicle Board of the Texas Department of Transportation proposes amendments to §§107.1-107.11, Warranty Performance Obligations. The Board also proposes the repeal of §107.12 and adoption of amendments incorporating the substance of §107.12 into §107.7. The sections set guidelines for filing a lemon law or warranty performance complaint and for holding hearings on these matters.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 requires that each state agency review and consider readoption of each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The Board conducted a review of Title 16, Chapter 107, relating to Warranty Performance Obligations, at its June 10, 1999 meeting. As a result of its review, the Board proposes these changes to Chapter 107.

General changes to rule language.

The Motor Vehicle Commission was renamed the Motor Vehicle Board in 1992. The title of "executive director" was also changed to "director". The amendments change all references from "Commission" to "Board" and "executive director" to "director" throughout the chapter. Changes are also proposed throughout the chapter to make it clear that the procedures in the chapter apply to complaints filed under the lemon law for repurchase or replacement of a vehicle (§6.07 of the Motor Vehicle Commission Code) (Code) and to complaints filed for repair of a vehicle under general warranty agreements (§3.08(i) of the Code). Sections pertinent only to §6.07 or §3.08(i) are now clearly identified. Other proposals correct grammar, add acronyms to avoid repetition, and remove surplusage and gender-specific references.

Other changes specific to each section:

The proposed amendment to §107.1 removes the word "new" with reference to complaints filed under §3.08(i) because general warranty complaints may be filed regarding used vehicles if they are still under warranty. Proposed changes to §107.2 conform the section to the current practice of accepting complaints even if they do not initially include necessary information. The proposal adds converters and distributors as potential parties to a complaint, as permitted by the Code. Suggested amendments also delete an obsolete filing fee amount, add provisions clarifying no filing fee is due for complaints filed under §3.08(i) and indicate failure to remit a fee under §6.07 may result in dismissal of the complaint.

Proposed amendments to §107.3 clarify procedure references and Code provisions. Proposed changes to §§107.4 and §107.5 add converters as entities who will be given notice and an

opportunity to settle if a complaint is filed and give the Board the option of requiring a response from dealers.

Section 107.6, Hearings, contains a proposal that deletes the specific requirement that dealers be given notice of hearing, since all parties receive notice of hearing. Other proposed changes make the section apply to warranty performance complaints as well as lemon law complaints, increase the amount of time to notify the Board of attorney appearances and clarify that evidence presented is subject to admission by the hearing examiner so consumers will understand that the right is not absolute. Additional changes delete the requirement that an expert be independent to conform to current practice, and no longer require the presence of the expert at the hearing.

Proposed changes to §§107.7(4) and 107.7(6) conform the sections to Government Code amendments effective September 1, 1999. Other proposed changes to §107.7 allow hearings under both the lemon law and general warranty complaints and add language conforming the section to statutory time limit and appeal provisions contained in the Government Code and the Motor Vehicle Commission Code. Proposed amendments to §107.8 state that the section only applies to lemon law (§6.07) complaints unless otherwise indicated, and conforms the overall application of the section relating to serious safety hazards to the language in the statute. Additional proposals add the inventory tax as a reimbursable item and include converters and distributors as entities who may have obligations under the section, as set out in the statute. The proposed amendment to §107.8(9) conforms the section to the current practice of allowing reconsideration of the repurchase price for damage to the vehicle after the date of the hearing, instead of the date of delivery to the owner, since damage between the date of delivery and the date of hearing is considered at the hearing. Proposed changes to §107.8(10) make it clear that the Board will issue a written order in both lemon law and warranty performance complaints when a hearing is held.

Proposed amendments to §107.9 require that incidental expenses be reasonable and verified and make it clear that incidental expenses are not limited to the ones listed in the section. Other changes set out loss or damage to personal property, service contracts, attorney fees if the Respondent is represented by an attorney, and after-market items as incidental expenses that may be reimbursable. A new provision provides guidance to the hearing examiner in considering whether items or accessories should be reimbursed.

Proposed changes to §107.10 extends the disclosure requirement to all vehicles reacquired by a manufacturer, converter or distributor. The proposed amendments also delete the disclosure statement at Attachment 1 and allow the Board or director to prescribe the manner and form for disclosing that a vehicle has been reacquired. Additional changes clarify that manufacturers must provide information on vehicles transferred from out-of-state and require dealers to complete and return the disclosure statement within 60 days of the sale of a reacquired vehicle. Other proposed changes remove non-original equipment manufacturer items or accessories from manufacturer warranty requirements and clarify that the Board, through its director, may provide or approve the warranty form.

The proposed amendment to §107.11 clarifies that the director shall provide the Board with information about complaints resolved before and after hearings are set, rather than formal and informal resolutions of complaints.

Brett Bray, Director, Motor Vehicle Division, 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. Bray has also determined that for each year of the first five years the sections are in effect, the anticipated public benefit of the amendments to Chapter 107 will be to provide a clearer understanding of the hearings process for lemon law and warranty performance complaints and conserve the time and resources of the agency and entities appearing before it. The amendments will also create better notification to consumers concerning reacquired vehicles. There will be no effect on small businesses. Anticipated economic cost to persons who are required to comply with the sections as proposed is indeterminate, since manufacturers, converters and distributors may have to pay more to reimburse incidental expenses on a case-by-case basis and will incur additional minimal expense in meeting disclosure requirements for all reacquired vehicles instead of only those vehicles reacquired pursuant to final order. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the sections.

Comments (15 copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P. O. Box 2293, Austin, Texas 78768, (512) 416-4910. The Motor Vehicle Board will consider adoption of the proposals at its meeting on September 9, 1999. The deadline for receipt of comments on the proposed amendments is 5:00 p.m. on August 23, 1999.

The amendments are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code §§3.08(i) and 6.07 are affected by the proposed amendments.

§107.1. Objective.

It is the objective of these sections to implement the intent of the legislature as declared in the Texas Motor Vehicle Commission Code (TMVCC) §3.06 and §6.07(e), by prescribing rules to provide a simplified and fair procedure for the enforcement and implementation of the Texas lemon law (TMVCC, §6.07) and consumer complaints covered by general warranty agreements (TMVCC, §3.08(i)) including the processing of complaints, the conduct of hearings, and the disposition of complaints filed by owners of [~~new~~] motor vehicles seeking relief under these provisions of the Code.

§107.2. Filing of Complaints.

(a) Complaints for relief under the lemon law must be in writing and filed with the Board [~~commission~~] at its office in Austin. Complaints may be in letter form or any other written format or may be submitted on complaint forms provided by the Board [~~commission~~].

(b) Complaints should state sufficient facts to enable the Board [~~commission~~] and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.

(c) Complaints should [~~must~~] provide the following information:

(1) name, address, and phone number of vehicle owner;

(2) identification of vehicle by make, model, and year, and manufacturer's vehicle identification number;

(3) type of warranty coverage;

(4) name and address of dealer, or other person, from whom vehicle was purchased or leased, including the name and address of the current lessor, if applicable;

(5) date of delivery of vehicle to original owner; and in the case of a demonstrator, the date the vehicle was placed into demonstrator service;

(6) vehicle mileage at time vehicle was purchased or leased, mileage when problems with vehicle were first reported, name of dealer or manufacturer's, converter's, or distributor's agent to whom problems were first reported, and current mileage;

(7) identification of existing problems and brief description of history of problems and repairs on vehicle, including date and mileage of each repair, with copies of repair orders where possible;

(8) date on which written notification of complaint was given to the vehicle manufacturer, converter, or distributor, and if the vehicle has been inspected by manufacturer, converter, or distributor, the date and results of such inspection;

(9) any other information which the complainant believes to be pertinent to the complaint.

(d) The Board's [commission's] staff will provide information concerning the complaint procedure and complaint forms to any person requesting information or assistance.

(e) The Texas Motor Vehicle Commission Code (TMVCC) §6.07 [lemon law] complaint filing fee [of $75] should be remitted with the complaint by check or money order [payable to the Texas Motor Vehicle Commission.] No filing fee is required for a TMVCC §3.08(i) complaint. The filing fee is nonrefundable, but a complainant who prevails in a [lemon law] case is entitled to reimbursement of the amount of the filing fee. Failure to remit the filing fee with the complaint will result in delaying the commencement of the 150-day requirement provided in §107.6(11) of this title (relating to Hearings) and may result in dismissal of the complaint.

§107.3. Review of Complaints.

All complaints will be reviewed promptly by the Board's [commission's] staff to determine whether they satisfy the requirements of the Texas Motor Vehicle Commission Code §§3.08(i) or 6.07 [lemon law].

(1) If it cannot be determined whether a complaint satisfies the requirements of §§3.08(i) or 6.07, [the lemon law,] the complainant will be contacted for additional information.

(2) If it is determined that the complaint does not meet the requirements of §§3.08(i) or 6.07, [the lemon law,] the complainant will be notified of this fact.

(3) If it is determined that the complaint does meet the requirements of §§3.08(i) or 6.07, [the lemon law,] the complaint will be processed in accordance with the [following] procedures [in §§107.4-107.9 of this title (relating to Notification of Manufacturer and Distributor; Mediation, Settlement; Hearings; Hearing Officer's Report; Decisions; and Compliance)] set forth in this chapter.

(4) For purposes of §6.07(h), the commencement of a proceeding means the filing of a complaint with the Board, [commission,] and the date of filing is determined by the date of receipt by the Board [commission].

§107.4. Notification to Manufacturer, Converter, or [and] Distributor.

Upon receipt of a complaint for relief under the Texas Motor Vehicle Commission Code §§3.08(i) or 6.07, [the lemon law,] notification thereof, with a copy of the complaint, will be given to the appropriate manufacturer, converter, or distributor [against whom the complaint is made], and a response to the complaint will be requested. A copy of the complaint and notification thereof will also be provided to the selling dealer and any other dealers that have been involved with the complaint and a response may be requested. [Notification of the complaint and a request for a response will also be given to the selling dealer and any other dealer that has been involved with the complaint.]

§107.5. Mediation; Settlement.

If, from a review of the complaint and the responses received from the manufacturer, converter, distributor, or dealer, it appears to the Board [commission] staff that a settlement or resolution of the complaint may be possible without the necessity for a hearing, the Board [commission] staff will [contact all parties and] attempt to effect a settlement or resolution of the complaint [in a manner satisfactory to the parties].

§107.6. Hearings.

Complaints which satisfy the jurisdictional requirements of the Texas Motor Vehicle Commission Code, §3.08(i) and §6.07, will be set for hearing and notification of the date, time, and place of the hearing will be given to all parties by certified mail.

(1) Where possible, and subject to the availability of Board [commission] personnel and funds, hearings will be held in the city where the complainant resides or at a location reasonably convenient to the complainant.

(2) Hearings will be scheduled at the earliest date possible, provided that ten days prior notice, or as otherwise provided by law, must be given to all parties. [A notice of hearing will also be provided to a dealer identified as a party who will be requested to have a representative appear at the hearing.]

(3) Hearings will be conducted by Board [commission] staff hearing officers or by independent hearing officers designated by the [executive] director of the Board [commission].

(4) Hearings will be informal[in nature], it being the intent of this section [the lemon law] to provide a procedure and forum which does not necessitate the services of attorneys and which does not involve strict legal formalities applicable to trials in county or district court.

(5) The parties have the right to be represented by attorneys at a hearing, although attorneys are not necessary[in hearings on lemon law complaints]. Any party who intends to be represented by an attorney at a hearing must notify the Board [commission] and the other party at least five business days prior to the hearing and failure to do so will constitute grounds for postponement of the hearing if requested by the other party.

(6) The parties have the right to present their cases in full, including testimony from witnesses; documentary evidence such as repair orders, warranty documents, vehicle sales contract, etc. , subject to the hearing officer's rulings.

(7) Each party will be subject to being questioned by the other party, within limits to be governed by the hearing officer.

(8) The complainant will be required to bring the vehicle in question to the hearing for the purpose of having the vehicle

inspected and test driven, unless otherwise ordered by the hearing officer upon a showing of good cause as to why the complainant should not be required to bring the vehicle to the hearing.

(9) The Board [~~commission~~] may have the vehicle in question inspected prior to the hearing by an [~~independent~~] expert, where the opinion of such expert will be of assistance to the hearing officer and the Board [~~commission~~] in arriving at a decision. Any such inspection shall be made upon prior notice to all parties who shall have the right to be present at such inspection, and copies of any findings or report resulting from such inspection will be provided to all parties prior to, or at, the hearing. [~~Any such expert will be present at the hearing to present his report on the inspection of the vehicle and to respond to questions by the parties.~~]

(10) All hearings will be recorded on tape by the hearing officer. Copies of the tape recordings of a hearing will be provided to any party upon request and upon payment as provided by law. [~~for the cost of the tapes.~~]

(11) All hearings will be conducted expeditiously. However, if a Board hearing [~~commission hearings~~] officer has not issued a [~~proposal for~~] decision within 150 days after the Texas Motor Vehicle Commission Code §6.07 complaint and filing-fee were received, Board [~~commission~~] staff shall notify the parties by certified mail that complainant has a right to file a civil action in state district court to pursue [~~his~~] rights under §6.07[~~the lemon law~~]. The 150-day period shall be extended upon request of the complainant or if a delay in the proceeding is caused by the complainant. The notice will inform the complainant of the [~~his~~] right to elect to continue the [~~his~~] lemon law complaint through the Board. [~~commission if he chooses.~~]

§107.7. Contested Cases: Decisions and Final Orders.

To expedite the resolution of Texas Motor Vehicle Commission Code §§3.08(i) and 6.07 [~~lemon law~~] cases, the [~~executive~~] director is authorized to conduct hearings and issue final orders for the enforcement of these sections, including the delegation of this duty to hearing officers. [~~delegate final decision-making authority to hearings officers.~~] Review of the hearing [~~hearings~~] officers' decisions and final orders shall be according to the procedures set forth as follows.

(1) A hearing [~~hearings~~] officer will prepare a written decision and final order as soon as possible but not later than 60 days after the hearing is closed, or as otherwise provided by law. The decision and order will include the hearing [~~hearings~~] officer's findings of fact and conclusions of law.

(2) The decision and final order shall be sent to all parties of record by certified mail.

(3) The decision and order is final and binding on the parties, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing.

(4) A party who disagrees with the decision and final order may file a motion for rehearing within 20 days from the date of the notification [~~mailing~~] of the final order. A motion for rehearing must include all the specific reasons, exceptions, or grounds that are asserted by a party as the basis of the request for a rehearing. It shall recite, if applicable, the specific findings of fact, conclusions of law, or any other portions of the decision to which the party objects. Replies to a motion for rehearing must be filed with the agency within 30 days after the date of the notification [~~mailing~~] of the final order. A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the order was mailed.

(5) A motion for rehearing may be directed either to the [~~executive~~] director or to the Board [~~commission~~], as a body, at the election of the party filing the motion. If the party filing the motion does not include a specific request for a rehearing by the members of the Board [~~commission~~], the motion shall be deemed to be a request for a rehearing by the [~~executive~~] director.

(6) The [~~executive~~] director or the Board [~~commission~~], as appropriate, must act on the motion within 45 days after the date of notification [~~mailing~~] of the final order, or as otherwise provided by law, or it is overruled by operation of law. The [~~executive~~] director or the Board [~~commission~~], as appropriate, may, by written order, extend the period for filing, replying to, and taking action on a motion for rehearing, not to exceed 90 days after the date of notification of [~~mailing~~] the final order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the date of notification [~~mailing~~] of the final order.

(7) If the [~~executive~~] director or the Board [~~commission~~] grants a motion for rehearing, the parties will be notified by first class mail. A rehearing before the [~~executive~~] director will be scheduled as promptly as possible. A rehearing before the Board [~~commission~~] will be scheduled at the earliest possible meeting of the Board [~~commission~~]. After rehearing, the [~~executive~~] director or Board [~~commission~~] shall issue a final order and any additional findings of fact or conclusions of law necessary to support the decision or order. The [~~executive~~] director or the Board [~~commission~~] may also issue an order granting the relief requested in a motion for rehearing or replies thereto without the need for a rehearing. If a motion for rehearing and the relief requested is denied, an order so stating will be issued.

(8) A party [~~person~~] who has exhausted all administrative remedies, and who is aggrieved by a final decision in a contested case from which appeal may be taken is entitled to judicial review pursuant to Section 7.01 of the Texas Motor Vehicle Commission Code, under the substantial evidence rule. The petition shall be filed in a district court of Travis County or in the Court of Appeals for the Third Court of Appeals District within 30 days after the decision or order of the agency is final and appealable. A copy of the petition must be served on the agency and any other parties of record. After service of the petition on the agency and within the time permitted for filing an answer, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders new evidence to be presented to the agency, the agency may modify its findings and decision or order by reason of the new evidence, and shall transmit the additional record to the court.

§107.8. Decisions.

Unless otherwise indicated, this section applies to decisions made pursuant to Texas Motor Vehicle Commission Code §6.07. [~~Any decisions by the Board and recommended decision by a hearing officer~~] Decisions shall give effect to the presumptions provided in the Texas Motor Vehicle Commission Code, §6.07(d), where applicable.

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's vehicle which creates a serious safety hazard or substantially impairs the use or market value[~~, or safety~~] of the vehicle after a reasonable number of attempts, and that the affirmative defenses provided under the Texas Motor Vehicle Commission Code, §6.07(c), are not applicable, the Board [~~commission~~] shall order the manufacturer, distributor, or converter to replace the vehicle with a comparable vehicle, or accept the return of the vehicle from the owner and refund

to the owner the full purchase price of the vehicle, less a reasonable allowance for the owner's use of the vehicle.

~~[(A) In a complaint involving a defect or condition that creates a serious safety hazard in the vehicle, an owner shall be deemed to have given the manufacturer, distributor, or converter a reasonable number of attempts to repair the vehicle if he reported and allowed an opportunity to repair the defect or condition at least once during the period of 12 months or 12,000 miles, whichever occurs first, immediately following the date of delivery and at least once more in the period of 12 months or 12,000 miles, whichever occurs first, following the first repair attempt.]~~

~~[(B) A defect or condition that creates a serious safety hazard is one that results in a lifethreatening malfunction or nonconformity that substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes or that creates a substantial risk of fire or explosion.]~~

(2) In any decision in favor of the complainant, the Board [~~commission~~] will accommodate the complainant's request with respect to replacement or repurchase of the vehicle, to the extent possible.

(3) Where a refund of the purchase price of a vehicle is ordered, the purchase price shall be the amount of the total purchase price of the vehicle, and shall include the amount of the sales taxes and title, registration, inventory tax, and documentary fees, but shall not include the amount of any interest or finance charge or insurance premiums. The award to the vehicle owner shall include reimbursement for the amount of the lemon law complaint filing fee paid by or on behalf of the vehicle owner. The refund shall be made payable to the vehicle owner and the lienholder, if any, as their interests require.

(4) Except in cases where clear and convincing evidence shows that the vehicle has a longer or shorter expected useful life than 100,000 miles, the reasonable allowance for the owner's use of the vehicle shall be that amount obtained by adding the following:

(A) the product obtained by multiplying the purchase price of the vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the TMVC hearing.

(5) Except in cases where clear and convincing evidence shows that the vehicle has a longer or shorter expected useful life than 120 months, the reasonable allowance for the owner's use of the towable recreational vehicle shall be the greater of 10% of the purchase price, as defined in paragraph (3) of this section, or that amount obtained by adding the following:

(A) The product obtained by multiplying the purchase price of the towable recreational vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 120 months, except the denominator shall be 60 months, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of months from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 120 months, except the denominator shall be 60 months, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of months of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of months during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the Board hearing.

(6) Except in cases involving unusual and extenuating circumstances, supported by a preponderance of the evidence, where refund of the purchase price of a leased vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the lessor, respectively as follows.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by him to the lessor under the terms of the lease; and

(ii) all sums previously paid by him to the lessor in connection with the entering into the lease agreement, including, but not limited to, any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license and registration fees, and other documentary fees, if applicable.

(B) The lessor shall receive the total of:

(i) the actual price paid by the lessor for the vehicle, including tax, title, license, and documentary fees, if paid by lessor, and as evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; plus

(ii) an additional 5.0% of such purchase price plus any amount or fee, if any, paid by lessor to secure the lease or interest in the lease;

(iii) provided, however, that a credit, reflecting all of the payments made by the lessee, shall be deducted from the actual purchase price which the manufacturer, converter, or distributor is required to pay the lessor, as specified in causes (i) and (ii) of this subparagraph.

(C) When the Board [~~commission~~] orders a manufacturer, converter, or distributor to refund the purchase price in a lease vehicle transaction, the vehicle shall be returned to the manufacturer, converter or distributor with clear title upon payment of the sums indicated in subparagraphs (A) and (B) of this paragraph. The lessor shall transfer title of the vehicle to the manufacturer, converter, or distributor, as necessary in order to effectuate the lessee's rights under this rule. In addition, the lease shall be terminated without any penalty to the lessee.

(D) Refunds shall be made to the lessee, lessor, and any lienholders as their interest may appear. The refund to the lessee under subparagraph (A) of this paragraph shall be reduced by a reasonable allowance for the lessee's use of the vehicle. A reasonable allowance for use shall be computed according to the formula in paragraph (4) or (5) of this section, using the amount in subparagraph (B) (i) of this paragraph as the applicable purchase price.

(7) In any award in favor of a complainant, the [~~executive~~] director may require the dealer involved to reimburse the complainant,

manufacturer, [~~distributor, or~~]converter, or distributor, for the cost of any items of options added to the vehicle but only to the extent that one or more of such items or options contributed to the defect that served as the basis for the order or repurchase or replacement. In no event shall this paragraph be interpreted to mean that a manufacturer, [~~distributor, or~~]converter, or distributor, will be required to repurchase a vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.

(8) If it is found by the Board [~~commission~~] that a complainant's vehicle does not qualify for replacement or repurchase, then the Board [~~commission~~] shall enter an order dismissing the complaint insofar as relief under the Texas Motor Vehicle Commission Code §6.07(c) [~~lemon law~~] is concerned. However, the Board [~~commission~~] may enter an order in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, [~~distributor, or~~] converter's, or distributor's, warranty obligations.

(9) If the vehicle is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing [~~delivery to the owner~~] to the date of repurchase, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party shall have the right to request reconsideration by the Board [~~commission~~] of the repurchase price contained in the final order.

(10) The Board [~~commission~~] will issue a written order in each Texas Motor Vehicle Commission Code §§3.08(i) or 6.07 case in which a hearing is held and a copy of the order will be sent to all parties.

§107.9. Incidental Expenses.

(a) When a refund of the purchase price of a vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The expenses must be reasonable and verified [~~verifiable~~] through receipts or similar written documents. Reimbursable incidental expenses include but are not limited to the following costs:

(1) [~~reasonable cost of~~] alternate transportation;

(2) [~~charges for~~] towing;

(3) [~~costs of~~] telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle;

(4) [~~reasonable costs of~~] meals and lodging necessitated by the vehicle's failure during [~~out-oftown~~] out - of - town trips;

(5) loss or damage to personal property;

(6) service contracts;

(7) attorney fees if Respondent is represented by counsel; and

(8) items or accessories added to the vehicle at or after purchase.

(b) [~~Only reasonable incidental expenses shall be reimbursed to a complainant.~~] Incidental expenses shall be included in the final repurchase price required to be paid by a manufacturer, [~~distributor, or~~] converter, or distributor to a prevailing complainant or in the case of a vehicle replacement, shall be tendered to the complainant at the time of replacement.

(c) In regards to the cost of items or accessories presented under subsection (a)(8) of this section, the hearing officer shall consider the permanent nature of items or accessories and the value they add to the vehicle.

§107.10. Compliance with Order Granting Relief.

Compliance with the Board's order will be monitored by the Board.

(1) A complainant is not bound by the Board's [~~commission's~~] decision and order and may either accept or reject the decision.

(2) If a complainant does not accept the Board's [~~commission's~~] final decision, the proceeding before the Board [~~commission~~] will be deemed concluded and the complaint file closed.

(3) If the complainant accepts the Board's [~~commission's~~] decision, then the manufacturer, [~~distributor, or~~] converter, or distributor and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is necessary to implement the Board's [~~commission's~~] decision and order.

(4) If a manufacturer, converter, or distributor replaces or repurchases a vehicle pursuant to a Board order, reacquires a vehicle to settle a Texas Motor Vehicle Commission Code §§3.08(i) or 6.07 complaint, or brings a vehicle into the state of Texas which has been reacquired under the lemon law of another jurisdiction, [~~If complainant's vehicle is replaced or repurchased pursuant to a Board order,~~] the manufacturer, [~~distributor, or~~] converter, or distributor shall, prior to resale of such vehicle, issue a disclosure statement [~~in the format of Attachment 1 or~~] on a form provided by or approved by the Board through its director. In addition, the manufacturer, [~~distributor, or~~] converter, or distributor repurchasing or replacing the vehicle shall affix a disclosure label provided by or approved by the Board through its director on an approved location in or on the vehicle. Both the disclosure statement and the disclosure label shall accompany the vehicle through the first retail purchase[~~after the Board order~~]. Neither the manufacturer, [~~distributor, or~~] converter, or distributor nor any person holding a license or general distinguishing number issued by the Board under the Code or Chapter 503, Transportation Code, shall remove or cause the removal of the disclosure label until delivery of the vehicle to the first retail purchaser. A manufacturer, [~~distributor, or~~] converter, or distributor shall provide the Board, in writing, the name, address and telephone number of any [~~the~~] transferee, regardless of residence, to whom the manufacturer, distributor or converter, as the case may be, transfers the vehicle within 60 days of each transfer. The selling dealer shall return the completed disclosure statement to the Board within 60 days of the retail sale of a reacquired vehicle. Any manufacturer, [~~distributor, or~~] converter, or distributor or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Code. In addition, the manufacturer, [~~distributor, or~~] converter, or distributor must repair the defect or condition in the vehicle that resulted in the vehicle being reacquired [~~in the repurchase or replacement~~] and issue, at a minimum, a basic warranty (12 months/12,000 mile, whichever comes first), except for non-original equipment manufacturer items or accessories, on a form provided by or approved by the Board through its director, which warranty shall be provided to the first retail purchaser of the vehicle [~~following the Board order~~].
[~~Figure: 16 TAC §107.10(4)~~]

[~~(5) If a manufacturer, distributor, or converter brings a vehicle into this state, which has been reacquired under the lemon law of another jurisdiction, the manufacturer, distributor, or converter shall, prior to the first retail sale, issue a disclosure statement on~~

~~a form provided by or approved by the Board. In addition, the manufacturer, distributor, or converter repurchasing or replacing the vehicle shall affix a disclosure label provided by or approved by the Board through its director on an approved location in or on the vehicle. Both the disclosure statement and the disclosure label shall accompany the vehicle through the first retail purchase. Neither the manufacturer, distributor, converter nor any person holding a license or general distinguishing number issued by the Board under the Code or Chapter 503, Transportation Code, shall remove or cause the removal of the disclosure label until delivery to the first retail purchaser. Any manufacturer, distributor, converter, or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanction prescribed by the Code.]~~

(5) [~~(6)~~] In the event of any conflict between this rule and the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(6) [~~(7)~~] The failure of any manufacturer, [~~distributor,~~] converter, distributor or dealer to comply with a decision and order of the Board within the time period prescribed in the order may subject the manufacturer, [~~distributor, or~~] converter, or distributor, or dealer to formal action by the Board and the assessment of civil penalties or other sanctions prescribed by the Texas Motor Vehicle Commission Code for the failure to comply with an order of the Board.

§107.11. Reports to Board. [~~Commission.~~]

The [~~executive~~] director shall inform the Board [~~commission~~] concerning the administration and enforcement of the lemon law. The director [~~He~~] shall provide monthly reports to the Board [~~commission~~] which include data about the number of complaints received, number of complaints resolved before a hearing is set and after a hearing is set, [~~informally and formally,~~] pursuant to written orders, number of vehicles ordered repurchased, and any other information that may be requested by the Board [~~commission~~].

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 July 9, 1999.

TRD-9904094
Brett Bray
Division Director
Texas Motor Vehicle Board
Proposed date of adoption: September 9, 1999
For further information, please call: (512) 416-4899

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16 TAC §107.12

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

The Motor Vehicle Board of the Texas Department of Transportation proposes the repeal of §107.12, Contested Cases under General Warranty Provisions: Decisions and Final Orders.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 requires that each state agency review and consider readoption of each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The Board conducted a review of Title 16, Chapter 107, relating to Warranty Performance Obligations, at its June 10, 1999 meeting.

As a result of its review, the Board determined that §107.12, Contested Cases under General Warranty Provisions: Decisions and Final Orders, is unnecessary, since proposed amendments to §107.7 incorporate the authority contained in §107.12. Section 107.12 states that the director has authority to conduct hearings and issue final orders in warranty performance complaints filed under Section 3.08(i) of the Texas Motor Vehicle Commission Code (Code). Amendments to §107.7 now authorize the director to conduct hearings and issue final orders in complaints filed under both §6.07 and §3.08(i) of the Code, relating to lemon law and warranty performance complaints respectively, making §107.12 redundant.

Brett Bray, Director, Motor Vehicle Division, has determined that for 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 repeal of the section.

Mr. Bray has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit of the repeal of §107.12 and simultaneous amendment of §107.7 will be to simplify the procedures for filing and hearing a warranty performance complaint and conserve the time and resources of the agency and entities appearing before it. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the repeal as proposed. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the repeal.

Comments (15 copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P. O. Box 2293, Austin, Texas 78768, (512) 416-4910. The Motor Vehicle Board will consider adoption of the repeal at its meeting on September 9, 1999. The deadline for receipt of comments on the proposed repeal is 5:00 p.m. on August 23, 1999.

The repeal is proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code §§3.08(i) and 6.07 are affected by the proposed repeal.

§107.12. Contested Cases under General Warranty Provisions: Decisions and Final Orders.

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 July 9, 1999.

TRD-9904095
Brett Bray
Division Director
Texas Motor Vehicle Board
Proposed date of adoption: September 9, 1999
For further information, please call: (512) 416-4899

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 105. Foundation School Program

Subchapter B. Use of State Funds

19 TAC §105.12

The Texas Education Agency (TEA) proposes new §105.12, concerning administration of the Foundation School Program. The new section would explain the authorized use of state aid for acquisitions, renovation, repairs, and maintenance of facilities.

Senate Bill 4, 76th Texas Legislature, 1999, amended the Texas Education Code (TEC), §42.301, relating to the use of the guaranteed yield component for capital outlay and debt service. The bill prohibits use of the guaranteed yield component for capital outlay and debt service. Clarification of the appropriate use of state aid for these purposes is necessary because of the impact of the amendment to TEC, §42.301, upon school districts' capacity to service outstanding and future debt obligations and to purchase, improve, renovate, lease, and incur other costs related to facilities. New §105.12 would specify the appropriate use of state aid by school districts. A technical change is also proposed to change the title of Chapter 105, Subchapter B, to read "Use of State Funds."

The TEA is also proposing an amendment to 19 TAC §109.41, which is filed in a separate submission. Section 109.41 adopts by reference the "Financial Accountability System Resource Guide." The proposed amendment to the Financial Accounting and Reporting Module of the "Resource Guide" would also explain the authorized use of undesignated state aid under the TEC, Chapter 42, Subchapter B.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Proposed new §105.12 would not directly affect the amount of school district costs under the Foundation School Program. The new section may achieve cost efficiencies because clarifying the appropriate use of state aid may result in lower interest rates under financing arrangements.

Mr. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be improving financial accountability for educational programs in the Texas school system and keeping financial management practices current with changes in state law and federal rules and regulations. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted 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 section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §42.004, which authorizes the State Board of Education to implement rules to administer the Foundation School Program. The new section implements the Texas Education Code, §42.004.

§105.12. Basic Allotment.

A school district may use state aid received pursuant to the Texas Education Code (TEC), Chapter 42, Subchapter B, and indirect costs as defined in §105.11 of this title (relating to Maximum Allowable Indirect Cost) for any lawful purpose, including operations and using, purchasing, or acquiring real property or land; improving real property; constructing or equipping buildings; renovating real property; repairing real property; or maintaining real property. A school district may fund obligations from state aid received pursuant to the TEC, Chapter 42, Subchapter B, including reduction of bond tax by deposit into the district debt service fund, lease purchase agreements, and public property finance contracts authorized under the Local Government Code, §271.004 and §271.005; time warrants issued pursuant to the TEC, §45.103; maintenance notes issued pursuant to the TEC, §45.108; and contracts issued pursuant to the TEC, §44.901.

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 July 12, 1999.

TRD-9904150
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: August 22,1999
For further information, please call: (512) 463–9701

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Chapter 109. Budgeting, Accounting, and Auditing

Subchapter C. Adoptions By Reference

19 TAC §109.41

The Texas Education Agency (TEA) proposes an amendment to §109.41, concerning the "Financial Accountability System Resource Guide." The section adopts by reference the "Financial Accountability System Resource Guide" as the TEA's official rule. The "Resource Guide" describes rules for financial accounting such as financial reporting; budgeting; purchasing; auditing; site-based decision making; data collection and reporting; and management. Public school districts use the "Resource Guide" to meet the accounting, auditing, budgeting, and reporting requirements as set forth in the Texas Education Code and other state statutes relating to public school finance. The "Resource Guide" is available at www.tea.state.tx.us/school.finance/ on the TEA website.

The proposed amendment to §109.41 changes the date from "December 1998" to "September 1999" to reflect the effective date of the proposed amendments to the "Financial Accountability System Resource Guide." Under §109.41(b), the commissioner of education shall amend the "Financial Accountability System Resource Guide," adopting it by reference, as needed. The proposed amendments to the "Resource Guide" include changes to financial accounting and reporting guidelines. The amendments are necessary to implement new 19 TAC §105.12 that explains authorized use of undesignated state aid under the Texas Education Code, Chapter 42, Subchapter B. Undes-

ignated state aid under the Texas Education Code, Chapter 42, Subchapter B, may be used for any lawful purpose, including the acquisition, renovation, repairs and maintenance of facilities and necessary sites, and capital purchases.

The TEA is also proposing new 19 TAC §105.12, which is filed in a separate submission. The new section would specify appropriate use of state aid by school districts.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be improving financial accountability for educational programs in the Texas school system and keeping financial management practices current with changes in state law and federal rules and regulations. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted 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 section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §§7.055, 44.001, 44.007, and 44.008, which authorize the commissioner of education to establish advisory guidelines relating to fiscal management of a school district and the State Board of Education to establish a standard school fiscal accounting system in conformity with generally accepted accounting principles.

The proposed amendment implements the Texas Education Code, §§7.055, 44.001, 44.007, and 44.008.

§109.41. Financial Accountability System Resource Guide.

(a) The rules for financial accounting are described in the official Texas Education Agency publication, Financial Accountability System Resource Guide, as amended September 1999 [~~December 1998~~] , which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) The commissioner of education shall amend the Financial Accountability System Resource Guide and this section adopting it by reference, as needed. The commissioner shall inform the State Board of Education of the intent to amend the Resource Guide and of the effect of proposed amendments before submitting them to the Office of the Secretary of State as proposed rule changes.

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 July 12, 1999.

TRD-9904151

Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: August 22,1999
For further information, please call: (512) 463–9701

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TITLE 22. EXAMINING BOARDS

Part XVI. Texas Board of Physical Therapy Examiners

Chapter 329. Licensing Procedure

22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes an amendment to §329.5, concerning Licensing Procedures for Foreign-Trained Applicants. The amendment will require all foreign-trained applicants to demonstrate proficiency in the English language by achieving the board's standards on the Test of Spoken English (TSE), the Test of English as a Foreign Language (TOEFL), and the Test of Written English (TWE). It will also allow those who make a 50 on the TSE to submit three letters of recommendation, which, at the board's discretion, may be considered as proof of proficiency in spoken English.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the additional availability of qualified physical therapists. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amended section.

§329.5. Licensing Procedures for Foreign-Trained Applicants.

(a)-(g) (No change.)

(h) Guidelines for board-approved education credentialing entities.

(1) (No change.)

(2) The credentialing entity must attest that the institution attended by the applicant has the recognition of the Ministry of Education or the equivalent in that country. [~~All applicants must demonstrate proficiency in the English Language. The credentialing entity will certify if the applicant's physical therapy course work has been taught in English. Applicants whose physical therapy course work has not been taught in English are required to take the~~

~~Test of English as a Foreign Language (TOEFL), Test of Spoken English (TSE), and Test of Written English (TWE), as required in the Act, Section 8c. All three tests must be passed with the following minimum scores: TOEFL 580, TSE 55, AND TWE 5.~~]

(3) All foreign-trained applicants must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the following exams: Test of English as a Foreign Language (TOEFL), 580 (237 if paper-based test); Test of Written English (TWE), 5.0; Test of Spoken English (TSE), 55. If an applicant makes a score of 50 on the TSE, the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in Texas. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English.

(4) [~~(3)~~] Licensing procedures for foreign-trained applicants. The credentialing entity must attest that the applicant is licensed/registered/authorized to practice in the country in which the education and training were accomplished if the country has a licensure/registration/authorization system in place. Otherwise, the applicant must be eligible for unrestricted practice in that country.

(5) [~~(4)~~] The credentialing entity adopts the policy of "scaling" as defined by the National Council on the Evaluation of Foreign Educational Credentials, American Association of Collegiate Registrar and Admissions Officers, Washington D.C.; i.e., a year of foreign study is worth no more than a year of American study, regardless of contact hours, or general education is converted to equate to approximately 30-32 United States semester credit hours per year, and professional education to approximately 36 semester credit hours per year.

(6) [~~(5)~~] The credentialing entity must use a method to convert classroom hours to semester units which has a ratio no greater than the following: 15 contact lecture hours=one semester unit/hour; 55 contact laboratory hours=one semester unit/hour. When lecture/lab hours are not delineated on the transcript, the evaluator may use an appropriate ratio and indicate the ratio used in the evaluation.

(7) [~~(6)~~] The credentialing entity must list and assign a grade for each course taken by the applicant, by assigning the grade of A, B, C, D, F, Pass, Fail, Credit or No Credit. Those grades assigned by the credentialing entity must be the grades that are converted to the U.S. equivalent, in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. The credentialing entity must identify and list those courses which would not transfer to the U.S. as a C or above or Pass or Credit in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. An applicant must earn a grade of A, B, C, or Pass or Credit in any professional physical therapy education courses. An applicant with a grade of D, F, Fail, or no credit appearing for a professional physical therapy education course on his/her evaluation who has not successfully retaken the course with a grade of A, B, C, Pass or Credit is not eligible for licensure in Texas.

(8) [~~(7)~~] The credentialing entity must attest that the applicant has successfully completed an educational program equivalent to U.S. programs accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE) and has earned the equivalent of a minimum of 72 semester hours of professional physical therapy education. The applicant must have completed courses in each of the following areas: basic sciences, clinical science, and physical therapy theory and procedures. The applicant must have also successfully completed United States required equivalent courses/hours (no less than eight and will receive credit for no more than 15 U.S. semester credit hours at the Upper Division Level) in clinical education. If the applicant has completed the required course work in clinical education but the transcript does not reflect the required credit hours then the credentialing entity may use the conversion formula of 55 contact hours per one semester credit.

(9) [~~(8)~~] The credentialing entity must certify that the program covers at least four years of full-time post-secondary study and awards a degree equivalent in level and purpose to the Bachelor of Science in Physical Therapy, as awarded by regionally accredited colleges and universities in the United States.

(10) [~~(9)~~] If the degree received is equivalent to a four-year Bachelor of Science degree in Physical Therapy as awarded by regionally accredited colleges and universities in the United States, the credentialing entity must use the approved evaluation checklist when considering an applicant's credentials. Deficiencies must be identified and must show the subjects and credit hours necessary to satisfy the requirements of the evaluation checklist.

(11) [~~(10)~~] The credentialing entity must submit to the board the resumes of any and all credential analysts and the physical therapy consultants involved in the evaluation of foreign-trained applicants for licensure in Texas. This must be submitted to the council at least 30 days prior to any analysis performed by that person.

(12) [~~(11)~~] The credentialing entity must submit to the board a board-approved form, properly signed and notarized, in which it agrees to use the board's guidelines to evaluate transcripts of applicants seeking licensure in Texas.

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 July 8, 1999.

TRD-9904089
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 305-6900

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Part XX. Texas Board of Private Investigators and Private Security Agencies

Chapter 421. General Provisions

22 TAC §421.1, §421.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §421.1 and §421.2, concerning General Provisions. Pursuant to the Appropriations Act, Ar-

ticle IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) Vernon Anotated Civil Statutes, by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Mr. Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules.

Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§421.1. Notice of Change or Fact.
§421.2. Complaint Limitation.

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 July 9, 1999.

TRD-9904107
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 421. Fraudulent Application Prohibited

22 TAC §421.1

The Texas Board of Private Investigators and Private Security Agencies proposes new §421.1, concerning Fraudulent Application Prohibited. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) Vernon Anotated Civil Statutes, by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Mr. Kimbrough also has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The new section is proposed under 4413(29bb) Vernon Anotated Civil Statutes, §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§421.1. Fraudulent Application Prohibited.

Applications submitted to the Commission are government documents and / or records. A fraudulent application for a license, registration or security officer commission pursuant to the Act is a criminal offense. Applicants that willfully make false statements in making applications for licenses, registrations, or security officer commissions pursuant to the Act, or otherwise commit a violation in connection with such application, will be subject to prosecution.

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 July 9, 1999.

TRD-9904133
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 422. Definitions

22 TAC §422.1

The Texas Board of Private Investigators and Private Security Agencies proposes new §422.1 concerning Definitions. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and

Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The new section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§422.1. Additional Definitions.

The following words or terms, when used in the Act or Commission Rules, shall have the following meaning, unless the context clearly indicates otherwise:

(1) Client - A person as defined in Section 2.2 of Article 4413 (29bb) V.A.C.S. having a contract which authorizes services to be provided in return for financial or other considerations.

(2) Conflicts of interest - A conflict or the appearance thereof between the private interests and public obligations of an individual, organization, or other legal entity authorized to conduct business pursuant to the Act.

(3) Contract - An agreement between a person or agency licensed under this Act and a client. Such contracts may be oral or written, or in any combination thereof.

(4) Conviction - Any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendre, or otherwise, and any deferred or suspended sentence or judgement, or pre-trial diversion.

(5) Curriculum - The collective, written documentation of the material content of a training course, or any particular phase of training prescribed by the Act, minimally consisting of course objectives, student objectives, lesson plans, training aids, and examinations.

(6) Licensee - Any person defined in the Act that has been granted a license, registration or security officer commission or has filed an application for a license, registration or security officer commission by or with the Texas Commission on Private Security.

(7) Act - the statutes as amended by the 76th Legislature under Article 4413 (29bb) V.A.C.S and Commission Rules.

(8) Director - The Director of the Texas Commission on Private Security.

(9) Shareholder - Shall mean any individual holding stock in a licensee who is actively involved in the normal course of operation and business of the licensee and shall not include those individuals who only hold stock in the licensee solely for the purposes of investment.

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 July 9, 1999.

TRD-9904134
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-5545

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Chapter 423. Rules of Procedure and Seal

Subchapter A. Code of Professional Responsibility and Conduct

22 TAC §§423.1-423.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§423.1 - 423.4 concerning Code of Professional Responsibility and Conduct. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply

with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§423.1. Standards of Conduct.

§423.2. Standards of Services.

§423.3. Standards of Reports.

§423.4. Continuing Education Courses for Private Investigators.

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 July 9, 1999.

TRD-9904108
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-5545

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Subchapter B. Hearings, Grievances, and Appeal Procedures

22 TAC §§423.11-423.62

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§423.11 - 423.62 concerning Hearings, Grievances, and Appeal Procedures. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§423.11. Grievance and Appeal Procedures Provided.

§423.12. Definitions.

§423.13. Filing of Documents.

§423.14. Computation of Time.

§423.15. Agreement to be in Writing.

§423.16. Service in Nonrulemaking Proceedings.

§423.17. Conduct and Decorum.

§423.18. Classification of Parties.

§423.19. Parties in Interest.

§423.20. Appearances Personally or by Representative.

§423.21. Classification of Pleadings.

§423.22. Form and Content of Pleadings.

§423.23. Examination by the Director.

§423.24. Motions.

§423.25. Amendments.

§423.26. Incorporation by Reference of Agency Records.

§423.27. Docketing and Numbering of Causes.

§423.28. Licenses.

§423.29. Contested Proceedings.

§423.30. Personal Service.

§423.31. Prehearing Conference.

§423.32. Motions for Postponement, Continuance, Withdrawal, or Dismissal.

§423.33. Joint Hearings.

§423.34. Place and Nature of Hearing.

§423.35. Presiding Officer.

§423.36. Order of Procedure.

§423.37. Recordings and Transcripts.

§423.38. Formal Exceptions.

§423.39. Dismissal Without Hearing.

§423.40. Rules of Evidence.

§423.41. Documentary Evidence and Official Notice.

§423.42. Prepared Testimony.

§423.43. Limitations on Number of Witnesses.

§423.44. Exhibits.

§423.45. Offer of Proof.

§423.46. Depositions.

§423.47. Subpoenas.

§423.48. Proposals for Decision.

§423.49. Filing of Exceptions, Briefs, and Replies.

§423.50. Form and Content of Briefs, Exceptions, and Replies.

§423.51. Oral Argument.

§423.52. Final Decisions and Orders.

§423.53. Rendering of Final Decision or Order.

§423.54. Administrative Finality.

§423.55. Motions for Rehearing.

§423.56. The Record.

§423.57. Show Cause Orders and Complaints.

§423.58. Ex Parte Consultations.

§423.59. Appeals.

§423.60. Amendments to Rules Subsequent to January 1, 1976.

§423.61. Effective Date.

§423.62. Petition for Adoption of a 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 July 9, 1999.

TRD-9904109
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-5545

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Chapter 425. Organization and Meetings of the Board

22 TAC §425.1

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

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §425.1 concerning Organization and Meetings of the Board. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed section is proposed under 4413(29bb) V.A.C.S., §11(a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rules: Texas Civil Statutes, Article 4413(29bb).

§425.1. Meetings of the Board.

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

Filed with the Office of the Secretary of State, on July 9, 1999.

TRD-9904110
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 425. Licensed Companies

22 TAC §§425.1-425.4, 425.10, 425.15, 425.20, 425.25, 425.30, 425.35, 425.40-425.42, 425.50, 425.55, 425.70, 425.80, 425.81, 425.85, 425.86, 425.90-425.94

The Texas Board of Private Investigators and Private Security Agencies proposes new §§425.1 - 425.4, 425.10, 425.15, 425.20, 425.25, 425.30, 425.35, 425.40 - 425.42, 425.50, 425.55, 425.70, 425.80, 425.81, 425.85, 425.86, and 425.90 - 425.94 concerning Licensed Companies. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of

its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect the fiscal implications for individuals who are required to comply with these rules will be minimal, and are specifically directed towards the conduct of licensees for the protection of the public and consumers. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The new sections are proposed under 4413(29bb) V.A.C.S., §11(a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these new rules: Texas Civil Statutes, Article 4413(29bb).

§425.1. Complaint Limitation.

The Commission shall not accept an administrative complaint relating to the fulfillment of contractual obligations against a licensee if the complaint is filed more than two years after the alleged violation date.

§425.2. Date of Licensing, Certification or Acknowledgment.

If an application or written notification is required, the date of licensing, certification, or acknowledgment by the Commission will be either the receipt date or the date the complete application or written notification is accepted for processing, whichever is later.

§425.3. Certificate of Installation.

(a) For purposes of interpreting the term "exterior structure opening" in §6(a)(2)(A), Texas Insurance Code, that term shall mean all exterior doors, windows, or other openings into a structure greater than 96 square inches with the smallest dimension exceeding six inches; provided however, that no opening is an "exterior structure opening" if it was designed and installed to be unmovable or inoperable and has not been reconstructed to be movable or operable. A garage door is not an exterior structure opening if all other exterior structure openings from the garage into the structure are contacted.

(b) Any alarm system company may issue a certificate of installation pursuant to §3C., Article 4413 (29bb) V.A.C.S..

§425.4. Standards of Conduct.

(a) Licensees shall carry out fully any contract for services entered into with a client except for reasons deemed to be lawful.

(b) Licensed companies may use the phrase "Licensed by the Texas Commission on Private Security" on stationary, business cards, and in advertisements, but no licensee shall have a badge, shield or insignia as part of any uniform, identification card or markings on a motor vehicle containing the State Seal of Texas, except those identification and license items that are prepared or issued by the Commission. No licensee shall use the State Seal of Texas to advertise or publicize a commercial undertaking.

(c) No licensee shall have a badge, shield or insignia as part of any uniform, identification card or markings on a motor vehicle containing the Flag of the State of Texas, except those identification and license items that are prepared or issued by the Commission. No licensee shall use the Flag of the State of Texas to advertise or publicize a commercial undertaking.

(d) Licensees will make copies of contracts with clients available to Commission investigators when served with a subpoena signed by the investigator for copies of said contracts if a written contract was utilized.

(e) Commissioned security officers or personal protection officers shall carry only a firearm of the type with which the commissioned security officer or personal protection officer has been formally trained and of which training documentation is on file with the Commission.

(f) No commissioned security officer or personal protection officer shall carry an inoperative, unsafe, replica or simulated firearm while in the course and scope of their employment.

(g) No commissioned security officer or personal protection officer shall brandish, point, exhibit, or otherwise display a firearm at anytime, except as authorized by law.

(h) The discharge of a firearm while in the performance of their duty by any person registered, or commissioned by a licensee shall be reported to the Austin office of the Commission. Notification of the discharge of a firearm shall be in writing within 24 hours of the incident, and shall be faxed by the licensee, or manager. The fax shall be addressed to the Director of the Commission at (512) 452-2307. The fax shall include:

(1) name of the person discharging the firearm:

(2) name of the employer;

(3) location of the incident;

(4) a brief narrative of what happened;

(5) whether death, personal injury or property damaged resulted, and

(6) whether the incident is being or was investigated by a law enforcement agency.

(i) No licensee shall engage in any business activity in violation of §38.11 or §38.12 of the Texas Penal Code (Barratry and Solicitation of Professional Employment.)

(j) Licensees shall not perform any service regulated by the Commission if a Letter of Summary Suspension or Letter of Summary Denial has been forwarded in accordance with the Act and Commission Rules. After Summary Suspension or Summary Denial, a Letter of Reinstatement must be received by the licensee prior to performing any services regulated by the Commission.

(k) All licensees, if arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor shall immediately notify their employer, who shall then notify the Commission in writ-

ing at the Austin office of the Commission within three days of the arrest, including the name of the arresting agency the offense, court, and cause number of the charge or indictment, if any.

(l) All licensees shall report any name changed by marriage, divorce or other reason to the Commission within 30 days of the effective date of change. The notice of the change shall be in writing, and shall include a certified copy of the legal document ordering the name change.

(m) No licensee shall engage in conduct while in the course, scope or performance of their duties that constitutes a Class C misdemeanor as provided in the Texas Penal Code, Alcoholic Beverage Code, or Health and Safety Code.

§425.10. Stay of Summary Suspension.

(a) An individual who is an owner, shareholder, manager or supervisor of a sole proprietorship or closely-held corporation, and who has been summarily suspended as the result of a Class B misdemeanor or equivalent offense only, may request a stay of summary suspension by submitting a written request to the Director.

(b) The written request for a stay of summary suspension must include all of the following:

(1) The full name, mailing address, telephone number, fax number, social security number, license number, position with the company, and date of birth of the individual making the written request.

(2) The arrest date, time, and location, and the offense title, arresting officer's name and department relating to the offense for which the stay request is made.

(3) A statement as to whether the individual making the request for a stay of summary suspension was in the performance of an activity or duties involved in the operation of the individual's company or activities for which a license, commission or registration would be required.

(4) A detailed account of the circumstances leading up to, and resulting in the requesting individual's arrest.

(5) An explanation as to why the summary suspension of the individual making the request for a stay would place an undue hardship on the company's continued operation.

(6) A statement providing that the information in the written request for a stay of summary suspension is true and correct.

(7) Any additional information requested by the Director.

(c) Upon receiving a written request for a stay of summary suspension, the Director may, at his discretion, consider the request under the following conditions:

(1) The individual must be an owner, majority shareholder, qualified manager or qualified supervisor of a licensee.

(2) The Class B misdemeanor offense must not involve violence or fraud.

(3) The individual must not have an acceptable immediate family member or other qualified person to whom the license can reasonably be assigned pending the disposition of the criminal case.

(4) The individual's prior history of criminal and/or administrative violations.

(5) Circumstances of the individual's arrest.

(6) Any other information as may be required by the Director.

(d) If, in the discretion of the Director, a stay of the summary suspension is granted, the requesting individual will be notified in writing by the Director within two working days after the request is received by the Director.

(e) No stay of summary suspension shall be effective until and unless the requesting party has received written confirmation of the stay from the Director.

(f) No stay of summary suspension shall remain in effect beyond the date of the next called meeting of the Commission following the request for a stay at which time the Commission members will consider the disposition of the matter.

(g) No continuance shall be granted with respect to a stay of summary suspension.

§425.15. Standards of Service.

(a) In accordance with subsection (c) of this section, a licensee shall inform each client he is entitled to receive a written contract that contains the fee arrangement with necessary information covering services to be rendered.

(b) A written contract for services required to be licensed under the Act shall be furnished to a client within seven days after a request is made for such written contract. The written contract shall contain the fee arrangement, with the necessary information covering services to be rendered.

(c) A written contract for services requiring a license under the Act shall be dated and signed by the owner, manager or a person authorized by one or either of them to sign written contracts for the licensed company.

(d) Each licensee that has a contract to provide services licensed by the Commission within seven days after entering into a contract for services regulated by the Commission with another licensee shall:

(1) notify the recipient of those services of the name, address, and telephone number, and individual to contact at the company which purchased the contract.

(2) notify the recipient of services at the time the contract is negotiated that another licensed company may provide any, all or part of the services requested by sub-contracting or out-sourcing those services. If any of the services are sub-contracted or out-sourced to a licensed third party the recipient of services must be notified of the name, address, phone number and license number of the company providing those services.

§425.20. Standards of Reports.

(a) At the time a contract for services requiring a license under the Act is negotiated, each client shall be informed that he or she is entitled to receive a written report concerning services rendered for which a fee has been tendered by a licensed company.

(b) A written report shall be furnished by the licensed company to the client within seven days after a written request is received from the client.

§425.25. Permitting or Allowing Violations.

Licensees or persons who have applied for or have been issued a registration or security officer commission shall not knowingly permit or allow employees to violate a provision of the Act, a Commission Rule or any criminal statute.

§425.30. Administrative Hearing Procedures.

Hearings and Appeal Procedures related to all administrative hearings conducted by the Commission are governed by §2001 of the Government Code, V.A.C.S.

§425.35. Penalty Range.

The Commission shall develop, utilize and publish guidelines for administrative penalties and ranges of violations of the Act and Commission Rules.

§425.40. Amendments to Commission Rules Subsequent to January 1, 1976.

(a) Prior to the adoption of any rule, the Commission shall give at least 30 days notice of its intended action. Notice of the proposed rule shall be filed with the Secretary of State and published by the Secretary of State in the *Texas Register*. The notice shall include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule, except any portion omitted as provided in §2002.014 of the Texas Government Code prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated;

(4) a request for comments on the proposed rule from any interested person; and

(5) any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the *Texas Register*. The notice shall be mailed to all persons who have made timely written requests of the Commission for advance notice of this rule making proceeding. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

(c) Prior to the adoption of any rule, the Commission shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing shall be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The Commission shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the Commission, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in statement its reasons for overruling the considerations urged against its adoption.

(d) If the Commission finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer that 30 days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period not longer than 120 days renewable once for a period of not exceeding 60 days, but the adoption of an identical rule under subsections (a) and (c) of this section is not precluded. An emergency rule adopted under the provisions of this subsection, and the Commission's written reasons for the adoption, shall be filed in the office of the Secretary of State for publication in the *Texas Register*.

(e) The Commission may use informal conferences and consultations as means of obtaining viewpoints and advice of interested persons concerning contemplated rule making. The Commission may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees are advisory only.

(f) Any interested person may petition the Commission requesting the adoption of a rule. Any such petition must be presented in substantially the form set forth in §425.42 of this title (relating to Petition of Adoption of a Rule). Within 60 days after submission of a petition, the Commission either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rule-making proceedings in accordance with the provisions of this rule.

§425.41. Effective Date.

These rules govern all proceedings filed after they take effect and they also govern all proceedings then pending. Any rule adopted after December 31, 1975, shall become effective 20 days after filing two certified copies of said rule with the Secretary of State, unless otherwise specified in the rule because of statutory directive or federal law or emergency.

§425.42. Petition for Adoption of a Rule.

(a) Applicant: (Here give name and complete mailing address of applicant on whose behalf the application is filed, hereinafter called the applicant.)

(b) Caption: Applicant hereby seeks (Here make specific reference to the rule or rules which it is proposed to establish, change or amend, so that it or they may be readily identified, prepared in a manner to indicate the words to be added or deleted from the current text, if any.)

(c) Proposed Change: (Here make reference to any exhibit to be attached to and incorporated by reference to the petition, the said exhibit to show the amendment providing for the proposed new provision, rule, regulation rate practice or other change, including the proposed effective date, application and all other necessary information, in the exact form in which it is to be published, adopted or promulgated.)

(d) Justification: (Here submit the justification for the proposed action in narrative form with sufficient information to inform the Commission and any interested party fully of the facts upon which applicant relies.)

(e) Resume or Concise Abstract: (Here file with the petition a concise but complete resume or abstract of the information required in Subsections (a), (b), (c) and (d) of this section.

§425.50. Consumer Information.

(a) A licensee shall notify consumers or recipients of services of the name, mailing address, and telephone number of the Commission on each written contract and invoice for services.

(b) A licensed company must display prominently in the principle place of business and any branch office, a sign containing the name, mailing address, and telephone number of the Commission, and a statement informing consumers or recipients of services that complaints against licensees can be directed to the Commission.

(c) Signs required to be displayed in the place of business of a licensed company shall be obtained from the Commission.

§425.55. Information Shown in Advertisements.

Any advertisement by a licensee shall include:

(1) the company name and address as it appears in the records of the Commission; and

(2) the license number of the licensee as issued by the Commission.

§425.70. Guard Dog Welfare Requirements.

Each guard dog company licensed by the Commission shall comply with the following rules:

(1) All pens, spaces, rooms, runs, cages, compartments or hutches where guard dogs are housed, exercised, trained or placed shall be kept clean and maintained in a sanitary condition. Excreta shall be removed as often as necessary to prevent contamination of the inhabitants and reduce disease hazards and odors. Adequate shelter shall be provided to protect animals from any form of overheating or cold or inclement weather.

(2) All animals shall be fed at least once a day except as otherwise might be directed by a licensed veterinarian. The food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition and size of the animal. Food receptacles shall be accessible to all animals and shall be located so as to minimize contamination by excreta. Feeding pans shall be durable and kept clean and sanitary. Disposable food receptacles may be used but must be discarded after each feeding. Self-feeders may be used for the feeding of food, and shall be kept clean and sanitary to prevent molding, deterioration, or caking of feed.

(3) All animals shall be furnished ample water. If potable water is not accessible to the animals at all times, it shall be offered to them at least twice daily for periods of not less than one hour, except as directed by a licensed veterinarian. Watering receptacles shall be kept clean and sanitary.

(4) All animals shall be vaccinated by a licensed veterinarian against rabies by the time they are four months of age and within each subsequent 12 month intervals thereafter. Official rabies vaccination certificates issued by the vaccinating veterinarian shall contain certain standard information as designated by the Texas Department of Health. Information required is as follows:

(A) Owner's name, address and telephone number.

(B) Animal identification. Species, sex, age (three mo. to 12 mo., 12 mo. or older), size (lbs.), predominant breed, and colors.

(C) Vaccine used, producer, expiration date and serial number.

(D) Date Vaccinated.

(E) Rabies tag number.

(F) Veterinarian's signature and license number.

§425.80. Written Examination.

(a) All manager or supervisor applicants shall pass a written examination administered by the Commission.

(b) The passing grade of a written examination shall be 75% of the total points possible.

(c) The written examination shall cover all sections of the Act and Commission Rules.

(d) Before being administered the written examination, the manager or supervisor applicant must:

(1) present a valid identification card which contains a photograph upon request;

(2) report 30 minutes prior to the examination time; and

(3) comply with all the written and verbal instructions of the proctor;

(e) During an examination session, a manager or supervisor shall not:

(1) bring any books, or other written material related to the content of the examination into the examination room;

(2) refer to, use, or possess any such written material in the examination room;

(3) give or receive answers or communicate in any manner with another examinee during the examination;

(4) communicate any of the content of an examination to another at any time;

(5) steal, copy or in any way reproduce any part of the examination;

(6) engage in any deceptive or fraudulent act either during an examination or to gain admission to it;

(7) solicit, encourage, direct, assist or aid another person to violate any provision of this section; or

(8) disrupt the examination session.

§425.81. Reexamination and Fee.

Any examination, other than the one examination authorized by payment of the original license fee, shall be considered a reexamination and the reexamination fee shall be $100.00.

§425.85. Photographs.

Photographs required by the Act shall be in color and shall show a facial likeness of applicants. Photographs placed on pocket cards shall have been taken within the past six months and be 1" x 11/4" in size.

§425.86. Fingerprint Cards.

(a) All fingerprint cards required by the Act shall be fingerprint cards approved by and obtained from the Commission. Except as provided for in §435.2 of this title (relating to Fingerprints), two fingerprint cards shall be submitted for each applicant. All blank spaces shall be completed and the cards shall be signed by the applicant and the person taking the prints.

(b) Applicants who have had fingerprints rejected on three separate attempts may appeal to the Director in writing for a waiver, which the Director may grant under conditions deemed appropriate.

§425.90. Assumed Name Requirements.

(a) All applicants, doing business under an Assumed Name shall submit a certificate from the County Clerk of the county of the applicant's residence, showing compliance with the Assumed Name Statute.

(b) Corporations using an Assumed Name shall submit a certificate from the Texas Secretary of State and the County Clerk of the county of the applicant's residence, showing compliance with the Assumed Name Statute.

§425.91. Verification of Corporations.

Applicants that are corporations shall submit a current Certificate of Existence or a Certificate of Authority from the Texas Secretary of State.

§425.92. Assignment Under Class.

When a Class A license or a Class B license is assigned to a Class C license, a fee in the amount of the difference in the cost of the licenses shall be paid to upgrade the license. There shall be no refund when

a Class C license is assigned to a Class A or Class B license. This fee is in addition to the regular assignment of a license fee.

§425.93. Procedure for Termination of License or Branch Office License.

An owner or qualified manager shall:

(1) submit a written request to the Commission to terminate the license;

(2) not be required to pay a fee to terminate a license; and

(3) once terminated, a license shall not be reinstated.

§425.94. Assignment to Spouse or Heirs.

The Commission may approve the assignment of a license to the spouse or heir(s) of a deceased provided:

(1) a certified copy of the owner's death certificate is filed with the Commission;

(2) a certified copy of the Will, Order Admitting Will to Probate, Letters of Testament, or Order of Heirship is filed with the Commission; and

(3) in the case of the death of a qualified manager, that a replacement manager is qualified within 90 days.

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 July 9, 1999.

TRD-9904135
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 427. License Required and False Representation Prohibited

22 TAC §427.1

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

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §427.1, concerning License Required and False Representation Prohibited. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§427.1. Texas Residency.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 428. Guard Dog Company

22 TAC §§428.1–428.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§428.1 - 428.10, concerning Guard Dog Company. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§428.1. Guard Dog Company Requirements.

§428.2. Licensee Cooperation with Board Investigator.

§428.3. Board Approved Personal Protection Officer Instructor/ Level Four Training/Approved Commissioned Security Officer Training Schools.

§428.4. Level Four Training (Personal Protection Officer Training Course).

§428.5. Personal Protection Officer Training Video Tapes, Examination, and Grade.

§428.6. Certificate of Completion.

§428.7. Attendance, Progress and Completion Records Required.

§428.8. Requirements for Issuance of a Personal Protection Authorization.

§428.9. Requirements of Personal Protection Officer Employer.

§428.10. Violations of the Act by Personal Protection Officers.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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Chapter 429. Application and Examination

22 TAC §§429.1-429.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§429.1-429.10 concerning Application and Examination. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeals.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will no fiscal implications for individuals who are required to comply with the repeals. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these repeals. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas, 78711.

The repealed sections are proposed under 4413 (29bb) V.A.C.S., Section 11. (a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by the repealed sections: Texas Civil Statutes, Article 4413 (29bb).

§429.1. Verification of Experience.

§429.2. Examination.

§429.3. Reexamination and Fee.

§429.4. Photographs.

§429.5. Fingerprint Cards.

§429.6. Licensees who are not Texas Residents.

§429.7. Examination to be in Austin.

§429.8. Assumed Name.

§429.9. Corporations.

§429.10. Issuance of Pocket Card.

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 July 9, 1999.

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Jay Kimbrough
Director
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Chapter 430. Commissioned Officers/Personal Protection Officers

22 TAC §§430.1, 430.5, 430.10, 430.20, 430.21, 430.31, 430.35, 430.40, 430.45, 430.50

The Texas Board of Private Investigators and Private Security Agencies proposes new §§430.1, 430.5, 430.10, 430.20, 430.21, 430.31, 430.35, 430.40, 430.45, and 430.50 concerning Commissioned Security Officers and Personal Protection Officers. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect the fiscal implications for individuals who are required to comply with the rules will be minimal. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas, 78711.

The new section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§430.1. Requirements for Issuance of a Personal Protection Authorization.

(a) An applicant for Personal Protection Authorization shall:

(1) submit a written application for a personal protection authorization on a form prescribed by the Commission;

(2) be at least 21 years of age;

(3) have a valid Security Officer Commission issued prior to applying for a personal protection authorization;

(4) submit proof that the applicant has completed the handgun proficiency requirements of the Act within 90 days preceding the date the application for a personal protection authorization is received by the Commission;

(5) submit proof that the applicant has successfully completed the Personal Protection Officer Course taught by a Commission approved Personal Protection Officer Instructor; and

(6) submit proof of completion of the Minnesota Multiphasic Personality Inventory test (Proof of completion of the Minnesota Multiphasic Personality Inventory test shall be in the form of the Commission approved Declaration of Psychological and Emotional Health and shall be signed by a licensed psychologist).

(b) A personal protection officer may transfer his registration as a personal protection officer to another employer if:

(1) the personal protection officer has transferred his security officer commission to the new employer; and

(2) submits the appropriate form and transfer fee to the Commission's Austin office within in 14 days of the transfer of employment to the new employer.

§430.5. Requirements of Personal Protection Officer Employer.

Personal Protection Officer employers shall:

(1) issue the Personal Protection Officer authorization pocket card issued by the Commission to the Personal Protection Officer when received from the Commission and affix a color photograph to the pocket card;

(2) maintain on file for Commission inspection, contracts for Personal Protection Officer services; and

(3) maintain current records on all persons issued a personal protection authorization on file for Commission inspection. The records shall contain:

(A) current residence of personal protection officer.

(B) the personal protection officer's name, address and telephone number;

(4) upon receipt of a subpoena, provide:

(A) the name of the client being protected and contract information; and

(B) the hours and dates of duty assignment.

§430.10. Violations of the Act by Personal Protection Officers.

In addition to other rules, a personal protection officer shall not:

(1) perform personal protection officer duties for any person(s) other than the employer indicated in the Commission records;

(2) fail to affix his or her signature and color photograph to the personal protection officer pocket card issued by the Commission;

(3) fail to timely surrender the personal protection officer pocket card upon written notice served by the Commission or his employer;

(4) while in the course and scope of his or her employment as a personal protection officer, provide or engage in any other service regulated by the Act or Commission Rules other than providing personal protection from bodily harm to one or more individuals;

(5) fail to conceal his firearm on his person;

(6) fail to carry on his or her person, the issued security officer commission and personal protection authorization while performing the officer's duties as a personal protection officer; or

(7) fail to present his or her security officer commission and personal protection authorization card upon request.

§430.20. Renewal of Security Officer Commission.

The renewal period for security officer commissions shall be the calendar month prior to the expiration of the security officer commission.

§430.21. Requirements for Issuance of a Governmental Letter of Authority.

(a) A governmental letter of authority shall:

(1) be obtained by a governmental entity that employs commissioned security officers.

(2) be issued with each governmental letter of authority approved by the Commission and this number shall be used on all applications submitted to the Commission.

(3) be valid for one year and shall be renewed upon receipt of an acceptable renewal application.

(4) be renewed during the calendar month preceding the month of expiration.

(b) Holders of a letter of authority shall be subject to all rules of the Act and Commission.

§430.31. Requirements for Issuance of a Security Officer Commission by the Commission.

(a) Applicant shall have successfully completed a Commission approved 30-hour training program and be awarded a certificate of completion from a Commission approved security officer training school.

(b) The licensed company shall submit and maintain on file with the Commission color photographs of the company uniform(s) shown in full length and as worn by its security officer employees, size 8 inches by 10 inches desired, 3 inches by 5 inches minimum acceptable. The photographs shall show the entire uniform, including a close-up of the badge, shoulder patch, and nameplate.

§430.35. Application for a Security Officer Commission.

A completed security officer commission application shall be submitted on a form provided by the Commission. Incomplete applications cannot be processed and will be held no more than 30 days after Commission staff request clarification or additional information, after which time the application is deemed rejected.

(1) The application shall include:

(A) the required fee;

(B) at least two sets of fingerprints on fingerprint cards obtained from the Commission and the $25.00 FBI Fingerprint Check Fee;

(C) a copy of the applicant's Level I certificate of completion; and

(D) a copy of the certificate of completion provided to the applicant from a Commission approved Level Three Training school.

(2) The employer shall affix one color photograph, 1" x 1-1/4" to the pocket card when received from the Commission.

§430.40. Violations by Commissioned Security Officers.

In additional to other rules, a commissioned security officer shall not:

(1) perform commissioned security officer duties for any person(s) other than the employer as indicated in the Commission records;

(2) carry a pocket card to which the security officer has failed to affix his signature and photograph to the commission card issued by the Commission;

(3) fail to timely surrender his commission card upon written notice served by the Commission;

(4) possess or uses any security officer commission which has been altered; or

(5) deface or allow improper use of his security officer commission.

§430.45. Carrying of a Security Officer Commission.

A private security officer who has been issued a security officer commission by the Commission shall carry it while on duty and going to and from the place of assignment.

§430.50. Uniform Requirements.

(a) Each security officer shall, at a minimum, have on the outermost garment the name of the company under whom the security officer is employed, the word "security", and identification which contains the last name of the security officer.

(b) The name of the company and the word security shall be of a size, style, shape, design, and type which is clearly visible from a minimum of 10' by a reasonable person under normal conditions.

(c) No licensee shall have a badge, shoulder patch, or any identification which contain the words "law enforcement" and/or similar word(s) including, but not limited to: agent, enforcement agent, detective, task force, special officer, fugitive recovery agent or any other same or similar combination of names which gives the impression that they are connected in any way with the federal government, a state government or any political subdivision of a state government.

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 July 9, 1999.

TRD-9904136
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 431. Manager to Control Business

22 TAC §431.1

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

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §431.1 concerning Manager to Control Business. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of

Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§431.1. Operation Without Manager.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-5545

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Chapter 433. Handgun; Security Officer Commission

22 TAC §§433.1-433.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§433.1 - 433.11 concerning Handgun; Security Officer Commission. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§433.1. Renewal of Security Officer Commissions.

§433.2. Letter of Authority.

§433.3. Requirements for Issuance of a Security Officer Commission by the Board.

§433.4. Application for a Security Officer Commission.

§433.5. Issuance of a Security Officer Commission by the Board.

§433.6. Verification of Information Received.

§433.7. Violations of the Act by Commissioned Security Officers.

§433.8. Employers Records Required on Commissioned Security Officers.

§433.9. Carrying of a Security Officer Commission.

§433.10. Uniform Requirements.

§433.11. Commissioned Security Officer Scope of Authorization.

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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Jay Kimbrough

Director
Texas Board of Private Investigators and Private Security Agencies
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For further information, please call: (512) 463-5545

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Chapter 434. Alarm Systems Monitoring

22 TAC §434.1

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

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §434.1 concerning Alarm Systems Monitoring. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§434.1. Alarm Systems Monitoring.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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Chapter 435. Training Programs

22 TAC §§435.1-435.16

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§435.1 - 435.16 concerning Training Programs. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§435.1. Application for a Training Course Approval.

§435.2. Attendance, Progress, and Completion Records Required.

§435.3. Certificate of Completion.

§435.4. Records Required on Director.

§435.5. Board Refusal of Certificate of Completion.

§435.6. Withdrawal of Training School Approval.

§435.7. Notification of Denial or Withdrawal of a Letter of Approval.

§435.8. Application for a Training Instructor Letter of Approval.

§435.9. Training Course.

§435.10. Notice of Change of Address of a Training Course.

§435.11. Notice of Change of Instructor Signature Authorization.

§435.12. Firearm Courses.

§435.13. Shotgun Training.

§435.14. Training School and Instructor Approval.

§435.15. Security Officer Training Manual, Examination, and Grade.

§435.16. Firearm Requalification.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-5545

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Chapter 435. Registrants

22 TAC §§435.1-435.4, 435.10

The Texas Board of Private Investigators and Private Security Agencies proposes new §§435.1 - 435.4, and 435.10 concerning Registrants. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering these rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect the fiscal implications for individuals who are required to comply with these rules will be minimal, and are specifically directed towards the conduct of licensees for the protection of the public and consumers.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The new sections are proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§435.1. Employment Requirements.

(a) A registrant or commissioned security officer of a licensed company must meet the specifications defined by the Internal Revenue Service as an "employee."

(b) A licensee shall not make application for any person knowing that the conditions of that person's employment do not conform to subsection (a) of this section.

§435.2. Fingerprints.

(a) An applicant for a registration, security officer commission or license under the provisions of this Act whose registration or commission has been expired for a period of time less than six months is not required to submit new fingerprint cards when making application.

(b) Notwithstanding Commission §455.10 of this title (relating to Registration Deadline) a licensee shall obtain the fingerprints of an applicant for a registration or security officer commission prior to assigning the applicant to duty.

§435.3. Exhibit Pocket Card.

A person who has been issued a registration pocket card shall carry the pocket card on or about his person while on duty and shall present same upon request.

§435.4. Licensed Company Responsible for the Registration of Employees.

It shall be the responsibility of the licensed company to register all employees required to register under the Act, with the Commission.

§435.10. Registration Deadline.

Any person required to be registered with the Commission must have their application on file with the Commission within 14 days after commencing employment. Failure to comply may, in the discretion of the Director, result in denial of the application.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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For further information, please call: (512) 463-5545

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Chapter 436. Alarm Installer and Alarm Systems Salesperson Training and Testing

22 TAC §§436.1-436.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§436.1-436.6 concerning Alarm Installer and Alarm Systems Salesperson Training and Testing. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature, the Texas Board of Private Investigators

and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeals.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will no fiscal implications for individuals who are required to comply with the repeals. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these repeals. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas, 78711.

The repealed sections are proposed under 4413 (29bb) V.A.C.S., Section 11. (a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by the repealed section: Texas Civil Statutes, Article 4413 (29bb).

§436.1. Application for Alarm Training Program Approval.

§436.2. Attendance, Progress and Completion Records Required.

§436.3. Certificate of Completion Required.

§436.4. Records Required on Manager.

§436.5. Statutory or Rules Violations.

§436.6. Continuing Education.

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 July 9, 1999.

TRD-9904118
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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For further information, please call: (512) 463-5545

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Chapter 437. Change of Address and New Officers

22 TAC §§437.1-437.5

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§437.1-437.5 concerning Change of Address and New Officers. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeals.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will no fiscal implications for individuals who are required to comply with the repeals. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these repeals. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas, 78711.

The repealed sections are proposed under 4413 (29bb) V.A.C.S., Section 11. (a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by the repealed sections: Texas Civil Statutes, Article 4413 (29bb).

§437.1. Owner, Officer, Partner, and Shareholder Records.

§437.2. Filing of Owner, Officer, Partner, and Shareholder Records.

§437.3. Corporation Records.

§437.4. Partnership Records.

§437.5. Records of Change of Officers of a Corporation.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-5545

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Chapter 439. License Not Assignable

22 TAC §§439.1-439.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§439.1-439.4 concerning License Not Assignable. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§439.1. Assignment of an Expired License.

§439.2. Assignment Under Retained Ownership.

§439.3. Assignment to Spouse or Heirs.

§439.4. Assignment Under Class.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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For further information, please call: (512) 463–5545

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Chapter 440. Continuing Education

22 TAC §440.1

The Texas Board of Private Investigators and Private Security Agencies proposes new §440.1 concerning Continuing Education. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering this rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect the fiscal implications for individuals who are required to comply with this rule will be substantial, and are specifically directed towards the conduct of licensees for the protection of the public and consumers.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The new section is proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§440.1. Continuing Education Courses.

(a) A license may not be renewed unless the required minimum hours of Commission approved continuing education credits have been obtained in accordance with the Act. Proof of the required continuing education must be received by the Commission along with the renewal application and shall reflect the following:

(1) all registrants (except noncommissioned security officers and alarm monitors) shall complete a total of eight hours of continuing education, seven hours of which must be in subject matter that relates to the type of registration held, and one hour of which must be over ethics;

(2) alarm monitors shall complete four hours of continuing education in subject matter that relates to the duties and responsibilities of an alarm monitor; and

(3) commissioned security officers shall complete six hours of continuing education, two hours of which must be completed within 90 days of renewal and must contain instruction on the Act and Rules. Continuing education for commissioned security officers must

be taught by schools and instructors approved by the Commission to instruct commissioned security officers as defined in §20A of the Act.

(b) Continuing education instructors shall provide a certificate of completion to each person successfully completing the continuing education course within 7 days after the date of course completion.

(1) The continuing education certificate of completion shall contain:

(A) the name and social security number of the person attending the course;

(B) the title and topic of the course;

(C) the number of hours of instruction provided;

(D) the signature of the instructor; or

(E) any information deemed necessary by the Director.

(2) The manager of a commissioned security officer training school conducting a continuing education course for commissioned security officers shall provide a certificate of completion to each person successfully completing the course within 7 days after the date the course was completed.

(3) The certificate of completion for commissioned security officers shall contain:

(A) the name and social security number of the person attending the course;

(B) the title and topic of the course;

(C) the number of hours of instruction provided;

(D) the signature of the instructor and school Director; and

(E) any information deemed necessary by the Director.

(c) To receive Commission approval, a continuing education course shall contain instruction relating to one or more of the following:

(1) Investigative procedures and practices;

(2) Business practices;

(3) Legal aspects of private investigation or private security;

(4) Ethical aspects of private investigation or private security;

(5) Handgun proficiency as defined under §20 of the Act; and/or

(6) Any other course of instruction approved by the Director.

(d) To receive Commission approval, a continuing education course shall contain at least one clock hour of instruction.

(e) The Director shall approve courses for continuing education that are determined to meet the qualifications of these rules and the Act. Such courses may be provided for and taught by any organization or person that, in the Director's discretion, has the education, knowledge and experience to provide such information. A person wishing to conduct a continuing education course must provide the Director a description of the contents of the curriculum and the qualifications of any instructor. The Director shall inform the person wishing to conduct the course of the approval or disapproval within 10 working days of receiving the request. The Director may delegate this responsibility to other employees of the Commission.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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For further information, please call: (512) 463–5545

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Chapter 441. Termination of License

22 TAC §§441.1–441.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§441.1-441.4 concerning Termination of License. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority

"to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§441.1. Procedure for Termination of License.

§441.2. No Termination Fee Required.

§441.3. Denial of Termination.

§441.4. Terminated License Not to be Reinstated.

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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Jay Kimbrough
Director
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Chapter 443. Licensee Responsible for Conduct of Employees

22 TAC §443.1, §443.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §443.1, §443.2 concerning Licensee Responsible for Conduct of Employees. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§443.1. Requirements for Employees of Licensees.

§443.2. Permitting or Allowing Employee Violations.

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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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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Chapter 445. Employee Records

22 TAC §445.1, 445.3, 445.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§445.1, 445.3, and 445.4 concerning Employee Records. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeals.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will no fiscal implications for individuals who are required to comply with the repeals. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these repeals. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas, 78711.

The repealed sections are proposed under 4413 (29bb) V.A.C.S., Section 11. (a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by the repealed sections: Texas Civil Statutes, Article 4413 (29bb).

§445.1. Employee Records.
§445.3. Records to be Available for Inspection.
§445.4. Pre-Employment Check.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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For further information, please call: (512) 463–5545

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22 TAC §§445.1-445.5

The Texas Board of Private Investigators and Private Security Agencies proposes new §§445.1-445.5 concerning Employee Records. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have review the legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas, 78711.

The new section is proposed under 4413 (29bb) V.A.C.S., Section 11. (a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413 (29bb).

§445.1. Employee Records.

Licensed companies shall keep records of all registered or commissioned employees . Records shall be maintained for a period of five years from the date of termination. The following records shall be maintained:

(1) Full name of employee, date of employment, position and address;

(2) Social Security Number;

(3) Date of termination;

(4) Date and place of birth; and

(5) One color photograph.

§445.2. Location of Records.

Records of registered employees shall be maintained at the following locations:

(1) If a company has no branch offices, the records shall be maintained at the principal place of business.

(2) If a company has one or more branch offices, the records shall be maintained at the branch office where the registrant or commissioned security officer is employed.

§445.3. Records to be Available for Inspection.

All records required to be kept under the provisions of the Act and Commission Rules shall be made available for inspection by Commission staff during normal business hours.

§445.4. Pre-Employment Check.

The employer of a commissioned security officer or registrant shall exercise due diligence in ensuring that an applicant's qualifications meet the provisions of Section 14 of the Act, prior to duty assignment.

§445.5. Records required on Commissioned Security Officers.

The employer of a commissioned security officer shall maintain current records on all persons issued a security officer commission for Commission inspection. The records shall contain:

(1) current residence of the security officer;

(2) current duty assignment and location of assignment; and

(3) documented information on training required and provided.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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For further information, please call: (512) 463-5545

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Chapter 446. Schools/Instructors/Training

22 TAC §§446.1-446.25

The Texas Board of Private Investigators and Private Security Agencies proposes new §§446.1-446.25 concerning Schools/ Instructors/Training. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have review the legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering these rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect the fiscal implications for individuals who are required to comply with these rules will be minimal, and are specifically directed towards the conduct of licensees for the protection of the public and consumers.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas, 78711.

The new sections are proposed under 4413(29bb) V.A.C.S., Section 11. (a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§446.1. Commission Approved Personal Protection Officer Instructor/Level Four Training/Approved Commissioned Security Officer Training Schools.

(a) The personal protection officer course must be offered by Commission approved commissioned personal protection officer training schools and taught by Commission approved Personal Protection Officer Instructors who are employed by the approved school. Personal Protection Officer Training Instructors must be approved to instruct Level Four training. To receive Commission approval, a school or instructor must submit an application to the Commission on a form provided by the Commission. Any person applying for approval as an instructor shall submit proof of qualification as required by the Commission. Proof of qualification as an instructor shall include, but not be limited to, the following:

(1) an instructor's certificate issued by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for 3 or more years. Evidence may include:

(A) affidavit from employer;

(B) a copy of curriculum taught;

(2) an instructor's certificate issued by federal, state or political subdivision law enforcement academy along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for 3 or more years. Evidence may include:

(A) affidavit from employer;

(B) a copy of curriculum taught;

(3) an instructor's certificate issued by the Texas Education Agency (TEA) along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for 3 or more years. Evidence may include:

(A) affidavit from employer;

(B) a copy of curriculum taught;

(4) an instructor's certificate relating to law enforcement, private security or industrial security issued by a junior college, college or university along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for 3 or more years. Evidence may include:

(A) affidavit from employer;

(B) a copy of curriculum taught; or

(5) evidence of attending and successfully completing a Commission approved training course for Personal Protection Officer Instructors.

(b) A letter of approval from the Commission shall be issued to each approved instructor and shall be valid for a period of one year. The instructor's approval may be renewed for a period of one year upon application to the Commission and payment of the renewal fee.

(c) A letter of approval for a personal protection officer instructor shall be considered a license with respect to suspension, revocation or denial.

(d) Notice shall be given in writing to the Commission within 14 days after a change in address of the approved instructor.

§446.2. Level Four Training (Personal Protection Officer Training Course).

The Personal Protection Officer Training Course shall consist of a minimum of 15 classroom hours and shall be offered by Commission approved personal protection officer training schools and taught by Commission approved personal protection training instructors. All training shall be conducted with Commission approved instructor present during all instruction. All students of a Personal Protection Officer Training Course shall be tested with an examination prepared by and obtained from the Commission. Commission official Personal Protection Officer Training Video Tapes shall be obtained from the Commission and used as the curriculum. LEVEL FOUR TRAINING COURSE:

(1) Introduction

(A) Credentials - Establishing credibility for purpose of student confidence

(B) Options in personal protection

(C) Increase security consciousness

(2) Rules to employ in personal protection circumstances.

(A) Distance is insurance - maintain the defensive cocoon

(B) Reversing the flow of fear and intimidation

(C) Maximizing the use of the element of surprise

(D) Do not assume help will arrive

(E) Never turn your back on danger

(3) The Force Continuum: An academic study

(A) Command presence

(B) Verbal tactics

(C) Empty hand control (soft)

(D) Empty hand control (hard)

(E) Intermediate

(F) Deadly force

(G) Totality of circumstances affecting the use of force

(H) Evaluation and Testing

(4) Unarmed Defensive Tactics

(A) Empty hand control (hard)/linear attack response techniques

(B) Empty hand control (soft)/control measures, detainment technique, and take downs

(C) Practical simulations

(D) Evaluation and Testing

(5) Oleoresin Capsicum/Aerosol Projector Training THIS SECTION MUST HAVE A CERTIFIED OLEORESIN CAPSICUM (O.C.) INSTRUCTOR TO OBTAIN CERTIFICATION IN O. C. USE:

(A) Historical overview

(B) Position on force continuum

(C) Familiarization with chemical agent, content, and dispensing unit

(D) Effects of Oleoresin Capsicum

(E) Subject/Officer decontamination

(F) Deployment

(G) Practical exercises

(H) Evaluation and Testing

§446.3. Personal Protection Officer Training Manual, Examination.

(a) The Commission's official Personal Protection Officer Training Manual shall be used by all Commission approved personal protection officer schools and instructors as their curriculum and shall be obtained from the Commission.

(b) All students of a Personal Protection Officer Training Course shall be tested with an examination prepared by and obtained from the Commission.

(c) The passing grade of the Personal Protection Officer Training Course shall be a minimum of 75% correct answers on academic studies and must meet the minimum standards as set forth by the approved instructor on practical simulations.

§446.4. Certificate of Completion - Personal Protection Officer Training.

(a) The certificate of completion shall contain the:

(1) name and approval number of the school;

(2) name and signature of the school director;

(3) name, signature and approval number of the personal protection training instructor;

(4) date of completion;

(5) full name and social security number of the student; and

(6) complete address of the location where the training was conducted.

(b) Certificates of completion shall be issued by a Commission approved training school.

§446.5. Attendance, Progress and Completion Records Required.

A Commission approved school shall:

(1) issue an original Certificate of Completion to each qualifying student, within 7 days after the student qualifies;

(2) maintain adequate records to show attendance and progress of grades of students and maintain on file a copy of each certificate issued to students at the Commission approved training school; and

(3) make records available to Commission Investigators for inspection during reasonable business hours.

§446.6. Application for a Training Course Approval.

(a) An application for training school approval shall be on a form prescribed by the Commission to show proof that the applicant has:

(1) developed an adequate training course or is using the Commission's Training Manual as its curriculum:

(2) adequate space, qualified instructors, and proper instructional material; and

(3) appointed a qualified manager who will be responsible for training.

(b) The Letter of Approval shall be valid for one year and may be renewed by submitting an application for renewal 30 days prior to the expiration date.

§446.7. Attendance, Progress and Completion Records Required.

A Commission approved training school shall:

(1) issue an original Certificate of Completion to each qualifying student, within seven days after completion; and

(2) maintain adequate records to show attendance, progress, and grades of students.

§446.8. Certificate of Completion.

(a) The Certificate of Completion shall reflect the particular course or courses completed by a student during the training period.

(b) All Certificates of Completion shall contain:

(1) name and approval number of the school;

(2) date of completion;

(3) name, signature and approval number of training instructor;

(4) name and signature of the qualified manager; and

(5) full name and social security number of student;

(6) the date of final completion of the entire course;

(7) the specific date of firearm qualification along with the name and approval number of the firearms instructor on those certificates designating completion of Level Three; and

(8) notation as to the type (semi-automatic or revolver) and caliber of the firearm used in range qualification.

§446.9. Records Required on Commission Approved Training School, and Registrants of Any Commission Approved Training Schools.

(a) Each Commission approved training school shall have a qualified manager who shall comply with the requirements of the Act and Commission Rules.

(b) Effective upon renewal after January 1, 2000, any Commission approved training school that has not submitted applications to register its owners, officers, partners, shareholders and qualified a manager shall be required to do so before the renewal can be completed along with any applications, fees or fingerprints that may be required for licensing.

§446.10. Commission Refusal of Certificate of Completion.

The Commission may refuse to accept a Certificate of Completion from a training school upon receipt of evidence of violation of the Act or Commission Rules involving an owner, officer, partner, shareholder, or qualified manager or instructor.

§446.11. Withdrawal of Training School Approval.

The Commission may withdraw approval of a training school upon evidence the school has operated in violation of the Act or Commission Rules.

§446.12. Notification of Denial or Withdrawal of a Letter of Approval.

The Commission, upon review and consideration of an application for training school approval, shall set forth in writing the reasons for denial of approval.

§446.13. Application for a Training Instructor Letter of Approval.

An application for approval as an instructor shall contain evidence of qualification as required by the Commission. Instructors may be approved for classroom and/or firearm training. An individual may apply for approval for one or both of these categories. To qualify for a classroom or firearm instructor approval the applicant for approval must submit acceptable certificates of training for each category. The classroom instructor and firearm certificates shall each have consisted of a minimum of 40 hours of Commission approved instruction.

(1) Proof of qualification as a classroom instructor shall include, but not be limited to:

(A) An instructor's certificate issued by Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).

(B) An instructor's certificate issued by federal, state or political subdivision law enforcement academy.

(C) An instructor's certificate issued by the Texas Education Agency.

(D) An instructor's certificate relating to law enforcement, private security or industrial security issued by a junior college, college or university.

(2) Proof of qualification as a firearm training instructor shall include, but not be limited to:

(A) An instructor's certificate issued by the National Rifle Association (NRA).

(B) An instructor's certificate issued by TCLEOSE.

(C) A firearm instructor's certificate issued by a federal, state or political subdivision law enforcement agency approved by the Director.

(3) A Letter of Approval from the Commission shall be issued to each approved instructor and shall be valid for a period of one year. The instructor's approval may be renewed during the month preceding the month in which the approval expires for a period of one year after expiration, upon application to the Commission and payment of the renewal fee.

(4) The Commission may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

(A) the instructor or applicant has violated any provisions of the Act or Commission Rules;

(B) the qualifying instructor's certificate has been revoked or suspended by the issuing agency;

(C) a material false statement was made in the application; or

(D) the instructor does not meet the qualifications set forth in the provisions of the Act and Commission Rules as amended.

§446.14. Training Courses.

(a) In accordance with Sections 20 and 32 of this Act, the following training shall be required of registrants and commissioned security officers:

(1) Level One–All registrants, and commissioned security officers including noncommissioned security officers, private investigators, branch office managers, licensed managers, alarm systems monitors, dog trainers and security consultants and excluding alarm installers, alarm salespersons, owner, officers, partners, and shareholders. A certificate indicating completion of Level One training shall be submitted to the Commission along with the application to register the individual within 14 days after they commence employment. Level One Training shall include:

(A) Introduction to Act and Commission Rules

(B) Field Note Taking

(C) Report Writing (Phase I)

(D) Introduction to Leadership and Professional Demeanor

(E) Individual Company Policy (Provided by Company)

(F) Review and Examination

(2) Level Three Training–shall be completed by applicants for a security officer commission and a personal protection officer authorization. A certificate indicating completion of Level Three Training shall be submitted to the Commission along with the application to register the individual within 14 days after employment is commended. Level Three Training shall include:

(A) Powers and Authority of Security Officer–4 hours

(B) Handgun proficiency as defined in Section 20.(j)–14 hours

(C) Shotgun training and proficiency–1 hour

(D) Act and Commission rules–4 hours

(E) Report writing–2 hours

(F) Field note taking–1 hour

(G) Emergency situations–3 hours

(H) Review and Examination–1 hour

(b) Level One may be taught by the manager, the manager's designee or a Commission approved school and Commission approved instructor.

(c) Levels Three and Four shall be taught by a Commission approved school and Commission approved instructor.

(d) Training manuals for Levels One, Three and Four will be prepared by Commission staff and other qualified individuals selected by the Director.

(e) The passing grade for all examinations shall be a minimum of 75% correct answers.

§446.15. Firearm Courses.

In addition to the firearm qualification requirements as set forth in the Act, a firearm instructor may qualify a student by using:

(1) the Texas Department of Public Safety Practical Combat Pistol Course;

(2) the Federal Law Enforcement Training Center Practical Pistol Course; or

(3) the Texas Department of Public Safety Approved Concealed Handgun Weapons Range Qualifications course.

§446.16. Shotgun Training.

Competency with a shotgun shall be determined by the firearms training instructor after instructing the student in the operation of a shotgun.

§446.17. Shotgun Training Requirements.

The course of fire for shotgun training shall include at a minimum, fifteen rounds fired as follows:

(1) five shots fired from the shoulder position at seven yards in one minute;

(2) five shots fired from the hip position at seven yards in one minute; and

(3) five shots fired from the shoulder position at 15 yards in one minute.

§446.18. Training School and Instructor Approval.

For the purpose of this Act, approval as a security officer training school and/or instructor shall be considered a license with respect to suspension, revocation or denial.

§446.19. Security Officer Training Manual and Examination.

(a) The Commission's official training manual shall be used by all Commission approved Level Three training schools.

(b) All students of a Level Three training school shall be tested with an examination prepared by and obtained from the Commission.

(c) The passing grade of all examinations shall be a minimum of 75% correct answers.

§446.20. Alarm Installer and Alarm Systems Salesperson Training and Testing/Application for Alarm Training Program Approval.

(a) An application for alarm installer or alarm systems salesperson training program approval shall be on a form prescribed by the Commission.

(b) A Letter of Approval shall be granted by the Director to all qualified alarm training programs and shall be valid for one year and may be renewed by submitting an application for renewal no later than 30 days prior to the expiration date along with any required fees.

(c) A qualified manager for an alarm training program in addition to meeting the requirements of Sections 14.(a), 18., and 32., and a qualified alarm training instructor must have successfully completed a Commission approved program in alarm installation. Approval by the Commission of alarm training program directors and qualified alarm training instructors shall be valid for one year.

§446.21. Attendance, Progress and Completion Records Required.

(a) A Commission approved alarm training program shall:

(1) issue an original Certificate of Completion to each qualifying student within 7 days after the student qualifies;

(2) maintain adequate records to show attendance, progress, and grades of students; and

(3) make all records required to be maintained available for inspection by Commission staff during business hours.

(b) Qualified Alarm Training Program Instructors shall maintain records on file for inspection by Commission staff during business hours as proof of attendance and progress of grades of students.

§446.22. Alarm Systems Installer or Alarm Systems Salesperson.

(a) The Certificate of Completion shall contain:

(1) name and approval number of the school;

(2) approval number(s) of qualified class room instructor(s);

(3) date of completion;

(4) name and signature of the manager of the school; and

(5) full name and social security number of the student.

(b) The Certificate of Completion shall indicate that the student has passed the required test and shall contain the words "has successfully completed the alarm installers or alarm systems salespersons alarm training program approved by the Texas Commission on Private Security."

§446.23. Records Required on Manager.

(a) Each Commission approved alarm training program shall:

(1) have a qualified manager, and they shall comply with the requirements of Section 14.(a), Section 18., and Section 32.(a) of the Act.

(2) register any owners, officers, partners, shareholders, and qualify a manager, and they shall meet the requirements under Section 14.(a) and Section 32.(a) of the Act.

(b) Each owner, officer, partner or shareholder and qualified manager of a Commission approved alarm training program shall within 14 days after commencement of employment submit an application to the Commission, the appropriate fees, and two sets of Commission approved fingerprint cards.

(c) Effective January 1, 2000, a Commission approved alarm training program shall register its owners, officers, partners, shareholders and qualified manager prior to renewal of the training program.

§446.24. Statutory or Rules Violations.

(a) The Commission may refuse to accept a Certificate of Completion from an alarm training program upon receipt of proof of

violation of the Act or Commission Rules involving an owner, officer, partner, shareholder, manager, or alarm training program instructor.

(b) The Commission may withdraw, suspend or revoke an approval of an alarm training program or approval of an alarm training instructor upon receipt of evidence that the program or instructor has violated the Act or Commission Rules.

§446.25. Continuing Education.

(a) Any person employed as an alarm systems installer or alarm systems salesperson must obtain 8 hours of continuing education credits during the 24-month period preceding the expiration date of the registration for education in alarm installation in order to renew the registration.

(b) The Director shall approve classes for continuing education that are determined to meet the qualifications of the Act and Commission rules.

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

Filed with the Office of the Secretary of State, on July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-5545

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Chapter 447. Advertisements

22 TAC §447.1, §447.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §447.1 and §447.2 concerning Advertisements. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeals.

Jay Kimbrough, Director, has determined that for the first five years the repeals are in effect there will no fiscal implications for individuals who are required to comply with the repeals. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these repeals. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the repeals as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas, 78711.

The repealed sections are proposed under 4413 (29bb) V.A.C.S., Section 11.(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by the repeals: Texas Civil Statutes, Article 4413 (29bb).

§447.1. Address Shown in Advertisements.

§447.2. False Advertising.

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 July 9, 1999.

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Jay Kimbrough
Director
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For further information, please call: (512) 463-5545

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Chapter 448. Reciprocity

22 TAC §§448.1-448.4, 448.10, 448.20, 448.25, 448.30, 448.35

The Texas Board of Private Investigators and Private Security Agencies proposes new §§448.1-448.4, 448.10, 448.20, 448.25, 448.30 and 448.35 concerning Reciprocity. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have review the legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect the fiscal implications for individuals who are required to comply with the rules will comply with the fees established by the 76th Legislature under House Bill 2617. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as

the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The new sections are proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§448.1. Reciprocity.

(a) The Commission shall identify those criteria for licensing from a state with whom a reciprocal agreement has been made that meet the requirements of the Act and Commission Rules.

(b) The Commission shall establish an agreement of reciprocity for use in implementing reciprocal agreements with other states. The terms of the reciprocal agreement shall be binding upon the parties thereto and shall be enforceable through the dissolution of the agreement in the event of violation of its terms.

(c) The Commission shall design an application form to be used by applicants for a reciprocal license. The application shall contain:

(1) the applicant's name, business address and telephone number;

(2) the type of license(s) or other authorization(s) currently held by the applicant and the identifying number(s) of such license(s) or other authorization(s);

(3) the dates of licensure or other authorization(s) and expiration date of the applicant's current license(s) or other authorization(s);

(4) in the case of individual applicants, any company affiliation(s);

(5) a statement that the applicant has read, and agrees to comply with all provisions of the rules, regulations and statutes governing investigations and security contractor providers in the State of Texas;

(6) a statement that the applicant agrees to cooperate with any investigation initiated by the Texas Commission on Private Security;

(7) the payment of all applicable fees;

(8) any and all items or documents required under the provisions of the Act or Commission Rules needed to complete the application as shall be specified in the reciprocal agreement with the applicant's state of license origin.

(9) an irrevocable consent that service of process, in connection with any complaint or disciplinary action filed against the applicant arising out of the applicant's investigation or security contractor activities in the reciprocating state may be made by the delivery of such process on the administrator of the originating state regulatory agency; and

(10) a statement that the applicant's investigations company or security contractor license or other authorization has not been suspended and/or revoked within a period of ten years immediately preceding that application of previously-satisfied qualifications or reciprocal licensure.

§448.2. Fees.

The fees submitted to the Commission shall be the same whether for an original application, renewal, reciprocal or provisional license, registration or security officer commission.

§448.3. Fees Not Refundable.

Fees collected by the Commission are not refundable or transferable.

§448.4. Method of Payment of Fees.

Payment of fees shall be made by licensed company check, cashier's check, or money order or by an attorney on behalf of his client paid on the attorney's trust fund account.

§448.10. Operation Without Manager.

When a qualified manager or supervisor of a license has terminated his position, and the Commission has been timely notified of the termination in writing within 14 days of the termination, the business shall be operated by an owner, officer, partner or shareholder. No license shall be operated without a manager for a period exceeding 60 days after the date of the previous manager's termination.

§448.20. Fingerprint Submission.

All applicants for any license, registration, security officer commission, permit or approval issued by the Commission shall submit two sets of classifiable fingerprints on fingerprint cards obtained from the Commission along with any required fees to the Commission for the purpose of a criminal history check.

(1) One set of classifiable fingerprints shall be submitted by the Commission to the Texas Department of Public Safety.

(2) One set of classifiable fingerprints shall be submitted to the Federal Bureau of Investigations.

§448.25. Original Fees Not Prorated

Original fees shall not be prorated. The full license fee shall accompany all applications for original license.

§448.30. Change of Expiration Date of License.

A licensee desiring to change the expiration date of his license may make such a request to the Commission during the renewal period as defined in §46A of the Act.

(1) The expiration date desired shall be the last day of any of the 12 months in a calendar year.

(2) The renewal fee shall be prorated on a monthly basis.

§448.35. Reapplication After Revocation.

An applicant who has had a license or registration revoked by the Commission is not eligible to re-apply for any license or registration issued under this Act unless the fifth anniversary of any such revocation has occurred.

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 July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies

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For further information, please call: (512) 463–5545

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Chapter 449. Branch Offices

22 TAC §449.1, §449.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §449.1, §449.2 concerning Branch Offices. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§449.1. Closing of a Branch Office.

§449.2. Branch Office License Required.

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

Filed with the Office of the Secretary of State, on July 9, 1999.

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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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Chapter 449. Authority to Waive Rules

22 TAC §449.1

The Texas Board of Private Investigators and Private Security Agencies proposes new §449.1 concerning Authority to Waive Rules. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have review the legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering this rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect the fiscal implications for individuals who are required to comply with this rule will be minimal, and are specifically directed towards the conduct of licensees for the protection of the public and consumers.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The new section is proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§449.1. Specific Authority to Waive Rules.

(a) The commissioners have determined that good cause exists to delegate to the Director the authority to waive the rules of the Commission:

(1) to update existing courses or to add new courses and curriculum;

(2) to add new examinations or to update existing licensing or certification examinations;

(3) to conduct other special projects as approved by the commissioner; or

(4) for other reasons as may be authorized by law.

(b) The Director will report these temporary waivers to the commissioners.

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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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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Chapter 451. Registration of Employees or Private Investigators

22 TAC §§451.1–451.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§451.1-451.9 concerning Registration of Employees or Private Investigators. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) Vernon Annotated Civil Statutes, by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Mr. Kimbrough also has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) Vernon Annotated Civil Statutes, §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§451.1. Employee Requirements.
§451.2. Registration Required Under Each Employer.
§451.3. Private Security Consultant.
§451.4. Fingerprints.
§451.6. Exhibit Pocket Card.
§451.7. Licensee Responsible for the Registration of Employees.
§451.8. Registration Deadline.
§451.9. Registration in Other Categories.

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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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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Chapter 452. Criminal History Background Checks

22 TAC §452.1

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

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §452.1, concerning Criminal History Background Checks. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) Vernon Annotated Civil Statutes, by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Mr. Kimbrough also has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private

Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§452.1. Criminal History Background Checks.

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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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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For further information, please call: (512) 463–5545

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Chapter 453. Expiration Dates of Licenses, Proration of Fees

22 TAC §453.1, §453.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §453.1, §453.2 concerning Expiration Dates of Licenses; Proration of Fees. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by these rules: Texas Civil Statutes, Article 4413(29bb).

§453.1. Original Fees Not Prorated.

§453.2. Change of Expiration Date of License.

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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Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
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Chapter 455. Fees

22 TAC §§455.1–455.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §§455.1-455.3 concerning Fees. Pursuant to the Appropriations Act, Article IX, §167, of the 75th Legislature (1997), the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature (1999). The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997, are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Jay Kimbrough, Director, has determined that for the first five years the rules are in effect there will no fiscal implications for individuals who are required to comply with the rules. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with these rules. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of the rules as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed sections are proposed under 4413(29bb) V.A.C.S., §11(a)(3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rules: Texas Civil Statutes, Article 4413(29bb).

§455.1. Fees.

§455.2. Fees Not Refundable.

§455.3. Method of Payment of Fees.

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 July 9, 1999.

TRD-9904129
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 456. Consumer Information

22 TAC §456.1

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

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §456.1, concerning Consumer Information. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§456.1. Consumer Information.

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

Filed with the Office of the Secretary of State, on July 9, 1999.

TRD-9904130
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 459. Suspension

22 TAC §459.1

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

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §459.1, concerning Suspension. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§459.1. Activity During Suspension.

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 July 9, 1999.

TRD-9904131
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Chapter 460. Application Processing and Refunds

22 TAC §460.1

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

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §460.1, concerning Application Processing and Refunds. Pursuant to the Appropriations Act, Article IX, Section 167, of the 75th Legislature, the Texas Board of Private Investigators and Private Security Agencies has undertaken a comprehensive review of its Board Rules that were in effect prior to September 1, 1997. Additionally, Agency Staff and Board members have reviewed the Legislative changes to Article 4413 (29bb) V.A.C.S., by the 76th Legislature. The Agency Staff and Board Members also reviewed suggestions and recommendations from individuals and various Trade associations. As a result of this review all of the Board Rules in effect prior to September 1, 1997 are being repealed, and a new substantive revision of Board Rules have been compiled.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Jay Kimbrough, Director, has determined that for the first five years the rule is in effect there will no fiscal implications for individuals who are required to comply with the rule. Mr. Kimbrough has also determined that there will be no fiscal implications for small businesses who are required to comply with this rule. Mr. Kimbrough has also determined that public benefit will be derived through the promulgation of this rule as the result of strengthened enforcement of the regulated industry thereby raising the level of public safety.

Comments on the proposal may be submitted to Jay Kimbrough, Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repealed section is proposed under 4413(29bb) V.A.C.S., Section 11. (a) (3) which provides the Texas Board of Private Investigators and Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb).

§460.1. Acceptance for Filing; Defective Applications

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 July 9, 1999.

TRD-9904132
Jay Kimbrough
Director
Texas Board of Private Investigators and Private Security Agencies
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–5545

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Part XXIX. Texas Board of Professional Land Surveying

Chapter 663. Standards of Responsibility and Rules of Conduct

Subchapter A. Ethical Standards

22 TAC §663.8

The Texas Board of Professional Land Surveying proposes an amendment to §663.8, concerning Adherence to Statutes and Codes.

A new paragraph (5) is being added in response to recent legislation, which required the Board to prescribe standards for compliance with Subchapter A, Chapter 2254 of the Government Code.

Sandy Smith, executive director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government.

Ms. Smith also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be prescribed standards for compliance with Subchapter A, Chapter 2254 of the Government Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendment is proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

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

§663.8. Adherence to Statutes and Codes.

Strict adherence to practice requirements of related sections of the statutes, the state code, and all local codes and ordinances should be maintained in all services rendered. The registrant:

(1) shall abide by, and conform to, the registration and licensing laws of the state;

(2) shall abide by, and conform to, the provisions of the state code and all local codes and ordinances;

(3) shall not violate nor aid and abet another in violating a rule of conduct nor engage in any conduct that may adversely affect his fitness to practice;

(4) shall not sign nor impress his seal or stamp upon documents not prepared by him or under his control or knowingly permit his seal or stamp to be used by any other person.

(5) shall not submit or request, orally or in writing, a competitive bid to perform professional surveying services for a governmental entity or political subdivision of the State of Texas unless specifically authorized by state law.

(A) For purposes of this section, the board considers competitive bidding to perform professional surveying services to include the submission of any monetary cost information in the initial step of selecting qualified professional land surveyors. Cost information or other information from which cost can be derived must not be submitted until the second step of negotiating a contract.

(B) This section does not prohibit competitive bidding in the private sector.

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 July 12, 1999.

TRD-9904160
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 452–9427

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter B. Interagency Agreements

25 TAC §§401.41–401.45, 401.48–401.52, 401.54, 401.57–401.61

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal of Chapter 401, Subchapter B, §§401.41–401.45, 401.48–401.52, 401.54, 401.57–401.61 concerning Interagency Agreements. New Chapter 411, Subchapter B, concerning interagency agreements, is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The repeals are part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review required by the current Appropriations Act, Article IX, §167. The subchapter adopts legislatively mandated memoranda of understanding (MOU) and other agreements between the department and other state agencies.

William R. Campbell, chief financial officer, has determined that for each year of the first five-year period that the repeals, as proposed, are in effect, there will be no significant fiscal impact on state or local government.

Karen Hale, commissioner, has determined that for each year of the first five years the repeals as proposed are in effect, the public benefit is the existence of a concise and relevant body of policy documents that is in compliance with the legislative mandate to sunset the department's rules. There is no anticipated economic impact on persons or small businesses affected by the repeal of the subchapter. No local employment impact is anticipated as a result of repealing the subchapter.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeals are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

This repeal of this subchapter would affect the following statutes which require the adoption of various MOUs: Texas Education Code, §29.011; Texas Family Code, §264.003; Texas Government Code, §501.093; Texas Health and Safety, §§161.133 and 533.044, and 614.013; and Texas Human Resources Code, §§22.011, 22.013, 22.014, and 81.017.

§401.41. Purpose.

§401.42. Application.

§401.43. Definitions.

§401.44. Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities.

§401.45. Memorandum of Understanding: Coordination of Services to Disabled Persons.

§401.48. Memorandum of Understanding: Continuity of Care for Inmates with a History of Substance Abuse.

§401.49. Memorandum of Understanding (MOU) on Coordinated Services to Children and Youths.

§401.50. Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons.

§401.51. Memorandum of Understanding: Coordination of Information, Services, and Resources for Youth.

§401.52. Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information.

§401.54. Memorandum of Understanding (MOU) on Transition Planning for Students Receiving Special Education Services.

§401.57. Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities

§401.58. Uniform Assessment Tool for Assessing Decision-making Capacity.

§401.59. Continuity of Care System for Offenders with Mental Impairments.

§401.60. Interagency Coordination of Special Education Services to Students with Disabilities in Residential Care Facilities.

§401.61. Distribution.

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 July 12, 1999.

TRD-9904183
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 206–4516

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Chapter 410. Volunteer Services and Public Information

Subchapter A. Public Responsibility Committees

25 TAC §§410.01–410.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal of §§410.01-410.14 of Chapter 410, concerning Public Responsibility Committees. Chapter 596 of the Texas Health and Safety Code, the statutory authority, for these sections has been repealed.

William R. Campbell, chief financial officer, has determined that for each of the first five years the proposed repeals are in effect, there will be no significant fiscal impact on state or local governments as a result of enforcing the repeal of these rules.

Karen Hale, commissioner, has determined that for each year of the first five years that the repeals as proposed are in effect, the public benefit will be the existence of a concise and relevant body of policy documents as a result of repealing unnecessary rules. There will be no effect on small or large businesses or on individuals. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No local economic impact is anticipated as a result of repealing the rules.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeals are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

The sections affect the Health and Safety Code, §532.015, Human Resources Code, §32.021, and Government Code, §531.021.

§410.01. Purpose.

§410.02. Application.

§410.03. Definitions

§410.04. Functions of the PRC.

§410.05. Membership.

§410.06. Meetings.

§410.07. Information Responsibilities.

§410.08. Investigatory Responsibilities.

§410.09. Routine Reporting Responsibilities.

§410.10. Confidentiality.

§410.11. Redress to Complaints.

§410.12. Exhibits.

§410.13. References.

§410.14. Distribution.

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 July 9, 1999.

TRD-9904143
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 206–4516

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Chapter 411. State Authority Responsibilities

Subchapter B. Interagency Agreements

25 TAC §§411.51–411.63, §411.75

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§411.51-411.63, and §411.75 of new Chapter 411, Subchapter B, concerning Interagency Agreements.

The new subchapter adopts legislatively mandated memoranda of understanding (MOU) and other agreements between the department and other state agencies that currently are adopted in Chapter 401, Subchapter B. The texts of §411.61, concerning capacity assessment for self care and financial management; and §411.62, concerning continuity of care system for offenders with mental impairments, contain the full texts of those MOUs, and reflect recent revisions by the signatory agencies.

The MOU between the department and the Texas Department of Human Services (TDHS) in §411.61 is revised to require the use of an assessment instrument by selected providers of services to an elderly person, a person with mental retardation, a person with a developmental disability, or a person who is suspected of being a person with mental retardation or a developmental disability. The Capacity Assessment for Self Care and Financial Management is required when the

provider believes a guardian of the person or the estate may be appropriate and a referral to the appropriate court for guardianship is anticipated. The current version of the MOU requires the assessment instrument to be piloted by the department in selected settings that serve persons with mental retardation and by TDHS in selected nursing facilities. The pilot has concluded and the assessment instrument has been revised as a result of information submitted by the pilot sites and the judges who participated in the pilot. The revised MOU drops references to the pilot and requires use of the assessment instrument at all facilities specified by the two agencies. Although none of the department's state hospitals or providers of Medicaid waiver services for which the department has operating authority were included in the pilot, the department has determined that the assessment instrument is appropriate for use in those settings. The MOU also mandates the use of the assessment instrument when a court considering a guardianship for a person in one of the targeted populations requests an assessment from the provider.

The MOU between the department, TDCJ, and local mental health and mental retardation authorities in §411.62 is revised to incorporate changes made by the 75th Legislature (1997) to Texas Health and Safety Code (THSC), §614.013, which mandates the MOU. The statute, as amended, includes local community supervision and corrections departments (CSCD) as participants in the MOU. The revised MOU specifies the expectations for the local CSCDs and implements a statutory change that facilitates the exchange of confidential information about offenders between the signatory agencies. Revisions to the MOU concerning the department require collaboration with local MHMR authorities in the development of CARE system data elements to facilitate the generation of reports about offenders involved with the MHMR service delivery system; revision of department rules to include continuity of care expectations for offenders with mental illness or mental retardation; continued inclusion in the performance contract of requirements for local authorities to identify staff responsible for the coordination of referrals and access to services for eligible offenders; and receipt of referrals by local authorities of persons who meet the priority population definitions, with the understanding that those persons will be placed on a waiting list for needed services if no funding exists. Revisions concerning TDCJ require the agency to provide information about only those offenders with mental illness and mental retardation who meet the department's priority population definitions, develop a procedure to ensure that offenders have medications and/or prescriptions upon their release from TDCJ facilities, and ensure that aftercare treatment providers are provided with all pertinent medical and/or psychiatric records prior to the release of eligible offenders. Revisions concerning local authorities require collaboration with the department in the development of CARE system data elements to facilitate the generation of reports about offenders involved with the MHMR service delivery system, development and implementation of procedures for sharing information with local jail systems and CSCDs, and identification to the department's contract managers and the Texas Council on Offenders with Mental Impairments (TCOMI) of local authority staff responsible for the coordination of referrals and access to services for eligible offenders with updates when staff change.

The texts of §§411.54-411.60 and 411.63 adopt by reference rules of other state agencies that contain the full texts of the referenced MOUs. Those MOUs are in various stages of review by the signatory agencies and will be revised as deemed necessary by those agencies with publication of the revised MOUs in the *Texas Register* for public review and comment.

The new subchapter is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review required by the current Appropriations Act, Article IX, §167. This provision is continued in the Appropriations Act recently passed by the 76th Legislature and will be codified as Texas Government Code, §2001.039 (Senate Bill 178, §1.11) with an effective date of September 1, 1999.

Existing Chapter 401, Subchapter B is proposed for repeal contemporaneously in this issue of the *Texas Register*.

William R. Campbell, chief financial officer, has determined that for each year of the first five-year period that the subchapter, as proposed, is in effect, there should be no significant fiscal impact on state or local government as a result of enforcing the provisions. Except for the revised MOUs in §411.61 and §411.62, the new sections contain no new provisions. The volume of referrals for guardianship of individuals receiving services from the entitites described in §411.61 is not expected to increase from the current low numbers. The new provisions of the MOU in §411.62 will not require the department or local authorities to hire new staff or reassign existing staff.

Gerry McKimmey, assistant commissioner, has determined that for each year of the first five years the new subchapter as proposed is in effect, the public benefit is the existence of a concise and relevant body of policy documents that is in compliance with the legislative mandate to sunset the department's rules and with statutory requirements to enter into MOUs with various state agencies. There is no anticipated economic impact on persons or small businesses affected by the new subchapter because it imposes no new requirements on persons or small businesses. No local employment impact is anticipated as a result of adopting the subchapter as proposed.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new subchapter is proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the following statutes which require the department to adopt by rule the memoranda referenced in the subchapter: Texas Education Code, §29.011; Texas Family Code, §264.003; Texas Government Code, §501.093; Texas Health and Safety, §§161.133 and 533.044, and 614.013; and Texas Human Resources Code, §§22.011, 22.013, 22.014, and 81.017.

This subchapter would affect the Texas Education Code, §29.011; Texas Family Code, §264.003; Texas Government Code, §501.093; Texas Health and Safety, §§161.133 and 533.044, and 614.013; and Texas Human Resources Code, §§22.011, 22.013, 22.014, and 81.017.

§411.51. Purpose.

The purpose of this subchapter is to provide public notice of legislatively mandated memoranda of understanding and other agreements between the Texas Department of Mental Health and Mental Retardation (TDMHMR) and other state agencies.

§411.52. Application.

This subchapter applies to:

(1) facilities of the Texas Department of Mental Health and Mental Retardation, including Central Office; and

(2) in the case of §411.62 of this title (relating to Memorandum of Understanding Concerning Continuity of Care System for Offenders with Mental Impairments), to local mental health and mental retardation authorities.

§411.53. Definitions.

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

(1) Local mental health and/or mental retardation authority – As defined in the Texas Health and Safety Code, §531.002, an entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental health to persons with mental illness and mental retardation services to persons with mental retardation in one or more local service areas.

(2) MOU – Memorandum of Understanding.

(3) TAC – Texas Administrative Code.

(4) TDMHMR – Texas Department of Mental Health and Mental Retardation.

§411.54. Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities.

(a) TDMHMR adopts by reference a rule of the Texas Department of Human Services (TDHS) contained in 40 TAC §72.101 (relating to Services in Hospitals and Long-term Care Institutions).

(b) The TDHS rule contains the text of MOU between TDMHMR, TDHS, and the Texas Department of Health concerning responsibilities, procedures, and standards involved in the provision, regulation, and/or funding of services in hospitals and long-term care facilities. The MOU is required by the Texas Human Resources Code, §22.014.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§411.55. Memorandum of Understanding: Coordination of Services to Disabled Persons.

(a) TDMHMR adopts by reference rules of the Texas Department of Human Services (TDHS) contained in 40 TAC §§72.201-72.212 (relating to Memorandum of Understanding Concerning Coordination of Services to Persons with Disabilities).

(b) The TDHS rule contains the text of an MOU between TDMHMR, TDHS, Texas Rehabilitation Commission, Texas Department of Health, Texas Commission for the Blind, Texas Commission for the Deaf, and Texas Education Agency clarifies financial and service responsibilities of each agency in relation to disabled persons and addresses how each agency will share data relating to services to disabled persons. The MOU is required by the Texas Human Resources Code, §22.011.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§411.56. Memorandum of Understanding (MOU) on Coordinated Services to Children and Youths.

(a) Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference a rule of the Texas Department of Protective and Regulatory Services (TDPRS) contained in 40 TAC §736.701 (relating to Memorandum of Understanding for Coordinated Services to Children and Youths).

(b) The TDPRS rule contains the text of an MOU between TDMHMR, TDPRS, Texas Commission for the Blind, Texas Department of Health, Texas Department of Human Services, Texas Education Agency, Texas Interagency Council on Early Childhood Intervention, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, and Texas Youth Commission. The MOU implements a system of local level interagency staff groups to coordinate services for multiple problem children and youth, and is required by the Texas Family Code, §264.003.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§411.57. Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons.

(a) TDMHMR adopts by reference rules of the Texas Commission for the Deaf and Hard of Hearing (TCDHH) contained in 40 TAC Chapter 181, Subchapter H (relating to Memoranda of Understanding with State Agencies).

(b) The TCDHH rules contain the text of an MOU between TDMHMR and TCDHH concerning the coordination of delivery of mental health and mental retardation services to persons who are deaf or have a hearing impairment. The MOU is required by the Texas Human Resources Code, §81.017.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§411.58. Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information.

(a) TDMHMR adopts by reference a rule of the Texas Department of Human Services (TDHS) contained in 40 TAC §72.301 (relating to Authorization and Requirement to Exchange and Distribute Public Awareness Information).

(b) The TDHS rule contains the text of an MOU between TDMHMR, TDHS, Texas Rehabilitation Commission, and Texas Department of Health concerning the coordination of the exchange and distribution of public awareness information among agencies. The MOU is required by the Texas Human Resources Code, §22.013.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§411.59. Memorandum of Understanding (MOU) on Transition Planning for Students Receiving Special Education Services.

(a) Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference a rule of the Texas Education Agency (TEA) contained in 19 TAC §89.1110 (relating to Memorandum of Understanding on Transition Planning for Students Receiving Special Education Services).

(b) The TEA rule contains the text of an MOU between TDMHMR, TEA, Texas Workforce Commission, Texas Department of Human Services, Texas Department of Protective and Regulatory Services, Texas Rehabilitation Commission, and the Commission for the Blind. The MOU concerns the provision of services necessary

to prepare students enrolled in special education programs for a successful transition to life outside the public school system, and is required by the Texas Education Code, §29.011.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§411.60. Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities.

(a) TDMHMR adopts by reference a rule of the Texas Commission on Alcohol and Drug Abuse (TCADA) contained in 40 TAC §148.118 (relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct).

(b) The TCADA rule contains the text of MOU between TDMHMR, TCADA, and the Texas Department of Health concerning training requirements for identifying abuse, neglect, and unprofessional or unethical conduct in health care facilities. The MOU is required by the Texas Health and Safety Code, §161.133.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§411.61. Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management.

(a) Introduction And Legal Authority. The Texas Department of Mental Health and Mental Retardation (TDMHMR) and Texas Department of Human Services (TDHS) enter into a memorandum of understanding (MOU) in accordance with Texas Health and Safety Code (THSC), §533.044. The statute requires the use of a uniform assessment tool to assess whether an elderly person, a person with mental retardation, a person with a developmental disability, or a person who is suspected of being a person with mental retardation or a developmental disability and who is receiving services in a facility regulated or operated by TDMHMR or TDHS needs a guardian of the person or estate or both. TDMHMR and TDHS agree to require the following entities, as indicated, to comply with the provisions of this MOU:

(1) TDMHMR: state facilities; local mental retardation authorities and their contractors; and providers in the ICF/MR/RC or Medicaid waiver programs; and

(2) TDHS: nursing facilities.

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

(1) Capacity Assessment for Self Care and Financial Management – The uniform capacity assessment instrument developed by TDMHMR and TDHS in compliance with THSC, §533.044, for use by providers described in subsection (a)(1) and (2) of this section to assess an individual's:

(A) ability to make a decision and communicate that decision to others; and

(B) capacity to:

(i) substantially provide the individual's food, clothing, or shelter;

(ii) care for the individual's physical health; or

(iii) manage the individual's financial affairs.

(2) Developmental disability (related condition) – In accordance with the Code of Federal Regulations, Title 42, §435.1009, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation, and requires treatment or services similar to those required for individuals with mental retardation;

(B) is manifested before the individual reaches age 22; and

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(3) Elderly – In accordance with Texas Human Resources Code, §102.001, sixty years of age or older.

(4) ICF/MR/RC – The Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition program which provides Medicaid-funded residential services to individuals with mental retardation or a related condition.

(5) Individual – A person who is receiving services from a provider and who:

(A) is elderly; or

(B) has mental retardation or is suspected of having mental retardation, including a person who is dually diagnosed with mental retardation and mental illness; or

(C) has a developmental disability or is suspected of having a developmental disability.

(6) Local mental retardation authority – As defined in the Texas Health and Safety Code, §531.002, an entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to consumers in one or more local service areas.

(7) Medicaid waiver program - A home and community-based program serving people with mental retardation and/or related conditions which is operated by TDMHMR as authorized by the Health Care Financing Administration (HCFA) in accordance with §1915(c) of the Social Security Act, including the Home and Community-based Services (HCS), Home and Community-based Waiver Services – OBRA (HCS-O), and Mental Retardation Local Authority (MRLA) programs.

(8) Mental retardation – Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive

behavior and manifested during the developmental period (birth to 18 years of age.)

(9) Nursing facility – An organization that provides organized and structured nursing care and service and is licensed under THSC, Chapter 242.

(10) Planning team – For providers other than nursing facilities, a group composed of the individual receiving services, the individual's legally authorized representative (LAR), actively-involved family members and friends who are invited by the individual or LAR, and professional and other support staff, that meets to assess the individual's habilitation, treatment, and service/support needs and develop strategies for enabling the individual to achieve desired outcomes.

(11) Provider – Those entities described in subsection (a)(1) and (2) of this section.

(12) Professional – A person licensed or certified by the State of Texas in a health or human services occupation or who meets TDMHMR criteria to be a case manager, service coordinator, qualified mental retardation professional, or associate psychologist.

(13) State facilities – State hospitals, state schools, and state centers that are operated by TDMHMR.

(c) Capacity Assessment.

(1) A provider will perform a capacity assessment for an individual receiving services from that provider when:

(A) the provider believes a guardian of the person or the estate for that individual may be appropriate and a referral to the appropriate court for guardianship is anticipated; or

(B) requested to do so by a court .

(2) In conducting the capacity assessment, the provider will use the Capacity Assessment for Self Care and Financial Management. Copies of the Capacity Assessment for Self Care and Financial Management may be obtained by contacting the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, 512/206-4516, or from the TDHS Long Term Care Policy web site.

(d) Performance Of Capacity Assessment. The capacity assessment will be performed:

(1) for providers other than nursing facilities, by the professional designated by the planning team with assistance from other staff or consultants as requested by the professional or directed by the planning team; and

(2) at nursing facilities, by the social worker with assistance from member(s) of the interdisciplinary care plan team as requested by the social worker.

(e) Annual Review. No later than the last month of each state fiscal year, TDMHMR and TDHS shall review and modify the MOU as necessary.

§411.62. Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments.

(a) For the purpose of establishing a continuity of care system for offenders with mental illnesses or mental retardation, the Texas Department of Criminal Justice (TDCJ), the Texas Department of Mental Health and Mental Retardation (TDMHMR), local mental health and mental retardation authorities (MHMRAs), and local community supervision and corrections' departments (CSCD's) agree to the following:

(1) Authority and purpose. Senate Bill 252, Acts 1993, 73rd Leg., Ch.488, 1, and House Bill 1747, Acts 1997, 75th Leg., codified as Texas Health and Safety Code, §614.013, authorizes TDCJ, TDMHMR, local MHMRAs, and CSCD's (entities) to establish a memorandum of understanding that identifies methods for:

(A) identifying persons with mental illness or mental retardation involved in the criminal justice system;

(B) developing interagency rules, policies and procedures for the coordination of the care of and exchange of information on persons with mental illness or mental retardation by local and state criminal justice agencies, TDMHMR, local MHMRAs, and CSCDs; and

(C) identifying services needed by persons with mental illness or mental retardation to re-enter the community successfully.

(2) This memorandum of understanding is intended to implement a continuity of care system for offenders with mental illness or mental retardation in the criminal justice system, using funds appropriated for that purpose.

(b) All entities agree to the extent possible to:

(1) follow the statutory provisions in Texas Health and Safety Code, §614.017, relating to the exchange of information (including electronic) about offenders with mental illness or mental retardation for the purpose of providing or coordinating services among the entities;

(2) develop a system and a procedure that describes the agencies' role in the pre-release and post-release planning process for persons with mental illness or mental retardation;

(3) develop procedures that provide for the preparation of assessments or diagnostics prior to the imposition of community supervision, incarceration, or parole, and the transfer of such diagnostics between local and state entities prior to release from incarceration;

(4) submit to the Texas Council on Offenders with Mental Impairments (Council) a list of contact staff who are responsible for responding to referrals and/or issues regarding persons with mental illness or mental retardation;

(5) participate in cross training and/or educational events targeted for improving each agency's knowledge and understanding of the criminal justice and mental health/mental retardation systems' roles and responsibilities;

(6) inform each other of any proposed rule or standards changes which could affect the continuity of care system. Each agency shall be afforded 30 days after receipt of proposed change(s) to respond to the recommendations prior to the adoption;

(7) provide on-going status reports to the Council on the implementation of initiatives outlined in this MOU;

(8) actively seek federal funds to operate and/or expand the service capability;

(9) develop a technical assistance manual that describes the criminal justice and mental health/mental retardation service delivery systems, and the role and responsibilities of each agency.

(c) TDCJ, to the extent possible, shall:

(1) design an information base for exchange purposes, that provides the following information:

(A) the number of offenders with a priority population diagnosis of mental illness or mental retardation who are on community supervision, incarcerated, or on parole;

(B) the county of residence to which these individuals reside or will return to upon release from incarceration;

(C) the type and level of offense with which the offender has been charged and convicted;

(D) the diagnoses including psychiatric, medical, and mental retardation;

(E) any other information deemed necessary to be consistent with the intent of this agreement.

(2) develop a procedure to ensure that clients or offenders have medications and/or prescriptions upon their release from incarceration from TDCJ facilities;

(3) ensure that aftercare treatment providers are provided with all pertinent medical and/or psychiatric records prior to the client or offenders release from TDCJ facilities.

(d) TDMHMR, to the extent possible, shall:

(1) Collaborate with local authorities in the development of CARE system data elements which are within the capacity of the MHMR system to generate reports about offenders with a mental illness or mental retardation referred, served, and discharged from service;

(2) Express in departmental rules continuity of care expectations for persons with mental illness and/or mental retardation involved in the criminal justice system;

(3) maintain in the performance contracts requirements for local MH/MR authorities to identify those staff members (primary and alternates) responsible for the coordination of referrals and access to service for persons with mental illness or mental retardation involved with or referred from the state and/or local criminal justice systems; and

(4) receive referrals on any person with mental illness or mental retardation who meets the priority population definition and is in need of MH/MR treatment services, with the understanding that if no funding exists they would be on a waiting list until services are available.

(e) Local MHMRAs, to the extent possible, shall:

(1) Collaborate with TDMHMR in the development of CARE system data elements which are within the capacity of the MHMR system to generate reports about offenders with MI/MR referred, served, and discharged from services;

(2) Develop and implement procedures with the local jail and CSCD which address respective responsibilities for sharing information and which specifically address the following circumstances:

(A) offenders whose status is that of a convicted felon or deferred adjudication and offender consent to release information is not necessary per §614.017 of the Texas Health and Safety Code;

(B) offenders from whom consent to release information is required; and

(C) offenders from whom consent to release information is required but circumstances exist which meet the provisions of Chapter 611 of the Texas Health and Safety Code allowing release of information without consent;

(3) Identify by September 30, 1998, to the State Authority Contract Manager and the Texas Council on Offenders with Mental Impairments (TCOMI), those staff members (primary and alternates) responsible for the coordination of referrals and access to services for persons with mental illness or mental retardation involved with or referred from the state and/or local criminal justice systems. This information must be updated with the department and TCOMI when assigned staff change; and

(4) receive referrals on any person with mental illness or mental retardation who meets the priority population definition and is in need of mental health and mental retardation treatment services, with the understanding that if no funding exists they would be on a waiting list until services are available.

(f) CSCDs, to the extent possible, shall:

(1) provide information to local MHMRAs concerning persons who are under community supervision and are served by said entities;

(2) track the number of referrals to local MHMRAs;

(3) monitor the number of persons supervised by CSCDs who are on MHMR waiting lists who become re-involved in the criminal justice system;

(4) initiate referrals on any person with mental illness or mental retardation who meets the priority population definition and is in need of MHMR treatment services, with the understanding that if no funding exists they would be on a waiting list until services are available;

(5) identify barriers and gaps in services which should be identified in the community justice plan of each respective CSCD; and

(6) coordinate with local MHMR authorities to access available information, including the CARE System, on offenders with mental illness or mental retardation.

(g) Review And Monitoring.

(1) TDMHMR, TDCJ, the local MHMRAs, and local CSCDs shall jointly monitor implementation of the continuity of care system as outlined in this Memorandum of Understanding. The intent of all agencies is to provide timely communication, discussion and resolution of transitional problems should any occur.

(2) This MOU shall be adopted by the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, the boards of trustees of community MHMR centers and local CSCDs. Subsequent to adoption, all parties to this memorandum shall annually review this memorandum and provide status reports to the Council. Amendments to this memorandum of understanding may be made at any time by mutual agreement of the parties.

(3) The Council will serve as the dispute resolution mechanism for conflicts concerning this MOU at both the local and statewide level.

§411.63. Interagency Coordination of Special Education Services to Students with Disabilities in Residential Care Facilities.

(a) Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference a rule of the Texas Education Agency (TEA) in 19 TAC §89.1115 (relating to Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Care Facilities).

(b) The TEA rule contains the text of an MOU between TDMHMR, TEA, Texas Department of Human Services, Texas Department of Health, Texas Department of Protective and Regulatory Services, Texas Interagency Council on Early Childhood Intervention, Texas Commission on Alcohol and Drug Abuse, Texas Juvenile Probation Commission, and Texas Youth Commission. The MOU concerns the provision of a free and appropriate education for school-age residents of residential care facilities, and was developed at the direction of the Texas Senate Committee on Health and Human Services, 73rd Texas Legislature, 1993.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§411.75. Distribution.

The provisions of this subchapter shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management and program staff in the TDMHMR's Central Office;

(3) superintendents/directors of TDMHMR facilities;

(4) executive directors of all state-operated community services;

(5) executive directors of all local MHMRAs;

(6) chairs of boards of trustees of community mental health and mental retardation centers;

(7) interested advocates and advocacy organizations; and

(8) state agencies and other entities who are parties to the memoranda referenced in this subchapter.

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

Filed with the Office of the Secretary of State, on July 12, 1999.

TRD-9904184
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 206–4516

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 1. Central Administration

Subchapter A. Practice and Procedure

Division 1. Practice and Procedure

34 TAC §1.28

The Comptroller of Public Accounts proposes an amendment to §1.28, concerning comptroller's decision. The amendment conforms the rule to changes to the Administrative Procedure Act, Government Code, §2001.142(c), effective September 1, 1999. The amendment clarifies that (a) effective September 1, 1999, parties, when notified by mail of a Comptroller's Decision, are presumed to have been notified on the third day after notice of the decision is mailed, and (b) the Comptroller's Decision becomes final 20 days from the date of notification, unless a motion for rehearing is filed on or before the 20th day.

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

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

Comments on the proposal may be submitted to John Neel, Chief, Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711-3528.

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

The amendment implements the Tax Code, §111.009 and §111.105.

§1.28. Comptroller's Decision.

(a) The proposed decision of the assigned administrative law judge must be approved by the Comptroller of Public Accounts before it is given effect. Notification of the [~~The~~] comptroller's decision will be mailed [~~sent~~] to the taxpayer and any authorized representative. For comptroller's decisions issued prior to September 1, 1999, the taxpayer and any authorized representative are presumed to have been notified of the comptroller's decision on the date notice of decision is mailed. For comptroller's decisions issued on or after September 1, 1999, the taxpayer and any authorized representative are presumed to have been notified of the comptroller's decision on the third day after notice of the decision is mailed. The comptroller's decision [~~It~~] is final 20 days from the date of notification [~~mailed~~], unless a motion for rehearing is filed on or before midnight of the 20th day. If the motion for rehearing is granted, the decision is vacated pending a subsequent decision upon rehearing. If the motion for rehearing is overruled, whether by order or operation of law, the decision is final on the date it is overruled.

(b) The administrative law judge may issue a comptroller's decision without the issuance of a proposed decision if the parties are in agreement on all contested issues or if the parties agree to waive issuance of a proposed decision.

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 July 9, 1999.

TRD-9904101
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463-4062

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34 TAC §1.29

The Comptroller of Public Accounts proposes an amendment to §1.29, concerning Motion for Rehearing. The amendment conforms the rule to the Administrative Procedure Act, Government Code, §2001.146, by clarifying that the time deadlines for filing a motion for rehearing, for filing a reply to a motion for rehearing, and for ruling on a motion for rehearing are calculated from the date the parties are given notification of a Comptroller's Decision.

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

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

Comments on the proposal may be submitted to John Neel, Chief, Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711-3528.

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

The amendment implements the Tax Code, §111.009 and §111.105.

§1.29. Motion for Rehearing.

A motion for rehearing may be filed by any party with the assigned administrative law judge no later than [~~within~~] 20 days after [~~from~~] the date notification of the comptroller's decision is provided to the parties [~~mailed~~]. The motion must state each specific ground upon which the party believes the comptroller's decision is erroneous. In addition, a motion for rehearing on a refund claim must state the amount of the refund sought. Any reply to a motion for rehearing must be filed no later than [~~within~~] 30 days after the date notification of the decision is provided to the parties [~~mailed~~]. The motion must [~~will~~] be acted on no later than [~~within~~] 45 days after the date notification of the decision is provided to the parties [~~mailed~~], or the motion will be overruled by operation of law. These times may be varied as provided by the Administrative Procedure [~~and Texas Register~~] Act, Government Code, §2001.146(e) [~~§16(e) and (f)~~]. If a rehearing is granted, a notice will be issued to the parties setting out all pertinent information.

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

Filed with the Office of the Secretary of State, on July 9, 1999.

TRD-9904102
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–4062

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XI. Texas Juvenile Probation Commission

Chapter 343. Standards for Juvenile Pre-Adjudication Secure Detention Facilities

37 TAC §343.9

The Texas Juvenile Probation Commission proposes amendments to §343.9 concerning security and control in juvenile pre-adjudication secure detention facilities. The amendment is being proposed in an effort to clarify reporting requirements regarding special incidents in juvenile pre-adjudication secure detention facilities.

Maribeth Powers, Director of Field Services, has determined that for the first five year period the amendments and are in effect, there will be no fiscal implications for state or local government as a result of enforcement.

Ms. Powers has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be improved reporting of special incidents in secure juvenile facilities and increased accountability in the juvenile justice system. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Maribeth Powers at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas, 78711.

The amendments are proposed under Texas Human Resource Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other code or article is affected by the amendment.

§343.9. Security and Control.

(a) Written policy and procedure, and practice of the following standards shall apply to all detention facilities.

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

(3) Special Incidents. Written policy, procedure, and practice shall ensure that all [~~All~~] special incidents including, but not limited to , the taking of hostages, escapes, assaults, staff use of restraint devices, chemical agents, and physical force shall be reported in writing to the administrative officer [~~Administrative Officer~~]. A copy of the report shall be [~~is~~] placed in the permanent file of the juvenile concerned. Written procedure shall designate persons or officials at the local level, as deemed appropriate by the juvenile board, to whom notice of special incidents shall be provided.

(4)-(7) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904024
Steve Bonnell
Deputy Executive Director
Texas Juvenile Probation Commission
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 424-6681

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Chapter 344. Standards for Juvenile Post-Adjudication Secure Correctional Facilities

37 TAC §344.8

The Texas Juvenile Probation Commission proposes amendments to §344.8 concerning security and control in juvenile post-adjudication secure correctional facilities. The amendment is being proposed in an effort to clarify reporting requirements regarding special incidents in juvenile post-adjudication secure correctional facilities.

Maribeth Powers, Director of Field Services, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcement.

Ms. Powers has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be improved reporting of special incidents in secure juvenile facilities and increased accountability in the juvenile justice system. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Maribeth Powers at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas, 78711.

The amendments are proposed under Texas Human Resource Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other code or article is affected by the amendment.

§344.8. Security and Control.

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

(c) Special Incidents. Written policy, procedure, and practice shall ensure that all special incidents including, but not limited to, the taking of hostages, escapes, assaults, staff use of restraint devices and physical force shall be reported in writing to the administrative officer. A copy of the report shall be placed in the file of the resident(s) involved in the incident. Written procedure shall designate persons or officials at the local level, as deemed appropriate by the juvenile board, to whom notice of special incidents shall be provided.

(d)-(j) (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 July 5, 1999.

TRD-9904025
Steve Bonnell
Deputy Executive Director
Texas Juvenile Probation Commission
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 424-6681

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Chapter 349. Standards for Child Abuse and Neglect Investigations in Secure Juvenile Facilities

Subchapter A. Intake, Investigation, and Assessment

37 TAC §349.118

The Texas Juvenile Probation Commission proposes an amendment to §349.118 concerning administrative review of investigation findings in cases of child abuse and/or neglect in secure juvenile facilities. The amendment is being proposed in an effort to clarify the role of the Texas Advisory Council on Juvenile Services in the investigation of child abuse and neglect in secure juvenile facilities and to authorize final appeals of disputed findings to the State Office of Administrative Hearings (SOAH).

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications for local government as a result of enforcement or implementation. The state government fiscal impact will vary according to the length of the appeals processes, if any, carried out by the State Office of Administrative Hearings. The fee charged by the SOAH for hearing such appeals is set at $90 per hour.

Ms. Capers has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement or implementation will be a clarification of the appeals process with respect to investigative findings in cases of child abuse or neglect. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Public comments on the proposed amendment may be submitted to Erika Sipiora at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas, 78711-3547.

The amendment is mandated under Texas Family Code §261.401(b) and proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other code or article is affected by the amendment.

§349.118. Administrative Review of Investigation Findings.

(a)-(f) (No change.)

(g) The Executive Director of TJPC shall appoint a three member review committee to conduct the review. TJPC's Advisory Board shall assist the review committee in an advisory capacity only. The review committee [~~reviewer~~] must confirm or revise TJPC's original dispositions based on the same policies that TJPC applied during the original investigation. Within 30 days after completing the review, the review committee [~~reviewer~~] notifies the designated perpetrator or designated victim/perpetrator of the outcome of the review.

(h) The review committee's [reviewer's] notification must inform the designated perpetrator or designated victim/perpetrator that he can appeal to the State Office of Administrative Hearings [complain to TJPC's Advisory Board] if he is dissatisfied with the review committee's [reviewer's] decision. To this end, the notification must explain the procedure for making an appeal [include the address and telephone number of the advisory board].

(i) If the review committee [reviewer] or the State Office of Administrative Hearings [advisory board] revises TJPC's original findings or advises TJPC to take any other actions in the case, TJPC must:

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

(j) (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 July 5, 1999.

TRD-9904026
Steve Bonnell
Deputy Executive Director
Texas Juvenile Probation Commission
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 424-6681

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) proposes amendments to §3.1002 and §3.3701, the repeal of §3.3702, and new §3.3702 and §3.3703, concerning income limits, temporary assistance for needy families standard budgetary needs, food stamp basis of issuance tables, and temporary assistance for needy families, in its Income Assistance Services chapter. The purpose of the amendments and new sections is to increase the Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance (RCA) grant amounts to equal 17% of the federal poverty income limit. Also, the number of eligibility tests will be reduced from three to two. This proposed change is based on a new state law in House Bill 1. DHS was funded to increase TANF and RCA grant amounts so that they equal approximately 17% of the federal poverty income limit.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect, fiscal implications for state governments will be an estimated additional cost of $15,124,006 for Fiscal Year (FY) 2000; $15,845,227 for FY 2001; $14,353,370 for FY 2002; $13,002,578 for FY 2003; and $11,779,467 for FY 2004. There will be no fiscal implications for local governments as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is that recipients will have more money to better meet the needs of their dependent children. The proposed change will have no adverse effect on small or micro- businesses because this change will increase the grant for TANF and RCA recipients, giving them more money to spend. There is no adverse economic effect on large businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Mary Haifley at (512) 438-2599 in DHS's Texas Works Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-234, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under Section 2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Subchapter J. Budgeting

40 TAC §3.1002

The amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001- 31.0325.

§3.1002. Income Limits.

(a) Temporary Assistance for Needy Families (TANF) [Aid to Families with Dependent Children]. DHS has two [three] eligibility tests for TANF [AFDC]:

[(1) Maximum income standard. This is 185% of the AFDC budgetary need standard. All applicants and certified clients must pass this needs test. The total countable gross income of all members in the certified group may not exceed the maximum income standard for each household size.]

(1) [(2)] Budgetary needs. The amount of money DHS determines is necessary to provide 100% of the basic needs to the certified group. Applicants who have not received TANF [AFDC] in the last four months must pass the budgetary needs test.

(2) [(3)] Recognizable needs. This is 25% of budgetary needs [The maximum grant amount for the household size]. Applicants and certified clients must pass this needs test.

(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.

Filed with the Office of the Secretary of State, on July 12, 1999.

TRD-9904152
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

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Subchapter KK. Support Documents

40 TAC §3.3702

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

The repeal is proposed under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs.

The repeal implements the Human Resources Code, §§31.001-31.0325.

§3.3702. Food Stamp Basis of Issuance Tables.

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 July 12, 1999.

TRD-9904154
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

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40 TAC §§3.3701–3.3703

The amendment and new sections are proposed under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs.

The amendment and new sections implement the Human Resources Code, §§31.001-31.0325.

§3.3701. Temporary Assistance for Needy Families [~~Aid to Families with Dependent Children~~] Standard Budgetary Needs [~~Allowances~~].

For October 1999 [~~March 1994~~] and future months, the needs allowance for each size family group for Temporary Assistance for Needy Families (TANF) [~~Aid to Families with Dependent Children (AFDC)~~] is as follows:
Figure 1 for 40 TAC §3.3701
Figure 2 for 40 TAC §3.3701
Figure 3 for 40 TAC §3.3701

§3.3702. Temporary Assistance for Needy Families.

For October 1999 and future months, the benefit amount is an amount determined by the Texas Department of Human Services based on funds appropriated by state law.

§3.3703. Food Stamp Basis of Issuance Tables.

The Texas Department of Human Services amends the basis of issuance tables, standard deductions, and allotment levels on an annual basis each October, as required by Section 3(o) and 5(e) of the Food Stamp Act of 1977 as amended by Title VIII, Sections 804 and 809 of Public law 104- 193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

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 July 12, 1999.

TRD-9904153
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

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Subchapter T. Social Security Numbers

40 TAC §3.2001

The Texas Department of Human Services (DHS) proposes to amend §3.2001, concerning eligibility requirements, in its Income Assistance Services chapter. The purpose of the amendment is to allow a child who is six months of age or younger to receive Temporary Assistance for Needy Families (TANF) benefits without providing a Social Security number (SSN) or proof that he has applied for one until the next complete review or for six months following the month the child was born, whichever is later. Making TANF and food stamp policy more alike will simplify the eligibility determination process and improve staff productivity. The rule is based on an Office of Programs simplification project.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bost 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 section is that households may have more money to better meet the needs of their dependent children because a child age six months or younger who does not have a Social Security number will be eligible to be included in the grant. The proposed change will have no adverse effect on small or micro-businesses because children who were previously disqualified for failure to provide an SSN will now be included in the grant until the first complete review or for six months following the month the child was born, whichever is later. There is no adverse economic effect on large businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Mary Haifley at (512) 438-2599 in DHS's Texas Works Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-235, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001- 31.0325.

§3.2001. Eligibility Requirements.

(a) Temporary Assistance for Needy Families clients must provide a Social Security number or verification of application for a Social Security number. A Social Security number or proof of

application for a Social Security number for a child six months of age or younger may be postponed until the next complete review or for six months following the month the child was born, whichever is later. If the Social Security verification match between the Texas Department of Human Services (DHS) and the Social Security Administration (SSA) results in a discrepancy based on the client-provided Social Security number, the client must cooperate in clearing the discrepancy [~~Aid to Families with Dependent Children clients must meet requirements for Social Security numbers as stipulated in 45 Code of Federal Regulations §205.52~~].

(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.

Filed with the Office of the Secretary of State, on July 12, 1999.

TRD-9904155
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

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Part XX. Texas Workforce Commission

Chapter 841. Workforce Investment Act

Subchapter A. General Provisions

40 TAC §841.2

The Texas Workforce Commission (Commission) proposes amendments to §841.2, relating to the definitions applicable to implementation of the Workforce Investment Act (WIA).

The purposes of the amendments are to provide clarity regarding the rules for early implementation of WIA and to establish uniform understanding and interpretation of the following terms: "certificate," "certified provider," "completion" and "performance standards."

The definition of "certificate" is added to clarify that the certificate pertains to proof of successful completion of a course, sequence of courses or programs which is a minimum of 144 hours (9 credit hours) in length for the purpose of establishing initial eligibility under §841.38. The Commission selected the minimum number of hours based on recent feedback from the public requesting clarification on the definition of "certificate," particularly from community colleges, to allow for consideration of shorter duration courses or programs of training services that are non-credit, credit or continuing education offerings. After consultation with the training provider community, the Commission has proposed that a certificate program of training include a minimum of 9 credit hours, which is the equivalent of 144 clock/contact hours. This criterion is proposed in order to establish an appropriate amount of time to allow for a substantial body of knowledge to be conveyed. Within WIA, the term certificate is used in association with a program of training services. The Commission determined that a program of training services should constitute more than incidental or short-term training. Since the term is used in conjunction with postsecondary institutions, providing criterion that relates to credit or the equivalent clock/contact hours is appropriate.

The purpose of adding the terms "certified provider," "completion," and "performance standards" is to provide consistency.

Background Regarding Early Implementation. The 74th Texas Legislature and the Governor enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995. This state law reformed both the welfare and workforce systems and made Texas the nation's leader among reform-minded states. H.B. 1863 provided local elected officials the opportunity to form local workforce development boards (LWDBs) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers.

The federal Workforce Investment Act of 1998 recognizes the strides made in the development of Texas' workforce investment system and specifically provides for the state to maintain many features of H.B. 1863. Without these provisions, early implementation of WIA in Texas would be substantially more complicated. Key features of the system that Texas is preserving include the following.

The State Human Resource Investment Council, called the Texas Council on Workforce and Economic Competitiveness (TCWEC) constituted under prior consistent state law will function as the State Board.

The twenty-eight existing local workforce development areas (LWDAs), established under prior consistent state law, will function as the local workforce investment areas for purposes of WIA.

The State will continue to use the Allocation Rule established under prior consistent state law for the disbursement of WIA funds.

LWDBs established in conformity with prior consistent state law will function as the local workforce investment boards, including those functions required of a Youth Council.

In lieu of designating or certifying one-stop partners and operators as described in WIA, Texas requires LWDBs to partner with those outlined under prior consistent state law and to competitively procure the Center Operator(s).

The LWDBs will also continue to make arrangements for financial services by selecting fiscal agents in accordance with the process established in prior consistent state law set out in the Texas Government Code.

Texas bases its strategies for implementing WIA requirements for the Texas workforce development system on four key principles determined by the Governor: (1) limited and efficient state government; (2) local control; (3) personal responsibility; and (4) support for strong families. The training provider certification system is guided by these four key principles which serve as a framework to guide the development of this system in order to allow maximum flexibility, emphasize customer choice, and demand strict accountability.

Within each LWDA, the LWDB and the Commission must find all providers of training services to be eligible and qualified to provide a training program before WIA funds may be used to pay for services provided by that training program. All providers must submit written applications in order for eligibility to be determined.

As described in §841.38, the LWDBs will develop an application to be used in two situations. The first situation is that of

institutions which are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 and which provide a program that leads to an associate degree, baccalaureate degree, or certificate, when those institutions are seeking to be certified as an eligible provider for a program leading to an associate degree, baccalaureate degree, or certification. The second situation occurs when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider for a program under the National Apprenticeship Act.

A second application process, described in §841.39, is used in three situations. The first is when a postsecondary school is seeking certification as an eligible provider for a program which does not lead to an associate degree, baccalaureate degree, or certification. The second is when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider of a program is not regulated under the National Apprenticeship Act. The third is when any other public or private provider of training services, including community-based and faith-based organizations, seeks to be certified as an eligible provider of training services.

The Commission solicited and received comments and input into the development of the provider certification procedures through meetings with representatives of community colleges, proprietary schools, literacy training providers, apprenticeship programs and LWDBs; the creation and maintenance of a website on the Internet; and a public hearing held on March 11, 1999. The Commission adopted rules for early implementation of WIA, which became effective June 22, 1999.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rule is in effect, the following statements apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing and administering the rule;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the amendments; and

there are no anticipated costs to persons who are required to comply with the rule as proposed.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated or foreseeable adverse impact on small businesses as a result of enforcing or administering the rule.

Jean Mitchell, Director of Workforce Development, has determined that for the first five-year period the rule is in effect, the public benefit anticipated as a result of the rule as proposed will be to add clarification and consistency to rules for early implementation of WIA.

Mark Hughes, Director of Labor Market Information, has determined that, while the proposed rule could affect private sector or public sector employment under certain circumstances, there is no significant negative impact upon employment conditions in this state as a result of the proposed section.

Comments on the proposed section may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas 78778; Fax Number 512-463-3424; or E-mail to barbara.cigainero@twc.state.tx.us. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The amendments are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

§841.2. Definitions.

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

(1) Administrative costs - The necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of employment and training services, as further defined by the federal regulations and subject to the cost limitations set forth in WIA §134(a)(3)(B) and the cost principles set forth in WIA §184(a)(2)(B).

(2) Certificate - For the purpose of establishing initial eligibility under §841.38, a document or other proof provided by an educational institution or other training provider awarded after successful completion of a course, sequence of courses or program that is a minimum 144 hours (9 credit hours) in length.

(3) Certified provider - A training provider certified as eligible to receive training funds as authorized under WIA and state rules.

(4) [~~(2)~~] Commission - The Texas Workforce Commission as established in the Texas Labor Code, §301.001 and designated by the Governor as the state administrative agency for WIA in Texas.

(5) [~~(3)~~] Complainant - Any participant or other personally interested or personally affected party alleging a non-criminal violation of the requirements of WIA.

(6) Completion - Finishing a program or course of study and receiving a formal credential as currently recognized by the Commission, a designated partner agency or State regulatory board.

(7) [~~(4)~~] Customized Training - As defined in WIA §101(8), training that is designed to meet the requirements of an employer, conducted with a commitment by the employer to employ an individual on successful completion of the training and for which the employer pays not less than 50 percent of the cost of the training.

(8) [~~(5)~~] Hearing Officer - An impartial party who shall preside at a hearing on a grievance.

(9) [~~(6)~~] ITAs - Individual Training Accounts.

(10) [~~(7)~~] LWDA - Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.

(11) [~~(8)~~] LWDB - Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261.

(12) [~~(9)~~] On-the-Job Training - As defined in WIA §101(31), training by an employer that is provided to a paid participant while engaged in productive work in a job.

(13) [~~(10)~~] One-Stop Partner - An entity which makes services available to participants through a one-stop delivery system under the terms of a memorandum of agreement with a LWDB.

(14) [~~(11)~~] Participant - As defined in WIA §101(34), an individual who has been determined to be eligible to participate in, and who is receiving services under, a program authorized by WIA.

(15) Performance Standards - The minimum acceptable levels of performance based on established measures of performance as described in WIA §122.

(16) [~~(12)~~] Respondent - The person, organization or agency against which a complaint has been filed for the alleged violation of the requirements of WIA.

(17) [~~(13)~~] WIA - Workforce Investment Act, P.L. 105-220, 29 U.S.C.A. §1601 et seq.

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 July 12, 1999.

TRD-9904175
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: August 22, 1999
For further information, please call: (512) 463–8812

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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 91. Texas Register

The Office of the Secretary of State, Texas Register, adopts amendments to §91.23 and §91.65, concerning procedures for filing adopted rules. The amendments are adopted without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 Texreg 4092).

The amendments require agencies to submit the entire text of adopted rules. The Texas Register anticipates that the new procedure will reduce editorial errors and streamline the procedure for updating the Texas Administrative Code.

No comments were received regarding adoption of the amendments.

Subchapter A. Administrative

1 TAC §91.23

The amendment is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State 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 July 12, 1999.

TRD-9904199
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: August 1, 1999
For further information, please call: (512) 463–5561

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Subchapter B. Filing Procedures

1 TAC §91.65

The amendment is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State 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 July 12, 1999.

TRD-9904200
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: August 1, 1999
For further information, please call: (512) 463–5561

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TITLE 4. AGRICULTURE

Part XI. Texas Food and Fibers

Chapter 201. Commission Administration

4 TAC §§201.1–201.9

The Texas Food and Fibers Commission adopts new §§201.1-201.9, concerning Commission Administration. Sections 201.1, 201.4, and 201.5 are adopted with changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3413). Sections 201.2, 201.3, 201.6-201.9 are adopted without changes and will not be republished.

These new rules are being adopted to replace existing bylaws that address administrative operations.

No comments were received regarding adoption of these rules.

This section is adopted under the Agriculture Code, Chapter 42, which provides the commission the authority to promulgate rules consistent with the Code.

§201.1. Definitions.

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

(1) Act - Texas Agriculture Code, Chapter 42, Texas Food and Fibers Commission.

(2) Commission - The Texas Food and Fibers Commission.

(3) Commissioners - The chancellor of The Texas A&M University System, the president of The University of Texas at Austin, the president of Texas Tech University, and the president of Texas Woman's University.

(4) Committee - The Industry Advisory Committee.

(5) Executive Director - the Executive Director of the Commission.

§201.4. Organization.

(a) The Commission is composed of the chancellor of the Texas A&M University System, the president of The University of Texas at Austin, the president of Texas Tech University; and the president of Texas Woman's University.

(b) Each member of the Commission shall serve a two-year term as chairman, rotating the service in the order in which the members are listed in subsection (a) of this section.

(c) The Commissioners shall: set policy, approve rules, approve legislative appropriations requests, approve annual operating budgets, appoint the industry advisory committee, approve research projects, and employ an Executive Director. The Commissioners shall retain and exercise all authority and responsibility assigned to them by law and not delegated to the Executive Director or their designated representatives.

(d) Each Commissioner shall designate a liaison officer to work with committees and staff members of the Commission and agencies, departments, and institutions consulting or contracting with the Commission concerning the daily operations of the work of the Commission. A Commissioner may grant the liaison officer the authority to represent their respective university, but the liaison officer shall not have voting privileges at Commission meetings.

(e) The Executive Director shall: manage the day-to-day business of the Commission; employ staff; draft rules, agreements, contracts, and other documents for approval by the Commission; prepare the agency strategic plan, biennial legislative appropriations request, annual operating budget, annual financial report, and other reports required by the governor, legislature, and state and federal agencies; interact with staff and officials of universities, federal government, and state government concerning Commission programs; interact with producers and members of the industries that the Commission serves; coordinate with the Industry Advisory Committee; request and review research proposals; recommend research programs; coordinate approved research projects at the participating universities; monitor other private, federal, and state research; receive and review research reports; receive, review, and approve payment vouchers; approve disbursements in accordance with the Commission's operating budget; conduct an annual property inventory; and carry out other duties and responsibilities assigned by law or delegated by the Commission.

(f) All decisions of the Commission shall be by majority vote of Commissioners present and voting.

§201.5. Commission Meetings.

(a) The Commission shall meet at least once each fiscal year, prior to September 1. During odd-numbered years, budget approval, appointment of the Industry Advisory Committee, review of Industry Advisory Committee recommendations, review of Commission operations, and other business shall be considered. During even-numbered years, review of Commission operations and other business shall be considered. The agenda and advance meeting materials and recommendations of the Industry Advisory Committee shall be mailed by the Executive Director to all members of the Commission at least ten calendar days prior to the meeting.

(b) Special meetings may be called by the chairman of the Commission by written notice to members at least 15 calendar days prior to such meetings.

(c) All Commission meetings shall be posted and held in accordance with the Texas Open Meetings Act.

(d) All formal actions by the Commission shall be approved by a majority vote of the Commissioners.

(e) Minutes of all Commission meetings shall be taken and recorded. A certified copy of the minutes shall be submitted to each of the Commissioners and to the Legislative Reference Library.

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 July 7, 1999.

TRD-9904055
Robert V. Avant, Jr., P.E.
Executive Director
Texas Food and Fibers
Effective date: September 1, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 936–2451

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Chapter 202. Industry Advisory Committee

4 TAC §§202.1–202.3

The Texas Food and Fibers Commission adopts new §§202.1 -202.3, concerning the Industry Advisory Committee. Sections 202.1 and 202.3 are adopted with changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3415). Section 202.2 is adopted without changes and will not be republished.

These new rules are being proposed to replace existing bylaws that address the industry advisory committee.

No comments were received regarding adoption of these rules.

This section is adopted under the Agriculture Code, Chapter 42, which provides the commission the authority to promulgate rules consistent with the Code.

§202.1. Industry Advisory Committee.

(a) The Industry Advisory Committee shall be limited to 50 members and shall be appointed by the chairman of the Commission with approval of the Commission. Appointment to the Industry Advisory Committee shall be for a period of two years coinciding with the biennium.

(b) The Committee shall have two divisions - the Food Protein Committee and the Natural Fibers Committee.

(1) The Food Protein Committee shall be limited to 25 members. Members shall elect a chairman annually for each fiscal year.

(2) The Natural Fibers Committee shall be limited to 25 members. Members shall elect a chairman annually for each fiscal year.

(c) All recommendations of the Committee shall be approved by majority vote of Committee members present. Recommendations of the Committee shall be approved by the Executive Committee and routed through the Executive Director to the Commission.

(d) Vacancies occurring in the Industry Advisory Committee shall be filled by the chairman of the Commission, with approval by the Commission. Recommendations for the filling of vacancies of the Industry Advisory Committee may be made by the Executive Advisory Committee by submitting candidates to the Executive Director.

(e) All special study committees or other activities shall be approved by the Executive Advisory Committee and the Executive Director.

§202.3. Executive Advisory Committee.

(a) The chairman of the Commission, with the approval if the Commission, shall appoint five persons to an Executive Advisory Committee. One person shall be representative of the wool industry, one from the mohair industry, two from the cotton industry, and one from the food protein industry. In addition to the appointed members, the Executive Advisory Committee shall consist of the chairman of the Natural Fibers Committee, the chairman of the Food Protein Committee, a representative of the Texas Department of Economic Development, and a representative of the Texas Department of Agriculture.

(b) The Executive Advisory Committee shall elect a chairman annually for each fiscal year.

(c) Appointment of any special study committees shall be by the Executive Advisory Committee with approval of the Executive Director and the Commissioners.

(d) The Executive Advisory Committee shall meet semiannually each fiscal year at times specified by the Committee chairman for budget recommendations, project reviews, research reports, and other business. The chairman of the Commission may call or authorize special meetings of the Executive Advisory Committee.

(e) All recommendations of the Executive Advisory Committee shall be presented to the Executive Director.

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 July 7, 1999.

TRD-9904056
Robert V. Avant, Jr., P.E.
Executive Director
Texas Food and Fibers
Effective date: September 1, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 936–2451

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Chapter 203. Primary Research Areas

4 TAC §§203.1-203.3

The Texas Food and Fibers Commission adopts new rules, §§203.1-203.3, concerning university research programs. Section 203.1 is adopted with changes to the proposed text as published in the May 7, 1999 issue of the *Texas Register* (24 TexReg 3416). Section 203.2 and §203.3 are adopted without changes and will not be republished.

These new rules are being adopted to replace existing bylaws that address university research programs.

No comments were received regarding adoption of these rules.

This section is adopted under the Agriculture Code, Chapter 42, which provides the commission the authority to promulgate rules consistent with the Code.

§203.1. Primary Research Areas.

(a) The Executive Director shall be responsible for coordination of the approved research projects and for carrying out the policies set out for the most effective utilization of the equipment, capabilities, and experience at each participating university.

(b) Research programs of the Commission shall be categorized into the following areas:

(1) Cotton research;

(2) Sheep and goat research;

(3) Food protein research;

(4) Textile research;

(5) Nutrition utilization research;

(6) Natural fibers utilization research; and

(7) Food and fibers information resources.

(c) The primary designated research area of each participating university is as follows.

(1) Texas A&M University:

(A) Texas Engineering Experiment Station - oilseed processing, food, feed, and industrial protein products, and fats and oils;

(B) Texas Agricultural Experiment Station - cotton breeding, cotton production practices, and cotton economics; and

(C) Texas Agricultural Experiment Station - wool and mohair production and quality and sheep and goat meat production and quality.

(2) The University of Texas at Austin - information resources and educational materials.

(3) Texas Tech University, International Textile Center - textile processes research, product development, and fiber testing.

(4) Texas Woman's University:

(A) Department of Nutrition & Food Sciences - sensory/fry lab for oils, oil nutrition studies, oil health studies, and flavor studies for sheep and goat meat;

(B) Department of Fashion & Textiles - dry cleaning research laboratory, fabric acceptability, washability, flammability studies, and wear-life studies, and fashion design; and

(C) Collegiate design competition.

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 July 7, 1999.

TRD-9904057
Robert V. Avant, Jr., P.E.
Executive Director
Texas Food and Fibers Commission
Effective date: September 1, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 936-2451

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Chapter 204. Pre-proposal Submission

4 TAC §§204.1-204.5

The Texas Food and Fibers Commission adopts new rules, §§204.1-204.5, concerning administration of research projects.

Sections 204.1, 204.3, and 204.5 are adopted with changes to the proposed text as published in the May 7, 1999 issue of the *Texas Register* (24 TexReg 3417). Section 204.2 and §204.4 are adopted without changes and will not be republished

These new rules are being adopted to replace existing bylaws that address the administration of research projects.

No comments were received regarding adoption of these rules.

This section is proposed under the Agriculture Code, Chapter 42, which provides the commission the authority to promulgate rules consistent with the Code.

§204.1. Pre-proposal Submission.

(a) The participating universities may prepare and submit to the Executive Director pre-proposals on forms provided by the Executive Director no later than April 1 of each even-numbered year. Pre-proposals shall not exceed two pages.

(b) Information provided shall include:

(1) Title;

(2) Investigators (List principal investigators.);

(3) Scope (Describe project scope.);

(4) Objectives (List major anticipated project objectives.);

(5) Continuation status (If a continuation project, identify the previous project.);

(6) Duration (Give the anticipated life of the project before completion/termination.);

(7) Budget (Itemize Commission and matching funds. Categorize funds by costs of personnel, materials, and capital equipment. Estimate the amount and source of matching funds to the extent possible.);

(8) Capital equipment needs (List capital equipment needs.); and

(9) Number of reports (Estimate of number of reports to be prepared.)

(c) Pre-proposals shall be responsive to the primary research area(s) of the participating university in accordance with §203.1(c) of this title (relating to primary research areas).

(d) Special projects in accordance with §203.3 of this title (relating to special projects), may also be submitted for consideration.

(e) Pre-proposals shall be received by the Executive Director in accordance with subsection (a) of this section, and categorized, as necessary.

(f) Pre-proposals will be submitted to the Committee for review.

(g) Information from the pre-proposals will be processed and used as a basis for preparing the Commission's updated strategic plan and legislative appropriations request.

§204.3. Proposal Review and Selection.

(a) Upon receipt from the universities, proposals shall be categorized by the Executive Director in accordance with § 203.1(b) of this title (relating to primary research areas).

(b) A summary sheet for each research category shall be prepared showing the titles of the projects and funding amount for Commission funds and matching funds.

(c) A summary sheet for all research categories shall be prepared showing the research categories and funding amount for Commission funds and matching funds.

(d) The project proposals shall be organized in a binder by research category.

(e) Binders shall be submitted to the Committee no less than 14 days prior to the annual Committee meeting of each odd-numbered year.

(f) Each division of the Committee (Food Protein and Natural Fibers) will review and rank proposals that respond to their respective research area and submit their recommendations to the Executive Advisory Committee.

(g) The Executive Advisory Committee will resolve any conflicts and prepare a research program recommendation for consideration by the Commissioners. The Executive Advisory Committee recommendation shall be routed through the Executive Director to the Commissioners.

(h) At their annual meeting each odd-numbered year, the Commissioners shall consider the recommendation of the Executive Advisory Committee and approve a research program for the next biennium.

§204.5. Research Project Conditions.

(a) Research shall be conducted in accordance with the proposal submitted to the Commission and the memorandum of agreement.

(b) Changes in project scope shall only be authorized, in writing, by the Executive Director after consultation with the Executive Advisory Committee.

(c) Reimbursement of Expenses:

(1) The Commission shall be billed on a calendar month basis for reimbursable expenses.

(2) All expenses including travel, supplies, materials, and capital equipment shall be procured and reimbursed on a cost reimbursal basis in accordance with the Constitution of the State of Texas and other appropriate statutes and rules governing such transactions.

(3) The Commission shall make compensation for reimbursable expenses within 30 days after receipt of satisfactory payment vouchers and supporting documentation.

(4) Final project billing shall be submitted to the Commission no later than 90 days after the end of each fiscal year. The Commission may lapse project funds after 90 days from the end of each fiscal year.

(d) Capital equipment:

(1) For any equipment that requires a Commission inventory number, a property acquisition form shall be submitted with the payment voucher that requests reimbursement for that piece of equipment.

(2) Any capital equipment purchased with Commission funds shall remain the property of the Commission.

(3) A Commission inventory number shall be permanently and prominently placed on the equipment by the university.

(4) An inventory of Commission equipment shall be conducted by each university on an annual basis and a written report shall be submitted no later than November 1 of each year.

(e) All records related to research projects funded by the Commission shall be available for inspection at reasonable times during work hours. All records are subject to audit by the Commission and/or the State Auditor.

(f) In accordance with the Appropriations Act, each university shall maintain a policy which clearly establishes and protects the property rights of the state with regard to any patentable product, process, or idea that might result from research supported by the Commission.

(g) Any publications, presentations, or press releases related to projects funded by the Commission shall prominently acknowledge the participation of the Commission in funding the project.

(h) Each university shall provide reports to the Commission as follows:

(1) Quarterly performance reports on forms and at times specified by the Executive Director.

(2) Annual reports (25) for each research program due no later than November 1 of each year that provides a:

(A) One-page executive summary of the research project in a standard format specified by the Executive Director;

(B) Technical report for each research project a format of the researcher's professional organization;

(C) Financial accounting of each research project that shows the total amount of funds expended on the project; a breakdown of matching funds; and an itemization of costs for personnel, materials and supplies, and capital equipment;

(D) List of publications and presentations related to the project; and

(E) List of equipment purchased with Commission funds.

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 July 7, 1999.

TRD-9904058
Robert V. Avant, Jr., P.E.
Executive Director
Texas Food and Fibers Commission
Effective date: September 1, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 936-2451

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TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 119. Publicly Offered Cattle Feeding Programs

7 TAC §§119.1-119.4

The State Securities Board adopts the repeal of §§119.1-119.4, concerning publicly offered cattle feeding programs, without changes to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1707).

Since no cattle feeding programs have been registered with the Agency since the 1980s, specific guidelines for such programs are unnecessary. Following this repeal, any cattle feeding programs applying for registration with the Agency will be subject to the more general securities registration guidelines contained in Chapter 113 (7 TAC §§113.1-113.25).

A chapter that is no longer needed will be eliminated.

No comments were received regarding adoption of the repeal.

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

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

Filed with the Office of the Secretary of State on July 12, 1999.

TRD-9904190
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 1, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 305-8300

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 66. State Adoption and Distribution of Instructional Materials

The Texas Education Agency (TEA) adopts amendments to 19 TAC §§66.10, 66.48, 66.72, and 66.75, concerning state adoption and distribution of instructional materials, without changes to the proposed text as published in the May 28, 1999, issue of the *Texas Register* (24 TexReg 3973). The sections implement definitions, requirements, and procedures related to administrative penalties, statements of intent to bid instructional materials, contract preparation and completion, and revised editions of state-adopted instructional materials.

The adopted amendment to §66.10 adds language specifying categories of factual errors, first-year penalties, and second-year penalties. Publishers who fail to correct factual errors will be assessed a base penalty plus one percent of sales. The adopted amendment to §66.48 reflects changes in textbook adoption activities that permit publishers to add new content to cover Texas Essential Knowledge and Skills (TEKS) that were not addressed in their original submissions. The adopted amendment to §66.72 updates contract procedures for consistency with statute. Language in §66.75 was amended to allow the commissioner of education to approve substituting a state-adopted electronic product with a revised edition prior to the end of the first year of contract. Language was also added to §66.75 that requires State Board of Education (SBOE) approval

of revised editions that differed in its coverage of the TEKS from the original submission adopted by the SBOE.

The following public comment has been received regarding adoption of the amendments.

Comment. Concerning §66.10(c)(4), Prentice Hall, Inc. commented whether the SBOE would assess a penalty in cases where the company identified its own errors after publication of a textbook. The question comes in light of Prentice Hall's efforts to use the Internet to identify and correct errors in textbooks currently in use.

Agency Response. The agency disagrees with the comment. Current rules already allow the SBOE discretion in determining penalties. Section 66.10(c)(4) states, "A penalty not to exceed $3,000 may be assessed for each factual error identified after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials." In addition, §66.10(g) states, "The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires." This provision gives the SBOE maximum flexibility to consider all circumstances, including identification of errors by the publisher. The SBOE can then decide whether to assess full penalties, reduced penalties, or no penalties.

Subchapter A. General Provisions

19 TAC §66.10

The amendment is adopted under the Texas Education Code, §31.003, which authorizes the State Board of Education to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks; and Texas Education Code, §31.151, which authorizes the State Board of Education to impose a reasonable administrative penalty against publishers or manufacturers.

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 July 12,1999.

TRD-9904148
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: August 15, 1999
Proposal publication date: May 28, 1999
For further information, please call: (512) 463–9701

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Subchapter B. State Adoption of Instructional Materials

19 TAC §§66.48, 66.72, 66.75

The amendments are adopted under the Texas Education Code, §31.003, which authorizes the State Board of Education to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks; and Texas Education Code, §31.026, which authorizes the State Board of Education to execute a contract for the purchase of state-adopted instructional materials, including electronic textbooks.

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

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TRD-9904149
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: August 15, 1999
Proposal publication date: May 28, 1999
For further information, please call: (512) 463–9701

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TITLE 22. EXAMINING BOARDS

Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (board) adopts the repeal of §681.84; amendments to §§681.2, 681.3, 681.16-681.18, 681.32, 681.33, 681.40, 681.43, 681.52, 681.63, 681.81-681.83, 681.92, 681.94, 681.96, 681.111, 681.112, 681.121-681.124, 681.126, 681.128, 681.172-681.178, 681.192 and 681.196; and new §§681.251-681.256 concerning the licensing and regulation of licensed professional counselors. Sections 681.2, 681.32, 681.81, and 681.92 are adopted with changes to the proposed text as published in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2829). Sections 681.3, 681.16-681.18, 681.33, 681.40, 681.43, 681.52, 681.63, 681.82, 681.83, 681.94, 681.96, 681.111, 681.112, 681.121-681.124, 681.126, 681.128, 681.172-681.178, 681.192, 681.196, and 681.251-681.256 are adopted without changes and therefore will not be republished.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, requires that each state agency review and consider for readoption each rule adopted by that board pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Sections 681.1-681.19, 681.26, 681.32-681.43, 681.51, 681.52, 681.61-681.64, 681.81-681.84, 681.91-681.96, 681.111-681.114, 681.121-681.128, 681.161-681.163, 681.171-681.179, 681.191-681.200, 681.211, and 681.220 have been reviewed and the board determined that reasons for adopting the sections continue to exist. No comments were received from the public during the 30 days following publication of the notice and intent to review these rules which was published in the July 17, 1998, issue of the *Texas Register* (23 TexReg 7396). All rule changes and new rules are the result of the review by the board and staff.

Specifically, §681.2 concerning definitions, is amended to ensure that all definitions are listed with numbers to comply with the Texas Register format required by 1 Texas Administrative Code, §91.1, effective February 17, 1998.

Section 681.2(14) is amended to clarify the definition of recognized religious practitioner.

Section 681.2(14)(A) is amended to accurately reflect federal regulation citations.

Section 681.3(c) is amended to remove language " Texas Civil Statutes".

Section 681.16(c) is amended to remove the word "copies" in reference to making rosters available to licensees and other agencies as this information is now available through electronic means.

Section 681.17(a)(5) is amended to provide additional clarification of late renewal fees.

Section 681.17(a)(6) is amended to provide additional clarification concerning when renewal penalty fees must be submitted to the board.

Section 681.18(a)(1) is amended to clarify procedures for written notifications related to applications.

Section 681.18(a)(1)(A) is amended to remove the reference to letters of acceptance of applications and replace with language to indicate that the time frame is in reference to the issuance of a temporary license.

Section 681.32(e) is amended to require licensees to inform in writing individuals entering into a counseling relationship of fees, counseling purposes, goals and techniques, any restrictions placed on the license by the board, limits of confidentiality, and intent to use another individual to provide counseling or supervision of the licensee by another licensed mental health care professional.

Section 681.32(g) is amended to define telepractice and to remove the prohibition of the provision of counseling services by electronic means. It is further amended to require counselors engaging in telepractice to adhere to each provision of this chapter.

Section 681.32(k) is amended to require the licensee to set and maintain professional boundaries and to clarify the meaning of dual relationship and boundary violations within a counseling relationship.

Section 681.32(q) is amended to require a written agreement between licensee and client for any modification in services rendered by the licensee.

Section 681.32(q)(1) is amended to require the licensee to indicate any relationship between the licensee and any other person used by the licensee to provide services to a client on billing documents.

Section 681.32(q)(2) is amended to provide clarification concerning persons who are entitled to client records and the type of information that must be provided by the licensee.

Section 681.32(u) is amended to remove reference to the Crime Victims Compensation Act and replace it with the Code of Criminal Procedure, Chapter 56, to provide accurate information concerning applicable laws.

Section 681.32(w) is amended to provide clarification of the intent of the rule by replacing "subversion" with the term "falsification".

Section 681.33(f) is amended to more accurately state the purpose of the rule by replacing " person" with the word "client".

Section 681.33(g)(8) is amended to indicate that any form of kissing or fondling of a client by a licensee may constitute sexual exploitation.

Section 681.33(i)(1) is amended to clarify the duty to report suspected client sexual exploitation, sexual misconduct, or therapeutic deception by a mental health service provider.

Section 681.40(f) is amended to remove the word " intervention" from the reference to counseling treatment services.

Section 681.40(g) is added to this section to require counselors holding a temporary license to indicate intern status on all advertisements, billing and announcements of counseling treatment by use of the term LPC-Intern.

Section 681.43(1) is amended to accurately reflect the applicable chapter of the Family Code by replacing Chapter "34" with Chapter "261".

Section 681.52(a)(7) is amended to remove the requirement that an imprint of a notary seal must appear on the edge of the photograph of applicants for licensure.

Section 681.52(d) is amended to include a requirement that supervisor agreements be dated by both supervisor and applicant before a notary public.

Section 681.63(d) is amended to modify wording to the past tense.

Section 681.81(a) is amended to clarify when a temporary license may be issued to an applicant.

Section 681.81(a)(4) is amended to add language to clarify time restrictions for reapplication when the applicant has failed the board examination two successive times.

Section 681.81(a)(5) is amended to further clarify requirements for reapplication for a second temporary licensure for a person having failed the board examination two successive times.

Section 681.81(b) is amended to remove paragraphs (1), (2), and (3) concerning the provisions for acceptance of supervised experience hours and to provide a statement of improved clarification concerning time periods for acceptable supervisory experience for persons not holding a temporary license.

Section 681.82 is amended by the addition of subsections (l)-(o) containing rules moved from §681.84 in order that they may be located in the rule section more appropriate for experience requirements for interns.

Section 681.83(a)(2) is amended to provide clarification of persons eligible to supervise counseling services provided by interns.

Section 681.83(b)(2)(B) is amended to provide clarification of persons eligible to supervise counseling services provided by interns.

Section 681.83(c) is amended to clarify that supervisors of interns must be board approved.

Section 681.83(d)(1)-(5) is amended to add these paragraphs containing rules moved from §681.84 in order that they may be located in the rule section more appropriate to requirements concerning supervisors of interns.

Section 681.84 is repealed to move specific rules related to interns receiving supervision to §681.82 and move specific rules related to the supervision of interns to §681.83.

Section 681.92(a) is amended to allow interns to take the Licensed Professional Counselor Examination at any time during the effective dates of their temporary license. Paragraphs (1)-(4) have been added to this section to clarify when a regular license may be issued after successful completion of the examination, when an application or temporary licensed may be voided if the examination is failed twice and reapplication requirements after failing the examination twice.

Section 681.92(b) is amended to further clarify application requirements for applicants seeking a regular license and not holding a temporary license at the time of application.

Section 681.94(d) is amended to clarify the need for and requirements concerning licensure reapplication for persons failing the examination twice.

Section 681.96 is amended to correct punctuation, and delete the word "or".

Section 681.111(a) is amended to clarify procedures concerning the payment of fees associated with the issuance of a license.

Section 681.111(b) is amended to remove reference to fee requirements associated with the submission of an examination score report.

Section 681.112(a)(1) is amended to remove reference to a provisional license fee and replace with a statement indicating only a license fee in keeping with §681.17(a)(1) concerning fees.

Section 681.112(a)(3) is amended to clarify the types of examinations that are acceptable to the board for licensure by endorsement.

Section 681.121(c) is amended to indicate the requirement that all licenses issued by the board are to be renewed annually.

Section 681.122 is amended to clarify and revise the the effective dates of an initial license issued by the board.

Section 681.123(a) is amended to reduce and clarify the type of information to be included in a notice of license renewal issued to the licensee by the board.

Section 681.124(d) is amended to clarify procedures for making late license renewal payments to the board.

Section 681.126(a) is amended to remove references to date stamps on retired licenses. The retired license will now be returned to the retiring licensee after it is marked as a retired license, but without processing date.

Section 681.128(c) is amended to reflect only the Family Code, Chapter 232 and remove all other references to legislative citations.

Section 681.172 is amended to allow the completion of at least three hours of continuing education directly related to counselor ethics issues in any two successive twelve month periods instead of one twelve month period.

Section 681.173 is amended to remove the requirement that a licensee must complete at least three clock-hours directly related to counselor ethics as a part of the required twelve clock-hours of continuing education in each twelve month period.

Section 681.174 is amended to clarify the types of continuing education activity that will be acceptable to the board.

Section 681.175 is amended to require that individuals and organizations initiate requests for board approval of specific programs for continuing education credit before these programs occur.

Section 681.176(a)(2)(A) is amended to remove the requirement that pre-approved providers maintain resumes of all presenters.

Section 681.177(5) is amended to allow for all of the twelve clock-hours of continuing education to be obtained through independent study instead of restricting independent study to three hours.

Section 681.178(1) is amended to clarify that continuing education completed by the licensee shall be reported on a form provided by the board.

Section 681.178(7) is amended to indicate that a failure to meet the continuing education requirement is a violation of board rules.

Section 681.192(e) is amended to indicate correspondence content, format and mailing procedures for service of notices of hearings to licensees, including information concerning default procedures associated with the licensees failure to appear for hearing.

Section 681.196(d)(7) is amended to clarify types of felony and misdemeanor offenses under various titles of the Texas Penal Code by adding reference to Title 8 offenses against public administration.

New Subchapter N. Schedule of Sanctions, §§681.251- 681.256 is added to comply with the Licensed Professional Counselor Act, Chapter 681, Sec. 16(d) which requires the board to adopt by rule a schedule of sanctions for violations under this Act. The schedule will be used by the State Office of Administrative Hearings (SOAH) when imposing any sanction as a result of an administrative hearing. Specifically, this subsection covers the purpose, relevant factors, severity levels and sanction guide, other disciplinary actions, SOAH and probation considerations.

The following comment was received concerning the proposed sections. Following this comment is the board's response and any resulting change(s).

COMMENT: Concerning proposed §681.32(k)(l)-(6), renumbered as §681.32(k)(1)-(3), a comment was received from the Texas Counseling Association which states that the proposed changes to the board rules concerning dual relationships are so delineating as to virtually preclude practice in small towns, schools, and other settings and are overly definitive and requests the rules be rewritten so as to be less restrictive and less prohibitive of reasonable practice.

RESPONSE: The board agrees that the proposed rules concerning dual relationships are overly definitive and has revised the rule to reduce restrictive language that could effect professional counselors practicing in small communities.

The board is making the following changes to further clarify the rules.

CHANGE: Concerning §681.2, all definitions are listed with numbers to comply with Texas Register format.

CHANGE: Concerning §681.81(a)(4), additional clarifying language has been added to further clarify the requirements for obtaining a temporary license by those applicants that have never held a temporary license, but have failed the counselor examination two successive times.

CHANGE: Concerning §681.81(a)(5), additional clarifying language has been added to better define the requirements for obtaining a second temporary license by those applicants who have held a temporary license, but have had their temporary licenses voided after failing the counselor examination two successive times.

CHANGE: Concerning §681.92(a)(3), additional language has been added to better clarify the application requirements and assist the applicant by providing a rule reference to required application materials necessary for reapplication for licensure.

Subchapter A. The Board

22 TAC §§681.2, 681.3, 681.16-681.18

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, Section 6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

§681.2. Definitions.

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

(1) Accredited universities–Universities as reported by the American Association of Collegiate Registrars and Admission Officers.

(2) Act–The Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, as amended.

(3) APA–The Administrative Procedure Act, Government Code, Chapter 2001.

(4) Art therapy–The practice of professional counseling through services that use art media to promote perceptive, intuitive, affective, and expressive experiences that alleviate distress and emotional, behavioral, or social impairment.

(5) Art therapy intern–An LPC or an LPC intern holding a temporary license with an art therapy specialty designation.

(6) Authorized representative–An individual authorized to act on behalf of a licensee as evidenced by a written power of attorney or the licensee's spouse.

(7) Board–The Texas State Board of Examiners of Professional Counselors.

(8) Client–A person who seeks or receives services from a licensee or from a person who is practicing counseling without a license, either because no license is required under the Act at the time of counseling or because the person has not obtained the license required by the Act.

(9) Department–The Texas Department of Health.

(10) Health care professional–A licensee or any other person licensed, certified, or registered by the State in a health related profession.

(11) License–A regular, regular with art therapy specialty designation, provisional, or temporary license issued by the board unless the content of the rule indicates otherwise.

(12) Licensee–A person who holds a regular, regular with art therapy specialty designation, provisional, or temporary license.

(13) LPC intern–A person who holds a temporary license to practice counseling.

(14) Recognized religious practitioner–A rabbi, member of the clergy, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3), and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations;

(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a professional counselor.

(15) Supervisor–A person approved by the board as meeting the requirements set out in §681.83 of this title (relating to Supervisor Requirements), to supervise an LPC intern.

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 July 12, 1999.

TRD-9904161
Anthony P. Picchioni
Chairperson
Texas State Board of Examiners for Professional Counselors
Effective date: August 1, 1999
Proposal publication date: April 9, 1999
For further information, please call: (512) 458-7236

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Subchapter C. Codes of Ethics

22 TAC §§681.32, 681.33, 681.40, 681.43

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, Section 6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

§681.32. General Ethical Requirements.

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

(e) A licensee shall inform an individual in writing before or at the time of the individual's initial professional counseling session with the licensee of the following:

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

(f) (No change.)

(g) A licensee shall provide counseling treatment intervention only in the context of a professional relationship. Telepractice (interactive long distance counseling delivery, where the client resides in one location and the counselor in another) may be used as a part of the therapeutic counseling process. Counselors engaging in Telepracticing must adhere to each provision of this chapter.

(h)-(j) (No change.)

(k) The licensee shall set and maintain professional boundaries. Dual relationships, with clients are prohibited. A dual relationship is considered any non-counseling activity initiated by either the licensee or client for the purpose of establishing a non-therapeutic relationship.

(1) The licensee shall not provide counseling services to previous or current:

(A) family members;

(B) personal friends;

(C) educational associates; or

(D) business associates.

(2) The licensee shall not give or accept a gift from a client or a relative of a client valued at more than fifty dollars, enter into barter for services, or borrow or lend money or items of value to clients or relatives of clients.

(3) The licensee shall not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client.

(l)-(p) (No change.)

(q) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(1) Relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(2) On the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee shall provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

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

(r)-(t) (No change.)

(u) A licensee shall be subject to disciplinary action if the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Code of Criminal Procedure, Chapter 56.

(v) (No change.)

(w) An applicant for licensure shall not participate in anyway in the falsification of licensing materials.

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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Anthony P. Picchioni
Chairperson
Texas State Board of Examiners of Professional Counselors
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For further information, please call: (512) 458-7236

♦ ♦ ♦

Subchapter D. Application Procedures

22 TAC §681.52

The amendment is adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, §6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

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Subchapter E. Academic Requirements for Examination and Licensure

22 TAC §681.63

The amendment is adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, §6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

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Subchapter F. Experience Requirements for Examination and Licensure

22 TAC §§681.81-681.83

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, Section 6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

§681.81. Temporary License.

(a) The Texas State Board of Examiners of Professional Counselors (board) may issue a temporary license to an applicant who:

(1) has filed all required application forms and license fee;

(2) has met all academic requirements for licensure;

(3) (No change.)

(4) has never held a temporary license from the board and has not failed any two successive board examinations within two years prior to application or;

(5) if applying for a second temporary license, (not a 30 month extension referenced in subsection (f) of this section), has failed the board examination two successive times, has not completed the required supervised experience and has waited two years since the date of the last failed counselor examination or has completed nine graduate level semester hours in the subject areas in which the applicant scored lowest on the previous counselor examination. Documentation of completion of all graduate course work must be submitted on an official school transcript.

(b) In Texas, a person must obtain a temporary license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting shall not count toward the supervised experience requirements. Supervised experience hours gained prior to June 1, 1994, may count toward licensure if all academic requirements have been met at the time of application. Hours gained after June 1, 1994 cannot count without a temporary license.

(c)-(g) (No change.)

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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22 TAC §681.84

The repeal is adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, Section 6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

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Subchapter G. Licensure Examinations

22 TAC §§681.92, 681.94, 681.96

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, Section 6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

§681.92. Requirements for Licensure Examination.

(a) An applicant who is an LPC intern may sit for the Licensed Professional Counselor Examination at any time during the effective dates of their temporary license.

(1) A regular license will be issued to an applicant only after completion of required supervised experience and successful completion of the licensed professional examination.

(2) The application of a person who fails any two successive examinations shall be voided.

(3) The temporary license of a person who fails any two successive examinations shall be voided. Reapplication for a temporary license must be in accordance with §681.52 of this title (relating to Required Application Materials) and §681.81(a)(5) of this title (relating to Temporary License).

(4) Reapplication for a regular license must be in accordance with §681.52 of this title.

(b) Applicants for a regular license that do not hold a temporary license must apply for licensure in accordance with §681.51 of this title (relating to General), §681.52 of this title and §681.82 of this title (relating to Experience Requirements (Internship)).

(c) (No change.)

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 H. Licensing

22 TAC §681.111, §681.112

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, Section 6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

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Subchapter I. Regular License Renewal and Inactive and Retirement Status

22 TAC §§681.121-681.124, 681.126, 681.128

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, Section 6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

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Subchapter K. Continuing Education Requirements

22 TAC §§681.172–681.178

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, §6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

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Subchapter L. Complaints and Violations

22 TAC §681.192, §681.196

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, §6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

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Subchapter N. Schedule of Sanctions

22 TAC §§681.251-681.256

The new sections are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes Article 4512g, Section 6(e)(2) which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act and the General Appropriations Act, House Bill

1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by this adoption.

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Part XXXVIII. Texas Midwifery Board

Chapter 831. Midwifery

The Texas Midwifery Board (board) adopts new §§831.1-831.3, 831.7, 831.51, 831.111, 831.121, 831.131, and 831.141 concerning the regulation of midwives. Sections 831.2, 831.51, and 831.121 are adopted with changes to the proposed text as published in the March 5, 1999 issue of the *Texas Register* (24 TexReg 1539). Sections 831.1, 831.3, 831.7, 831.111, 831.131, and 831.141 are adopted without changes, and therefore the sections will not be republished.

The sections cover introduction; definitions; the Midwifery Board; petition for the adoption of a rule; midwifery practice standards and principles; eye prophylaxis; newborn screening; informed choice and disclosure statement; and the provision of support services. The board is authorized by the Texas Midwifery Act (the Act), Texas Civil Statutes, Article 4512i, §8A(b), to adopt rules concerning documentation of midwives; standards for approval of midwifery education courses, instructors, and facilities; standards for midwifery practice; basic and continuing midwifery education requirements; reporting and processing complaints; disciplinary procedures; procedures for reciprocity for initial documentation; and any additional rules necessary to implement any duty imposed on the board by the Act, subject to the approval of the Texas Board of Health. The new sections are necessary for the limited purpose of locating all rules governing the documentation and regulation of midwives in 22 TAC Chapter 831, based on the Midwifery Board's increased rulemaking and enforcement authority. The rules were located in 25 Texas Administrative Code (TAC), and the Texas Board of Health adopted the repeal of 25 TAC §§37.171-37.174, 37.176-37.177, 37.179, 37.181-37.185 in order that the new sections may be adopted by the Texas Midwifery Board, which will be listed as an independent board under 22 TAC. The repeal of 25 TAC §§37.171-37.174, 37.176-37.177, 37.179, 37.181-37.185 can be found in this same issue of the *Texas Register* in the adopted rules section.

Changes made to the proposed text result from comments received during the comment period. The following changes were due to staff comments.

Change: Concerning §§831.2 and 831.51, minor editorial changes such as grammar and punctuation were made for clarification purposes.

Change: Concerning §831.121(a), the cite for §§37.51 - 37.69 was corrected from 22 Texas Administrative Code (TAC) to 25 TAC.

The following comments were received concerning the proposed sections. Following each comment is the board's response and any resulting change(s).

Comment: Concerning §831.2(5), one commenter stated that the definition of "certified nurse-midwife" should be amended as follows: "A registered nurse licensed in Texas, recognized by the Board of Nurse Examiners as an advanced practice nurse, and certified by the American College of Nurse-Midwives or the ACNM Certification Council."

Response: The board disagrees. The definition of "certified nurse-midwife" proposed for final adoption and the definition in the Act, §1(c)(5), are identical. No change was made as a result of this comment.

Comment: Concerning §831.2(14), one commenter stated that the definition of "midwifery" should be amended as follows: "The practice by a midwife or certified nurse-midwife of giving the necessary supervision, care, and advise to a woman during normal pregnancy, labor and the postpartum period; conducting a normal delivery of a child; and providing newborn care."

Response: The board disagrees. The definition of "midwifery" proposed for final adoption is the same as that in the Act, §1(c)(2). In addition, §2 of the Act states that its provisions do not apply to certified nurse-midwives. No change was made as a result of this comment.

Comment: Concerning §831.51(b), one commenter stated that midwives should be allowed to refer clients to "a licensed health care provider with current obstetric/pediatric knowledge" rather than only to "a licensed physician or licensed health care provider working under the supervision of a physician". The commenter's stated intent is to include certified nurse-midwives working within their scope of practice; i.e., in collaboration with but not under the supervision of a physician, as appropriate health care providers for consultation or referral.

Response: Section 831.51 is being adopted by the board at this time without change from the original 25 TAC §37.185 for the limited purpose of locating all rules governing the documentation and regulation of midwives in 22 TAC Chapter 831. Chapter 831 will contain the rules adopted by the board with approval of the Board of Health as allowed by the Midwifery Act, Texas Civil Statutes, Article 4512i, (Act). 25 TAC Chapter 37 will no longer contain any rules adopted under the Act. Those Board of Health rules are being repealed in this same issue of the Texas Register in the Adopted Rules section. The board anticipates substantive review and possible revision of §831.51 in the future, and this comment will be retained for consideration at that time. No change was made as a result of this comment.

The comments on the proposed rules were submitted by the Consortium of Texas Certified Nurse-Midwives. The comments were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

Subchapter A. The Board

22 TAC §§831.1–831.3, 831.7

The new sections are adopted under Texas Civil Statutes, Article 4512i, §8A(b), which authorizes the board to adopt rules, subject to the approval of the Texas Board of Health, necessary for the documentation and regulation of Texas midwives.

§831.2. Definitions.

The following words and terms when used in these sections shall have the following meaning unless the context clearly indicates otherwise:

(1) Act - The Texas Midwifery Act, Texas Civil Statutes, Article 4512i.

(2) Appropriate health care facility - The Department of Health, a local health department, a public health district, a local health unit or a physician's office where specified tests can be administered and read, and where other medical/clinical procedures normally take place.

(3) Approved midwifery education courses - The basic midwifery education courses approved by the Midwifery Board.

(4) Board - The Texas Board of Health.

(5) Certified nurse-midwife - A registered nurse licensed in Texas, recognized by the Board of Nurse Examiners as an advanced nurse practitioner, and certified by the American College of Nurse-Midwives.

(6) Code - Texas Health and Safety Code.

(7) Commissioner - The Commissioner of Health.

(8) Department - The Texas Department of Health.

(9) Documentation - The annual process of documenting midwives under the Texas Midwifery Act.

(10) Health authority - A physician who administers state and local laws regulating public health under the Health and Safety Code, Chapter 121, Subchapter B.

(11) Local health department - A department of health created by the governing body of a municipality or county under the Health and Safety Code, Chapter 121, Subchapter D.

(12) Local health unit - A division of a municipality or county government that provides limited public health services as provided by the Health and Safety Code, §121.004.

(13) Midwife - A person who practices midwifery under the Texas Midwifery Act and has met the requirements and standards of the Midwifery Board in these sections.

(14) Midwifery - The practice by a midwife of giving the necessary supervision, care, and advise to a woman during normal pregnancy, labor and the postpartum period; conducting a normal delivery of a child; and providing newborn care.

(15) Midwifery Board - The Midwifery Board appointed by the Texas Board of Health.

(16) Newborn care - The care of a child for the first six weeks of the child's life.

(17) Normal childbirth - The labor and delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(18) Physician - A physician licensed to practice medicine in Texas by the Board of Medical Examiners.

(19) Postpartum care - The care of a woman for the first six weeks after the woman has given birth.

(20) Program - The department's midwifery program.

(21) Public health district - A district created under the Health and Safety Code, Chapter 121, Subchapter E.

(22) Standing delegation orders - Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Board of Medical Examiners in Chapter 193 (relating to standing delegation orders).

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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Edna Dougherty
Chair
Texas Midwifery Board
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Subchapter D. Practice of Midwifery

22 TAC §§831.51, 831.111, 831.121, 831.131, 831.141

The new sections are adopted under Texas Civil Statutes, Article 4512i, §8A(b), which authorizes the board to adopt rules, subject to the approval of the Texas Board of Health, necessary for the documentation and regulation of Texas midwives.

§831.51. Midwifery Practice Standards and Principles.

(a) Standards for the Practice of Midwifery in Texas.

(1) Midwifery care is provided by qualified midwives as defined by the Texas Midwifery Act, Texas Civil Statutes, Article 4512i.

(2) Midwifery care supports individual rights and self-determination within the boundaries of safety.

(3) Midwifery care is based upon the knowledge, skill, and judgment that foster the delivery of safe and competent care to mother and newborn, giving the newborn the opportunity for a good beginning.

(4) Midwifery care is provided in accordance with established minimal standards which promote safe and competent care. The midwife implements these standards through adherence to the principles for the practice of midwifery in Texas as detailed in subsection (b) of this section.

(5) Midwifery care is provided in a safe environment.

(6) Midwifery care utilizes the community health care and social system to meet medical, psychosocial, economic and cultural or family needs.

(7) Midwifery care is documented in complete, legible health records.

(8) Midwifery care includes an ongoing process of evaluation and quality assurance.

(b) Principles. Midwifery practice is based upon the acquisition of clinical skills necessary for the care of essentially normal pregnant women and newborns. These skills may be obtained through

apprenticeship or within an institution. Care as defined by the Midwifery Board of the Texas Department of Health (department) includes antepartum, intrapartum, postpartum, and newborn services. The midwife is committed to maintain a high standard of professional care, to participate in continuing education, and to promote the concepts of high quality and safe practice among all Texas midwives.

(1) Qualifications for midwives in Texas. The midwife:

(A) is documented through the Texas Department of Health, Midwifery Program;

(B) has attended an approved mandatory basic midwifery education course or has been exempted from this requirement prior to January 1, 1994;

(C) shows evidence of continuing competency through an ongoing process of continuing education; and

(D) is in compliance with the legal requirements of Texas while practicing in the state.

(2) Clients rights. The midwife:

(A) provides clients with a description of the scope of midwifery practice, both in written and oral form, which includes but is not limited to her/his:

(i) midwifery experience;

(ii) limitations of practice;

(iii) date of expiration of documentation;

(iv) date of expiration of cardiopulmonary resuscitation certification;

(v) compliance with continuing education;

(vi) compliance with the standards of practice of midwifery in Texas as adopted in rule by the Texas Department of Health;

(vii) compliance with the client's individual rights relative to this paragraph;

(viii) medical consultation arrangements;

(ix) procedures regarding newborn blood screening;

(x) practice for ophthalmia neonatorum prevention; and

(xi) a delineation of the prohibited acts as detailed by the Midwifery Act of 1993.

(B) provides information regarding the client's rights as follows. The client has the right:

(i) prior to the administration of any drug or natural remedy to herself or her infant, to be informed by the midwife caring for her of the reason for such administration, all potential direct or indirect effects, and all risks or hazards to herself or her unborn or newborn infant which may result from the use of the drug or remedy;

(ii) to be accompanied during the stress of labor and birth by someone she cares for, and to whom she looks for emotional comfort and encouragement;

(iii) to be informed of any known or suspected condition which may cause her or her baby difficulty or problems. She has the right to care by a physician or other licensed health care professional operating under physician supervision for conditions or problems which are outside the scope of practice of the midwife. The client has the right to timely referral in such situations;

(iv) to be informed of the name and qualifications of all individuals participating in her care;

(v) to have access to and receive copies upon request of her and her baby's midwifery records which will be complete, accurate and legible; and

(vi) of self-determination to decline or continue care upon the midwife's recommendation. The client's decision to exercise this right will be made in writing. The midwife will retain a copy of this document to demonstrate compliance with this section.

(3) Criteria for safe and competent care. The midwife:

(A) provides care only to clients determined to be at low or normal risk, as defined in the following subparagraphs, of developing complications during pregnancy, childbirth, and the postpartum and neonatal periods;

(B) provides clients with information on other providers and services when requested or when care required is not within the scope of midwifery practice;

(C) practices in accordance with this section; and

(D) will not knowingly accept nor thereafter maintain responsibility for the prenatal, intrapartum, or postpartum care of a woman or neonatal care of an infant who has or develops a high risk condition or complication, except as detailed in clauses (i), (iv), (v), and (vi) of this subparagraph.

(i) If on the initial assessment or subsequent assessments, the midwife determines or suspects that the client has any of the conditions or symptoms listed in clauses (ii) and (iii) of this subparagraph, a consult by a physician who has current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision will be obtained in a timely manner. "Consultation" refers to a particular client, not generalized advice affecting more than one woman. The consultant is to evaluate the client and then advise the midwife whether to refer the client, co-manage the client with specified medical supervision, or continue midwifery care. The midwife will document the consultation in writing. If reasonable and documented attempts have been made to consult with a licensed physician or other licensed health care provider operating under physician supervision and the physician or other provider refuses to see the client, then the midwife may continue to provide care to the client after obtaining written informed consent that the client agrees to such care and is aware that she has or may have a high-risk condition which should be evaluated by a physician. If after the client has been made aware that she has or may have a high-risk condition; and she chooses to decline medical consultation, co-management, or referral, then the midwife may continue to provide care for the client if she signs a waiver of medical referral.

(ii) The midwife will recommend consultation if the client's history concerning prior pregnancies or medical history includes any of the following:

(I) preterm (less than 36 weeks) labor during two or more previous pregnancies;

(II) preterm (less than 36 weeks) rupture of membranes;

(III) delivery of an infant weighing less than 5 1/2 pounds or 2500 grams at term;

(IV) delivery of a large infant weighing greater than or equal to 10 pounds or 4500 grams that resulted in trauma to the infant;

(V) neonatal (first month of life) death;

(VI) severe postpartum hemorrhage (non-traumatic) requiring transfusion;

(VII) three or more consecutive spontaneous abortions;

(VIII) suspicion for an incompetent cervix;

(IX) mother or current conception's father having had a previous infant or fetus with a known or suspected genetic or familial disorder. (Refer to subsection 9 of this section for sample prenatal genetic screening questions which are from the American College of Obstetricians and Gynecologists (ACOG) Technical Bulletin #108.);

(X) mother or current conception's father having had a previous infant or fetus with a significant congenital anomaly;

(XI) pregnancy induced hypertension requiring medication, medical supervision or hospitalization; pre-eclampsia; or eclampsia;

(XII) gestational diabetes (diet controlled);

(XIII) intrauterine fetal demise;

(XIV) shoulder dystocia that resulted in trauma to the infant;

(XV) placenta previa at time of labor;

(XVI) placental abruption;

(XVII) Rh or other blood group isoimmunization;

(XVIII) inverted uterus;

(XIX) pelvic or genital tract anomaly;

(XX) cardiac disease;

(XXI) rheumatic fever;

(XXII) renal disease, pyelonephritis, recurrent urinary tract infection, urinary calculi, or urinary tract anomaly;

(XXIII) cancer;

(XXIV) vascular disease;

(XXV) any non A-Hepatitis;

(XXVI) hepatic insufficiency;

(XXVII) thyroid disease;

(XXVIII) syphilis;

(XXIX) thrombophlebitis or thromboembolism;

(XXX) HIV positivity; or

(XXXI) any other history which poses a risk to the mother or fetus as assessed by a midwife exercising ordinary skill and education.

(iii) The midwife will recommend a consultation if the client's history or examination concerning her current pregnancy includes any of the following:

(I) age 15 or under;

(II) exposure to a teratogen during current pregnancy or six weeks prior to conception;

(III) drug, tobacco and/or alcohol abuse;

(IV) significant psychological dysfunction;

(V) vaginal bleeding after twelve weeks;

(VI) significant abdominal pain;

(VII) significantly decreased fetal movement;

(VIII) urinary tract infection or signs or symptoms of urinary tract infection unresponsive to natural remedies or in association with temperature equal to or greater than 100.4 degrees Fahrenheit;

(IX) elevated temperature equal to or greater than 100.4 degrees Fahrenheit for more than 48 hours;

(X) chest pain and/or difficulty breathing;

(XI) signs or symptoms of thrombophlebitis or thromboembolism;

(XII) persistent, severe headaches;

(XIII) visual disturbances;

(XIV) seizure disorder requiring treatment;

(XV) asthma requiring treatment;

(XVI) pulmonary disease;

(XVII) gastrointestinal or colon disease requiring treatment;

(XVIII) contracted pelvis;

(XIX) hypertension, a diastolic blood pressure of at least 90 mm Hg or systolic pressure of at least 140 mm Hg or a rise in the former of at least 15 mm Hg or in the latter of 30 mm Hg. The blood pressures cited should be manifested on at least two occasions six hours or more apart;

(XX) severe edema of hands, face, or lower extremities;

(XXI) severe varicosities of vulva or lower extremities;

(XXII) intrauterine fetal demise;

(XXIII) non-vertex presentation after 36 weeks;

(XXIV) anemia (hemoglobin equal to or less than 10 g/dl or hematocrit equal to or less than 30%) not corrected by iron therapy;

(XXV) active genital herpes at the time of delivery;

(XXVI) gonorrhea, chlamydia, HPV, or pelvic inflammatory disease;

(XXVII) syphilis;

(XXVIII) HIV positivity;

(XXIX) proteinuria, equal to or greater than +1 on two consecutive visits or equal to or greater than +2 on one visit;

(XXX) glycosuria, equal to or greater than +1 on two visits (if unable to perform blood glucose screening for this finding);

(XXXI) abnormal pap smear;

(XXXII) abnormal fetal growth pattern or uterine discrepancy greater than four weeks on two visits unless assessment by palpation finds fetal growth appropriate for dates;

(XXXIII) intrauterine growth retardation;

(XXXIV) post-term pregnancy, equal to or greater than 42 and 0/7 weeks;

(XXXV) possible preterm (less than 36 weeks) labor;

(XXXVI) significant maternal trauma;

(XXXVII) hyperemesis gravidarum;

(XXXVIII) polyhydramnios or ogliohydramnios;

(XXXIX) vaginitis other than simple, non-recurrent monilia;

(XL) hepatitis, chronic hepatic dysfunction, or positive Hepatitis B surface antigen; or

(XLI) any other medical or obstetric condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising ordinary skill and education.

(iv) If on any assessment, the midwife determines that the client has one or more of the following conditions, she will consult, in a timely manner, with a licensed physician with current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision and, upon his/her documented recommendation, transfer care of the client or otherwise follow his/her recommendation. If the midwife is unable to obtain a consult, in a timely manner, the care of the client must be transferred to a licensed physician with current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision:

(I) history of incompetent cervix;

(II) history of gestational diabetes in a prior pregnancy requiring insulin therapy;

(III) history of autoimmune disease; e.g., systemic lupus erythematosus;

(IV) diabetes mellitus or gestational diabetes during current pregnancy;

(V) history of prior C-section or uterine surgery;

(-a-) The department agrees with the current obstetric practice of encouraging vaginal birth after C-section (VBAC). Further, it agrees with the most recent (1994) ACOG guidelines concerning VBAC which state that:

(-1-) The concept of routine repeat cesarean birth should be replaced by a specific decision process between the client and the physician for a subsequent mode of delivery;

(-2-) In the absence of a contraindication, a woman with one previous cesarean delivery with a lower uterine segment incision should be counseled and encouraged to undergo a trial of labor in her current pregnancy;

(-3-) A woman who has had two or more previous cesarean deliveries with lower uterine segment incisions and who wishes to attempt vaginal birth should not be discouraged from doing so in the absence of contraindications;

(-4-) A trial of labor and delivery should occur in a hospital setting that has professional resources to respond to obstetric emergencies;

(-b-) If however, a client chooses not to accept the department's position that VBACs should be conducted in a hospital setting, then she may continue care with the midwife if the client signs a waiver of medical transfer and the client has not had a classical C-section.

(-c-) A waiver document shall be developed by the Midwifery Board and department for use in this situation and the midwife will have each client, for whom she conducts a VBAC, sign this form. The form will be retained in the client's midwifery record.

(VI) chronic hypertension;

(VII) hemoglobinopathy;

(VIII) preterm labor (less than 36 weeks);

(IX) preterm rupture of membranes (less than 36 weeks);

(X) multiple gestation;

(XI) Rh or other blood group isoimmunization;

(XII) seizure activity;

(XIII) pyelonephritis;

(XIV) AIDS or HIV positivity with immune compromise;

(XV) cancer; or

(XVI) any other medical or obstetric condition or symptom which poses a significant risk to the mother or fetus, as assessed by a midwife exercising ordinary skill and education.

(v) If any of the following conditions or symptoms are noted during labor, delivery, or immediately postpartum (the first 24 hours), the midwife will immediately consult with a licensed physician who has current obstetric knowledge and, unless the physician recommends otherwise, transfer care. If a physician is not available for immediate consultation, the midwife will transfer care to a licensed physician. If delivery is imminent after recognition of one of these conditions or symptoms and transfer is not feasible, then delivery should be carried out by the midwife. Consultation and/or transfer should then occur immediately postpartum except for those conditions in subclauses (I) and (III)-(VI) of this clause:

(I) multiple gestation;

(II) preterm (less than 36 weeks) labor;

(III) estimated fetal weight less than 51/2 pounds or 2500 grams;

(IV) active phase dilatation less than 1 cm/3-4 hours;

(V) second stage greater than 1-2 hours in a multiparous woman or greater than 2-3 hours in a primiparous woman and delivery;

(VI) rupture of membranes for greater than 24 hours and not anticipated to deliver within 4 hours or delivery not imminent after an additional 4 hours;

(VII) premature rupture of membranes longer than 24 hours and not in the active phase of labor;

(VIII) foul smelling amniotic fluid;

(IX) hypertension, a diastolic blood pressure greater than 90 mm Hg or systolic pressure greater than 140 mm Hg or a rise in the former of at least 15 mm Hg or in the latter of 30 mm Hg;

(X) severe abdominal pain inconsistent with normal labor or involution;

(XI) significant decrease in urine output;

(XII) persistent vomiting or diarrhea;

(XIII) foul smell to the placenta or infant;

(XIV) retained placenta or fragment, i.e., lack of spontaneous placental expulsion within one hour with no excessive bleeding or evidence of shock, or evidence of incomplete placenta on post expulsion exam;

(XV) inappropriate uterine involution;

(XVI) inability to void within six hours of delivery with adequate hydration; or

(XVII) any other medical or obstetric condition which poses a risk to the mother or fetus, as assessed by a midwife exercising ordinary skill and education.

(vi) If any of the following conditions or symptoms are noted during labor, deliver, or immediately postpartum (the first 24 hours), the midwife will transfer the client immediately to a physician. If delivery is imminent after recognition of one of these conditions or symptoms and transfer is not feasible, then delivery should be carried out by the midwife. Consultation and/or transfer should then occur immediately postpartum except for those conditions in subclauses (I) and (IV)-(VI) of this clause:

(I) non-vertex presentation; e.g., breech or transverse lie or face with position other than mentum anterior;

(II) vaginal bleeding more than bloody show (prior to delivery);

(III) herpetic lesions;

(IV) moderate to severe thick meconium staining of amniotic fluid;

(V) non-reassuring fetal heart rate - persistent baseline rate less than 120 beats per minute or greater than 160 beats per minute; persistent decelerations (greater than 10 minutes without variability or greater than 30 minutes with good variability) or recurring decelerations from baseline. A shorter observation interval prior to transfer may be indicated in the presence of large decreases in rate;

(VI) umbilical cord or extremity prolapse;

(VII) persistent fall in blood pressure to equal to or less than 80/50;

(VIII) pulse persistently greater than 120 or less than 50;

(IX) respiratory rate persistently greater than 30 or less than 10;

(X) elevated temperature, equal to or greater than 100.4 degrees Fahrenheit;

(XI) faintness, pallor, or other signs/symptoms consistent with shock;

(XII) loss of consciousness;

(XIII) persistent severe headache;

(XIV) visual disturbance;

(XV) seizure;

(XVI) chest pain and/or difficulty breathing;

(XVII) uterine inversion;

(XVIII) uterine atony with significant bleeding;

(XIX) significant postpartum bleeding, i.e., greater than 1,000 cc during the first two hours following delivery of the infant;

(XX) third- or fourth-degree perineal laceration, or significant vulvar, vaginal, or cervical laceration; or

(XXI) any other medical or obstetric condition which poses a significant risk to the mother or fetus, as assessed by a midwife exercising ordinary skill and education.

(vii) If any of the following conditions or symptoms are noted during the postpartum period, the midwife will refer the client in a timely manner to a licensed physician who has current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision:

(I) significant vaginal bleeding;

(II) persistent severe headache;

(III) visual disturbance;

(IV) seizure;

(V) significant abdominal pain inconsistent with involution;

(VI) chest pain and/or difficulty breathing;

(VII) signs or symptoms of thrombophlebitis;

(VIII) urinary problems, e.g., difficulty with initiation or emptying, pain, blood, or frequency;

(IX) blood pressure equal to or greater than 140 mm Hg systolic or 90 mm Hg diastolic;

(X) temperature equal to or greater than 100.4 degrees Fahrenheit;

(XI) improper healing or infection of delivery site lacerations;

(XII) inappropriate uterine involution;

(XIII) foul smelling lochia;

(XIV) significant edema of hands, legs, or face;

(XV) signs or symptoms of mastitis unresponsive to natural remedies within 24 hours;

(XVI) hemoglobin less than or equal to 10 g/dl and/or hematocrit less than or equal to 30%; or

(XVII) any other medical or obstetric condition or symptom which poses a risk to the mother, as assessed by a midwife exercising ordinary skill and education.

(viii) If any of the following conditions or symptoms are noted in the neonate at birth or during the immediate postpartum period (the first 24 hours), the infant will be immediately transferred to a physician:

(I) vital signs that indicate the following:

(-a-) APGAR score less than seven at five minutes and/or less than eight at 20 minutes;

(-b-) pulse rate at rest persistently less than 120 beats per minute or greater than 160 beats per minute during the first hour of life and then less than 100 beats per minute or greater than 160 beats per minute;

(-c-) respiratory rate persistently less than 30 breaths per minute or greater than 60 breaths per minute and/or difficulty breathing and/or grunting and/or nasal flaring and/or sternal retraction;

(-d-) persistent temperature equal to or greater than 100.4 degrees Fahrenheit or less than 97.7 degrees Fahrenheit rectally; or

(-e-) requires full cardiopulmonary resuscitation;

(II) physical exam (done within one to two hours of birth) that indicate the following:

(-a-) foul smelling infant;

(-b-) birth injury;

(-c-) flaccidity and/or lethargy and/or irritability;

(-d-) asymmetrical movements of extremities:

(-1-) spasticity;

(-2-) seizure and/or twitching and/or tremor;

(-3-) abnormal tone; or

(-4-) persistent jitteriness;

(-e-) shrill or abnormal cry;

(-f-) vomiting or choking;

(-g-) persistent poor suck or swallow;

(-h-) central cyanosis;

(-i-) pale;

(-j-) persistent "beefy" red skin in conjunction with other signs and symptoms;

(-k-) mottling of skin with normal temperature;

(-l-) jaundice;

(-m-) presence of abnormal rash or vesicles;

(-n-) loss of consciousness;

(-o-) delivered with meconium staining and symptoms of respiratory distress; or

(III) any other condition or symptom which poses a significant risk to the infant, as assessed by a midwife exercising ordinary skill and education.

(ix) If any of the following conditions or symptoms are noted in the neonate within the first 24 to 36 hours after birth, then a consult by a licensed physician who has current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision will be obtained within 24 hours or the time specified:

(I) birth weight less than 5 1/2 pounds with respiratory distress or greater than 10 pounds with signs of hypoglycemia;

(II) congenital anomaly, e.g.:

(-a-) cleft lip and/or palate;

(-b-) possible Down's Syndrome;

(-c-) umbilical abnormalities, e.g., umbilical cord with more or less than three vessels;

(-d-) abnormal abdominal wall; or

(-e-) spinal dimple.

(III) any non-vertex delivery;

(IV) absence of urination within 12-24 hours;

(V) absence of meconium passage within 24-36 hours;

(VI) head/length ratio discrepancy; or

(VII) any other condition or symptom which poses a risk to the infant, as assessed by a midwife exercising ordinary skill and education.

(x) If any of the following conditions or symptoms are noted in the infant during the first four to six weeks of life, the neonate will be referred in a timely manner to a licensed physician who has current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision:

(I) vital signs that indicate the following:

(-a-) pulse rate persistently less than 110 beats per minute or greater than 160 beats per minute;

(-b-) respiratory rate persistently less than 30 breaths per minute or greater than 60 breaths per minute and/or difficulty breathing and/or grunting and/or nasal flaring and/or sternal retraction; or

(-c-) temperature persistently above 99.6 degrees Fahrenheit or less than 96.5 degrees Fahrenheit axillary;

(II) physical exam that indicates the following:

(-a-) flaccidity and/or lethargy and/or irritability;

(-b-) asymmetrical movements of extremities:

(-1-) spasticity;

(-2-) seizure and/or twitching and/or tremor;

(-3-) abnormal tone; or

(-4-) persistent jitteriness.

(-c-) vomiting and/or choking;

(-d-) persistent poor suck and/or poor swallow;

(-e-) central cyanosis;

(-f-) pale;

(-g-) persistent "beefy" red skin in conjunction with other signs and symptoms;

(-h-) mottling of skin with normal temperature;

(-i-) jaundice;

(-j-) presence of abnormal rash or vesicles;

(-k-) loss of consciousness;

(-l-) failure to appropriately wet eight to ten diapers per day;

(-m-) failure to pass stool in a normal manner;

(-n-) bloody stool or abdominal distention;

(-o-) poor feeding, less than eight feedings daily; or

(-p-) failure to gain weight.

(III) abnormal lab:

(-a-) newborn screening; or

(-b-) positive syphilis serology; or

(IV) any other condition or symptom which poses a risk to the infant, as assessed by a midwife exercising ordinary skill and education.

(4) Guidelines for safe and competent care.

(A) The midwife will collect and assess maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the plan of care as necessary:

(i) Antepartum evaluation. The following components will be included in the antepartum evaluation:

(I) History. The history will include an inquiry regarding all of the following categories:

(-a-) client identification;

(-b-) age;

(-c-) race, ethnicity;

(-d-) psychosocial/economic;

(-e-) drug/alcohol/tobacco;

(-f-) medications;

(-g-) allergies;

(-h-) gynecologic;

(-i-) menstrual;

(-j-) contraceptive;

(-k-) sexual;

(-l-) HIV risk;

(-m-) obstetric;

(-n-) current pregnancy;

(-o-) perinatal risk;

(-p-) current problems;

(-q-) medical;

(-r-) surgical;

(-s-) anesthesia problems;

(-t-) hospitalizations;

(-u-) transfusions;

(-v-) family/genetic;

(-w-) immunization status (Td, rubella, etc.);

(-x-) nutrition; and

(-y-) abuse/trauma.

(II) Physical exam/assessment. The physical exam/assessment will include at least the following:

(-a-) weight and height;

(-b-) blood pressure;

(-c-) pulse;

(-d-) breasts, to include teaching on self exam (may be referred);

(-e-) abdomen, to include fundal height, estimated fetal weight, and fetal heart tones;

(-f-) pelvic, to include external genitalia, vagina, cervix, uterus, adnexa, and pelvimetry (unless contraindicated);

(-g-) fetal lie and presentation, if equal to or greater than 36 weeks;

(-h-) estimation of gestational age by physical findings; and

(-i-) assessment of varicosities, edema, and reflexes.

(III) Laboratory. The client will be encouraged to have the following laboratory tests performed:

(-a-) hemoglobin and/or hematocrit or CBC;

(-b-) urine dipstick for protein, glucose, and nitrites;

(-c-) syphilis serology;

(-d-) blood group, Rh type, and antibody screen;

(-e-) hepatitis B surface antigen;

(-f-) rubella screen;

(-g-) pap smear;

(-h-) gonorrhea test, if at risk;

(-i-) chlamydia test, if at risk;

(-j-) HIV test, if at risk; and

(-k-) hemoglobin electrophoresis, if Black or of Italian, Greek, Mediterranean, Philippine or Oriental ancestry and not previously tested.

(IV) Assessment. At the conclusion of the initial evaluation the antepartum client's overall health and risk status will be assessed. The assessment will include a consideration of at least the following:

(-a-) gestational age;

(-b-) maternal status;

(-c-) fetal status;

(-d-) nutritional/Women, Infants, and Children (WIC) status;

(-e-) psychosocial status; and

(-f-) educational needs.

(V) Plan. A plan of care will be developed based upon the assessment of the antepartum client. The plan of care will include a referral plan for diagnosis and treatment if necessary.

(VI) Education and counseling. Health education/counseling will be provided and will include consideration of at least the following (depending upon gestational age, certain of these items may be covered during subsequent visits as appropriate):

(-a-) midwife services/routine;

(-b-) reproductive physiology/anatomy;

(-c-) roles of various members of the health care team;

(-d-) caution concerning medications, recreational drugs, alcohol, tobacco, x-ray and chemical exposure, and sexual transmitted disease (STD) exposure;

(-e-) HIV infection;

(-f-) toxoplasmosis risk;

(-g-) environmental/work hazards;

(-h-) nutritional needs of pregnancy, weight gain, referral to WIC;

(-i-) danger signs of pregnancy appropriate to gestational age;

(-j-) when to seek medical care and where to obtain care in the case of an emergency;

(-k-) delivery arrangements;

(-l-) signs and symptoms of preterm labor;

(-m-) labor;

(-n-) rupture of membranes;

(-o-) fetal movement;

(-p-) minor discomforts/symptoms of pregnancy;

(-q-) comfort measures;
(-r-) physical changes of pregnancy, fetal growth;
(-s-) sexual activity;
(-t-) self breast exam;
(-u-) physical activity/exercise/posture;
(-v-) preparation for labor and delivery, childbirth classes;
(-w-) preparation for parenthood and arrangement for infant health care;
(-x-) infant feeding choices, breast-feeding should be promoted; and
(-y-) family planning/ postpartum care.

(ii) Subsequent antepartum evaluations. The following components will be included in each subsequent antepartum evaluation:

(I) History. Each follow-up history will include an inquiry regarding at least the following historical categories:
(-a-) current problems;
(-b-) progress of pregnancy to include an evaluation of fetal movement after 20 weeks;
(-c-) perinatal risks; and
(-d-) follow-up of problems identified in previous visits.

(II) Physical assessment. Each follow-up assessment will include at least the following:
(-a-) weight;
(-b-) blood pressure;
(-c-) abdomen, to include fundal height, estimated fetal weight, and fetal heart tones;
(-d-) fetal lie and presentation, if equal to or greater than 36 weeks;
(-e-) estimation of gestational age by physical findings; and
(-f-) assessment of varicosities and edema.

(III) Laboratory. Each follow-up assessment will include at least the following:
(-a-) urine dipstick for protein, glucose, and nitrites; and
(-b-) each client will be encouraged to have the following laboratory tests performed at the times indicated:

(-1-) hemoglobin and/or hematocrit at 28 and 36 weeks;

(-2-) blood glucose screening one hour post oral 50 gram glucose load at 24 to 28 weeks;

(-3-) if Rh negative, and initial antibody screen negative, repeat antibody screen at 28 weeks as precursor to Rh immune globulin administration. If the screen is still negative, the midwife will recommend that the client receive Rh immune globulin. If antibody screen is positive, refer to physician; and

(-4-) Maternal Serum Alpha-Fetoprotein (MSAFP) or triple screen, ideally at 16 to 18 weeks, may be done from 15 to 20 weeks.

(IV) Assessment. Each follow-up evaluation will conclude with an assessment which includes a consideration of at least the following:
(-a-) gestational age;
(-b-) maternal status;
(-c-) fetal status;
(-d-) nutritional/WIC status;
(-e-) psychosocial status; and
(-f-) educational needs.

(V) Plan. The current plan of care will be continued or modified based upon the assessment of the client. The plan will include a referral plan for diagnosis and treatment if necessary.

(VI) Education and counseling. The following health education and counseling components will be discussed or reviewed at subsequent evaluations as appropriate to the client's gestational age and needs:
(-a-) danger signs of pregnancy appropriate to gestational age;
(-b-) signs and symptoms of preterm labor, 24-36 weeks;
(-c-) true/false labor, if equal to or greater than 36 weeks;
(-d-) rupture of membranes;
(-e-) fetal movement;
(-f-) comfort measures;
(-g-) weight gain;
(-h-) physical activity/exercise/posture;
(-i-) physical changes of pregnancy/fetal growth;
(-j-) delivery arrangements;
(-k-) preparation for labor and delivery, childbirth classes;
(-l-) preparation for parenthood and arrangement for infant health care;
(-m-) infant feeding choices, breast-feeding should be promoted; and
(-n-) family planning/postpartum care.

(iii) Routine antepartum visits. Routine antepartum visits will be scheduled according to the following intervals:

(I) every four weeks for the first 28 weeks;

(II) every two to three weeks from 28 to 36 weeks;

(III) every week after 36 weeks; or

(IV) more frequently, if indicated.

(iv) Recommended vitamins. The midwife should recommend to all clients that they take one, over-the-counter, prenatal, multi-vitamin supplement with folic acid/iron each day (unless allergic or contraindicated).

(B) The midwife will appropriately evaluate the client when the midwife arrives for the labor and delivery, by obtaining a history, performing a physical exam, and performing a laboratory evaluation. The following components will be included in the evaluation of the client:

(i) History. The history will include an inquiry regarding all of the following:

(I) contractions - onset, frequency, duration;

(II) other abdominal or pelvic pain;

(III) status of membranes - if ruptured, when, amount, clear versus meconium stained;

(IV) vaginal bleeding;

(V) fetal movement; and

(VI) other problems or concerns.

(ii) Physical assessment. The physical will include at least the following:

(I) blood pressure;

(II) pulse;

(III) temperature;

(IV) abdomen, to include estimated fetal weight, fetal lie and presentation, and fetal heart tones;

(V) assessment of varicosities and edema; and

(VI) pelvic exam (unless contraindicated) which will include the following:

(-a-) external genitalia;

(-b-) cervix for dilatation, effacement, station, presentation, and position; and

(-c-) a sterile speculum exam, if necessary, prior to or in lieu of the cervical exam to evaluate for possible rupture of membranes.

(iii) Laboratory. The laboratory assessment will include a urine dipstick for protein, glucose, and nitrites.

(C) The midwife will appropriately monitor the client after the midwife's arrival for the labor and delivery. This monitoring will be done unobtrusively in order not to disturb the physiological process of labor. The following components will be included in the evaluation:

(i) Vital signs. The following vital signs will be obtained:

(I) blood pressure - to be measured at least every two hours, or more frequently if indicated;

(II) pulse - to be taken at least every four hours;

(III) respirations - to be evaluated at least every four hours; and

(IV) temperature - to be measured at least every four hours unless equal to or greater than 99 degrees Fahrenheit, then measured at least every one to two hours.

(ii) Contractions. Contractions will be monitored as follows:

(I) frequency, duration, and intensity at least every two hours in the latent phase of the first stage;

(II) frequency, duration, and intensity at least every 30 minutes to one hour in the active phase of the first stage or as indicated by heart rate patterns; and

(III) frequency, duration, and intensity at least every 15 minutes in the second stage.

(iii) Fetal heart tones. Fetal heart tones will be auscultated as follows:

(I) for routine monitoring, first establish a baseline by listening for several minutes before, during, and after a contraction; then listen during and for at least 30 seconds following a contraction according to the following schedule:

(-a-) at least every two hours in the latent phase of the first stage;

(-b-) at least every 30 minutes in the active phase of the first stage;

(-c-) at least every 15 minutes in the second stage; and

(-d-) for at least 30 seconds immediately after rupture of the membranes, and during and for at least 30 seconds following the next contraction.

(II) For VBAC monitoring, first establish a baseline as in subclause (I) of this clause, then listen during and for at least 30 seconds following a contraction according to the following schedule:

(-a-) at least every two hours in the latent phase of the first stage;

(-b-) at least every 15 minutes in the active phase of the first stage;

(-c-) at least every five minutes in the second stage; and

(-d-) for at least 30 seconds immediately after rupture of the membranes, and during and for at least 30 seconds following the next contraction.

(III) As indicated for bleeding or other signs of a possible problem.

(iv) Cervical and vertex status. Vaginal examinations are performed to assess the progress of labor. Although necessary, they will be kept to a minimum to reduce the risk of infection. Attention will be directed toward aseptic technique. Cervical dilatation and effacement and vertex station and position will be evaluated during each exam.

(v) Membrane status. Membrane status will be monitored for rupture, relative fluid volume, foul odor, and the presence of meconium once ruptured:

(I) temperature monitored every four hours;

(II) pulse monitored every four hours; and

(III) minimal sterile vaginal exams.

(vi) Intake/output status. The intake/output of the client will be monitored as follows:

(I) intake - all oral or other intake will be monitored on an ongoing basis; and

(II) urinary output - the client will be encouraged to void at least every two to three hours. Frequency and relative volume of voiding will be monitored on an ongoing basis.

(vii) Subjective status. The client will be monitored for complaints and concerns.

(viii) The following will not occur:

(I) application of pressure on abdomen or uterus at any stage in labor; and

(II) administration by any method (buccal, vaginal, IM, IV, intranasal, etc.) of oxytocin (Pitocin, Syntocinon, Uteracon), ergot, or prostaglandins prior to or during labor. Oxytocin or ergot may be administered after delivery of the placenta only under delegated authority of a licensed physician with current obstetric knowledge.

(D) The midwife will appropriately assist in normal, spontaneous vaginal deliveries.

(i) When delivery is imminent, the patient will not be left unattended, nor should any attempt be made to delay the birth of the infant by physical restraint; and

(ii) Forceps or vacuum extraction will not be utilized.

(E) The midwife will appropriately monitor and advise the mother during the immediate postpartum period for at least two hours and until her condition is stable. The following components will be evaluated or covered during this time period:

(i) Vital signs. The following vital signs will be obtained:

(I) blood pressure - to be measured at least every 15-30 minutes during the first hour and then every hour if stable;

(II) pulse - to be taken at least every 15-30 minutes during the first hour and then every hour if stable;

(III) respirations - to be taken at least every 15-30 minutes during the first hour and then every hour if stable; and

(IV) temperature - to be taken at least every four hours.

(ii) Intake/output status. Intake and output will be monitored.

(iii) Physical assessment. The client will be assessed frequently to assure that:

(I) the uterine fundus is well contracted; and

(II) bleeding is not excessive.

(iv) Subjective status. The client will be monitored for complaints and concerns.

(v) Laboratory and isoimmunization prophylaxis. If unsensitized and Rh negative, the client will be referred to a licensed physician with current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision within 72 hours of delivery for laboratory work-up and administration of Rh immune globulin or the midwife will obtain the necessary laboratory specimen and administer Rh immune globulin under standing delegation order from a licensed physician with current obstetric knowledge within 72 hours of delivery.

(vi) Education and counseling. Health education and counseling will be provided and will include consideration of at least the following (reinforcement will occur during subsequent postpartum visits):

(I) diet/nutrition;

(II) bowel/bladder function;

(III) postpartum bleeding;

(IV) perineal care;

(V) breast-feeding;

(VI) warning signs;

(VII) pain relief;

(VIII) physical activity/exercise;

(IX) sexual activity;

(X) contraception; and

(XI) infant care - located in subparagraph (F)(iii) and subparagraph (J)(vi) this paragraph.

(F) The midwife will appropriately evaluate the newborn by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the immediate postpartum period; provide necessary infant care; and provide pertinent education and counseling to the mother:

(i) Evaluation and monitoring. The following components will be included in the evaluation and monitoring of the infant.

(I) Vital signs. APGAR scores will be obtained at one minute and five minutes. If the five minute score is less than seven, obtain additional scores every five minutes until twenty minutes has passed or two successive scores are equal to or greater than 7. The following vital signs will be taken at 30 minute intervals for at least two hours or until the infant's temperature has stabilized, whichever is longer:

(-a-) pulse;
(-b-) respirations (rate and effort); and
(-c-) temperature.

(II) Physical exam. The physical exam will include at least the following:

(-a-) skin;
(-b-) head and neck;
(-c-) eyes, ears, nose, and throat;
(-d-) fontanel;
(-e-) heart/lungs;
(-f-) abdomen;
(-g-) umbilical cord;
(-h-) external genitalia;
(-i-) back;
(-j-) extremities (check for hip dislocation);
(-k-) neurological exam; and
(-l-) weight, length, head circumference.

(III) Laboratory.

(-a-) Cord blood will be taken and submitted to a state-approved lab for testing for syphilis. In the event that cord blood is not obtained, the midwife will arrange for collection of a specimen of blood from the mother within 24 hours after delivery and submit such sample to an approved laboratory; and

(-b-) The blood specimen for the first newborn screening will be obtained after 36 hours of age. It should be obtained after the baby has been breast-feeding or on protein (milk) feeding for at least 24 hours. The second screen will be done between one and two weeks of age.

(IV) Monitoring. The newborn will be observed for a minimum of two hours if stable with no signs of distress.

(ii) Care of the infant. The following components will be included in the care of the infant.

(I) Prophylaxis. Eye treatment will be provided within two hours after birth using one of the CDC approved ophthalmic preparations, i.e., silver nitrate, erythromycin, or tetracycline; and

(II) Feeding. Feeding can begin in the immediate newborn period if the infant is stable with no signs of distress.

(iii) Education and counseling. The following components will be included in education and counseling of the mother:

(I) Signs and symptoms. The significance of the following if observed in the newborn will be discussed:

(-a-) poor suck;

(-b-) abnormal cry;

(-c-) irritability, lethargy; or

(-d-) elimination:

(-1-) abnormalities with urine; or

(-2-) abnormalities with stool.

(II) Health care and immunization. Information regarding health care and immunization will be provided as follows:

(-a-) Routine pediatric care by a licensed physician with current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision will be recommended to begin at birth. Arrangements with an appropriate physician or other health care provider should be made during the antepartum period;

(-b-) The administration of the first hepatitis B vaccine at 12 hours of age will be discussed; the client will also be educated during the antepartum period about hepatitis B and the newborn hepatitis B vaccine; and

(-c-) The client should be referred to a licensed physician or other health care provider for vaccine information.

(G) The midwife will appropriately evaluate the mother at one to two days postpartum, including the following components.

(i) History. The history will include consideration of at least the following:

(I) current problems;

(II) abdominal/uterine/perineal pain;

(III) bleeding;

(IV) intake/output; and

(V) breast-feeding.

(ii) Physical assessment. The physical assessment will include at least the following:

(I) blood pressure;

(II) pulse;

(III) respirations;

(IV) temperature;

(V) breasts;

(VI) abdomen/fundus;

(VII) perineum; and

(VIII) assessment of varicosities and edema.

(iii) Laboratory. Hemoglobin and/or hematocrit or CBC will be strongly encouraged.

(iv) Assessment. The assessment will include at least the following:

(I) physical status;

(II) nutritional/WIC status; and

(III) psychosocial status.

(v) Plan. A plan of care will be developed based upon the assessment of the client. The plan of care will include a referral plan for diagnosis and treatment if necessary. The client will be counseled regarding family planning, contraception, and routine health care provided by a licensed physician or another licensed health care provider supervised by a licensed physician. The client's prenatal, multi-vitamin supplement with folic acid/iron should be continued during the postpartum period unless contraindicated.

(H) The midwife will appropriately evaluate the mother at two to three weeks postpartum, including the following components:

(i) History. The history will include consideration of at least the following:

(I) drugs/alcohol/tobacco;

(II) medications;

(III) current problems;

(IV) nutrition;

(V) bowel/bladder function;

(VI) abdominal/uterine/perineal pain;

(VII) bleeding; and

(VIII) breast-feeding.

(ii) Physical assessment. The physical assessment will include at least the following:

(I) blood pressure;

(II) pulse;

(III) weight;

(IV) abdomen/fundus;

(V) perineum; and

(VI) assessment of varicosities and edema.

(iii) Assessment. The assessment will include at least the following:

(I) physical status;

(II) nutritional/WIC status; and

(III) psychosocial status.

(iv) Plan. The current plan of care will be continued or modified based upon the assessment of the client. Family planning, contraception, and the client's medical postpartum follow up will be discussed.

(I) The midwife will appropriately evaluate the mother at four to six weeks postpartum, including the following components.

(i) History. The history will include consideration of at least the following categories:

(I) drugs/alcohol/tobacco;

(II) medications;

(III) allergies;

(IV) current problems;

(V) abdominal/uterine/perineal pain;

(VI) nutrition;

(VII) bowel/bladder function;

(VIII) bleeding;

(IX) menstruation;

(X) gynecologic;

(XI) sexual activity;

(XII) contraception; and

(XIII) abuse/trauma.

(ii) Physical exam/assessment. The physical exam/assessment will include at least the following:

(I) blood pressure;

(II) pulse;

(III) weight;

(IV) abdomen;

(V) pelvic exam to include external genitalia, vagina, cervix, uterus, and adnexa; and

(VI) assessment of varicosities and edema.

(iii) Laboratory. Hemoglobin and/or hematocrit or CBC will be encouraged.

(iv) Assessment. The assessment will include at least the following:

(I) physical status;

(II) nutritional/WIC status; and

(III) psychosocial status.

(v) Plan of care. A plan of care will be developed based upon the assessment of the client. The plan of care will include a referral plan for diagnosis and treatment if necessary. Family planning, contraception, and routine health care follow up provided by a licensed physician or other licensed health care provider operating under the supervision of a licensed physician should be reiterated.

(J) The midwife appropriately encourages follow-up care of the infant in concert with the mother for the first four to six weeks postpartum. The following components will be included in each evaluation of the newborn.

(i) History. The history will include consideration of at least the following categories:

(I) feeding;

(II) bowel and bladder function;

(III) concerns of mother;

(IV) problems;

(V) illnesses;

(VI) allergies; and

(VII) evaluations by other health care providers.

(ii) Vital signs. The following vital signs will be taken:

(I) pulse;

(II) respiratory rate; and

(III) temperature.

(iii) Physical assessment. The physical assessment will include at least the following:

(I) general health;

(II) muscle tone;

(III) feeding pattern;

(IV) color;

(V) skin condition;

(VI) elimination; and

(VII) cumulative weight gain.

(iv) Assessment. The infant's overall health and risk status will be assessed. The assessment will include at least the following:

(I) physical status; and

(II) feeding and weight gain status.

(v) Plan of care. A plan of care will be developed based upon the assessment of the infant. The plan of care will include a referral plan for diagnosis and treatment if necessary. The midwife will encourage the mother to take the infant to a licensed physician with current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision for a complete six week assessment.

(vi) Education and counseling. Health education and counseling will be provided to the mother and reviewed as appropriate to the infant's age and needs. It will include consideration of at least the following:

(I) diet, nutrition;

(II) bowel and bladder function;

(III) growth, weight gain;

(IV) bathing;

(V) clothing;

(VI) injury/poison prevention;

(VII) danger signs, illness;

(VIII) medical care and follow up; and

(IX) immunizations.

(5) Safe environment. The midwife:

(A) assesses the birth setting for reasonable freedom from environmental hazards;

(B) arranges, with the cooperation of the woman and family, the intended birth place;

(C) brings her/his own equipment;

(D) will not make arrangements for a home delivery if there is no phone available at the home or nearby or an adequate emergency transport system;

(E) promotes involvement of family and support persons in the birth setting;

(F) does not leave the client unattended during established active labor;

(G) is available and responds promptly to her client's needs;

(H) follows accepted infection control procedures regarding equipment, examinations, and procedures; and

(I) is familiar with and practices universal precautions established by Occupational Safety and Health Administration (OSHA) guidelines.

(6) Community systems. The midwife:

(A) collaborates and consults with and refers to the available medical and health care community;

(B) utilizes ancillary health and social community services; and

(C) demonstrates knowledge of psychosocial, economic, cultural, and family factors that may affect care, appropriate collaboration, and referral.

(7) Midwifery care records. The midwife:

(A) completely and accurately documents the client's history, physical exam, laboratory test results, antepartum visits, consultation reports, referrals, labor, delivery, postpartum visits, and neonatal evaluations at the time midwifery services are delivered and when reports are received;

(B) utilizes a record format that facilitates communication of information to consultants or other appropriate providers of care;

(C) facilitates clients' access to their own records;

(D) maintains the confidentiality of client records; and

(E) retains records for a minimum of five years.

(8) Evaluation and quality assurance. The midwife:

(A) collects client care data systematically and is involved in analysis of that data for evaluation of the process and outcome of care;

(B) seeks consultation to review problems identified by the midwife or by other professionals or consumers in the community; and

(C) acts to resolve problems that are identified.

(9) Sample Prenatal Genetic Screen. The following questions on this sample prenatal genetic screening form should be answered to determine possible risks.
Figure: 22 TAC §831.51(b)(9)

§831.121. Newborn Screening.

(a) Each midwife who assists at the birth of a child is responsible for seeing that newborn screening tests are performed according to the Health and Safety Code, Chapters 33 and 34, and 25 Texas Administrative Code §§37.51-37.69 (relating to Newborn Screening Program). The midwife may perform the tests or refer for them. If she or he does them, then she or he must have been appropriately trained. Each midwife must have one of the following documents on file with the midwifery program in order to be documented.

(1) Midwife Training Certification Form for Newborn Screening Specimen Collection. Should the midwife choose to do the newborn screening she or he will obtain training to perform this test from an appropriate health care facility. Instruction will be based upon the procedure for newborn screening developed by the department's Newborn Screening Program under authority of the Health and Safety Code, Chapter 33. The midwife who requests the training must show the training facility a copy of her or his documentation form to prove that she or he is in compliance with the Midwifery Act. At the completion of the instruction for newborn screening blood collection, the midwife will request that the form *Midwife Training Certification Form for Newborn Screening Specimen Collection* be signed by the designated representative of the health care facility, attesting to the fact that the midwife has complied with this requirement. This training, as part of the documentation requirements, is only necessary once unless there is a change in screening procedures.

(2) Newborn Screening Agreement for Newborn Babies of Midwife Clients. The midwife could also choose to refer the family to have the infant's screening done at an appropriate health care facility. In this case, the midwife must use the form *Newborn Screening Agreement for Newborn Babies of Midwife Clients* to attest to her responsibility for seeing that the screening is done and to designate a facility for such screening. The form must include a section where the facility representative signs, agreeing that the facility will do the screening.

(b) As long as the midwife has been approved to perform the newborn screening test, the act of collecting this specimen will not constitute "practicing medicine" as defined by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §1.03(a)(12).

(c) As long as one is available, a physician or an appropriately trained professional acting under standing delegation order from a physician at an appropriate health care facility shall instruct midwives in the proper procedure (newborn screening collection procedure of the department's Newborn Screening Program) for newborn screening blood specimen collection and submission. The physician, registered nurse, or any other person who instructs a midwife in the approved techniques for newborn screening on the orders of a physician is immune from liability arising out of the failure or refusal of a midwife to:

(1) collect and submit the blood specimen in an approved manner; or

(2) send the samples to the designated department laboratories in a timely manner.

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 July 12, 1999.

TRD-9904186
Edna Dougherty
Chair
Texas Midwifery Board
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Proposal publication date: March 5, 1999
For further information, please call: (512) 458–7236

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Subchapter H. Midwives

25 TAC §§37.171–37.174, 37.176–37.177, 37.179, 37.181–37.185

The Texas Department of Health (department) adopts the repeal of §§37.171-37.174, 37.176, 37.177, 37.179, and 37.181-37.185, concerning the regulation of midwives without changes to the proposed sections as published in the March 5, 1999 issue of the *Texas Register* (24 TexReg 1559), and therefore the sections will not be republished.

The department adopts repeal of the sections in 25 Texas Administrative Code (TAC) in order that new sections may be adopted by the Texas Midwifery Board at 22 TAC, Examining Boards, Chapter 831, Midwives. The Texas Midwifery Board is authorized by the Texas Midwifery Act (the Act), Texas Civil Statutes, Article 4512i, §8A(b), to adopt rules concerning documentation of midwives; standards for approval of midwifery education courses, instructors, and facilities; standards for midwifery practice; basic and continuing midwifery education requirements; reporting and processing complaints; disciplinary procedures; procedures for reciprocity for initial documentation; and any additional rules necessary to implement any duty imposed on the board by the Act, subject to the approval of the Texas Board of Health. The repeals are necessary for the limited purpose of locating all rules governing the documentation and regulation of midwives in 22 TAC Chapter 831, based on the Midwifery Board's increased rulemaking and enforcement authority. The new rules adopted by the Midwifery Board in 22 TAC, Chapter 831, can be found in this issue of the *Texas Register* in the Adopted Rules section.

No comments were received on the proposed repeals.

The repeals are adopted under Health and Safety Code, §12.001(b), which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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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Susan K. Steeg
General Counsel
Texas Department of Health
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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 321. Control of Certain Activities by Rule

Subchapter B. Concentrated Animal Feeding Operations

30 TAC §§321.31–321.37, 321.39–321.42, 321.46, 321.47

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §§321.31-321.37, 321.39-321.42, 321.46, and new §321.47, concerning technical requirements and administrative procedures relating to authorizations of concentrated animal feeding operations (CAFOs). The amendments and new section are adopted with changes to the proposed text as published in the January 8, 1999, issue of the *Texas Register* (24 TexReg 242).

The purpose for adopting the amendments to these rules is to provide for state assumption of National Pollutant Discharge Elimination System (NPDES) permitting of CAFO facilities. On September 14, 1998, the United States Environmental Protection Agency (EPA) authorized Texas to implement its Texas Pollutant Discharge Elimination System (TPDES) program. TPDES is the state program to carry out both the NPDES, a federal regulatory program to control discharges of pollutants to surface waters of the United States, and the corresponding state permitting program. As part of the TPDES program, Texas has assumed responsibility for authorization of CAFO facilities.

The current Subchapter B CAFO rules were adopted by the commission on August 19, 1998 and became effective on September 18, 1998. TNRCC's current authorizations by rule for CAFOs are state-only authorizations. The purpose of these rules is to implement NPDES assumption and to make the existing rules consistent with federal regulations. As amended, this subchapter will allow the TNRCC to administer a single permitting program for NPDES and state permits and provide CAFOs the opportunity to apply for just one permit to gain both state and federal coverage.

The commission has taken into consideration the following state and federal actions in proposing these amendments to Subchapter B: (1) EPA Region VI General Permit for CAFOs (March, 1993), which establishes the currently effective technical and procedural requirements for CAFOs to meet in order to maintain federal authorization to discharge under NPDES; (2) Proposed EPA Region VI NPDES General Permit for CAFOs (1998), which proposes requirements for permit coverage for CAFOs that discharge or have a potential to discharge process wastewater into waters of the United States; (3) §26.040 of the Texas Water Code, under which Subchapter B was originally adopted and which directed that the commission may by rule regulate and set requirements and conditions for discharges of waste whenever the commission determines that requiring individual permits is unnecessarily burdensome both to the waste discharger and to the commission; (4) HB 1542, 75th Texas Legislature (1997), which amended §26.040 of the Texas Water Code. This bill specifies that all current rules adopted by the TNRCC under §26.040 as it read prior to the effective date of the HB 1542 remain in effect, as they may be amended by the commission from time to time as appropriate, and provides that the commission's authority for subsequent amendments or modifications is not affected by the changes made by the bill; (5) Proposed EPA Region VI NPDES General Permit for CAFOs Located in Impaired Watersheds (1998), which proposes additional requirements for permit coverage for CAFOs and others that discharge or have a potential to discharge process wastewater into a watershed impaired by CAFO-related activities; (6) NPDES Memorandum of Agreement between the TNRCC and EPA Region VI (September 14, 1998), which establishes policies, responsibilities, and program commitments for assumption of the NPDES program by the TNRCC; (7) Federal NPDES Regulations contained in 40 Code of Federal Regulations (CFR) Parts 122, and 412; (8) EPA and United States Department of Agriculture (USDA) *Unified National Strategy for Animal Feeding Operations* (March 9, 1999) which proposes goals and performance expectations for

animal feeding operations; (9) Environmental Assessment and Finding of No Significant Impact on the Proposed Reissuance of EPA's NPDES General Permit for CAFOs (January 1999).

In its adoption of amendments to Subchapter B in 1998, the commission changed the existing technical and procedural requirements for some CAFOs. The CAFO permitting procedure as it operated prior to the adoption of the permit-by-rule system in 1995 required the agency to invest significant resources and manpower performing repetitive technical reviews and evaluations in order to develop individual draft permits for all CAFOs, even though federal and state experience establishes that permits for most CAFO facilities should contain basically uniform technical requirements. The agency was criticized by applicants, local economic development organizations, agricultural commodity groups, local chambers of commerce, and legislators for taking too long to process applications that was necessary when all applications had to be for individual permits. Such criticism indicated that the long processing time and the differing technical requirements from the existing EPA Region VI general permit, were combining to force potential CAFO facilities to locate in other states, depriving our state of economic development opportunities and making it difficult and burdensome to obtain the necessary state and federal authorizations. Partially in response to these expressions of concern, the TNRCC adopted Subchapter K in 1995. By judgement rendered in *ACCORD Agriculture, Inc. v TNRCC* (Cause Number 96-00159), 353rd Judicial District of Travis County (*Accord*) in May 1998, Subchapter K was set aside due to procedural defects in its adoption. The district court's judgement setting aside Subchapter K was recently upheld by the 3rd Court of Appeals by a decision rendered on June 17, 1999. The 1998 amendments to Subchapter B were developed and adopted both to address the substantive problems Subchapter K was created to ameliorate and to correct the defects in the adoption of Subchapter K cited by the district court.

The commission and other state agencies have been required through the appropriations process in the last several legislative sessions to reduce the number of their employees and overall costs of conducting their various programs. Since its consolidation in 1993, the commission has continued to evaluate its programs to find ways to reduce its overall human resources costs and associated expenses, while providing for the continued protection of the quality of the state's resources under its jurisdiction. The commission identified CAFOs as one of the number of types of facilities for which it is appropriate to modify the commission's authorization procedure from entirely an individual permitting process to one that partly utilizes permits-by-rule, so as to provide a performance-based system with a less time- consuming and labor-intensive administrative process while maintaining a high level of protection for the environment.

To permit each facility individually would lead to a backlog of such permitting actions, similar to occurrences before the implementation of permits by rule through the former Subchapter K. Of the 46 major amendment applications received between 1992 and 1994, 21 applications exceeded a technical review time of 180 days and thus considered in backlog. Of the 119 new applications received between 1992 and 1994, 41 applications exceeded a technical review time of 180 days and thus considered in backlog. Overall, there was a 38% backlog of new and major amendment applications received between 1992 and 1994. The commission believes its resources are better spent conducting full individual permitting procedures mostly for those facilities that regularly discharge waste into surface waters, and thereby have a greater potential for pollution, while regulating by uniform rule or general permit most facilities that are not allowed to discharge into a stream or water body unless there is a rainfall, either chronic or catastrophic, greater than a 25-year, 24-hour event. The commission has elected to regulate CAFOs through the permit-by-rule under §26.040 of the Texas Water Code because generally, the permitted discharges from these facilities will be relatively small quantity discharges. This permit authorizes discharges that occur only occasionally and only in the event of a chronic or catastrophic rainfall event. Since discharges may occur only in the presence of large quantities of rainwater, the pollutant content of the discharged effluent will be small. As such, these discharges will be infrequent and small in total quantity compared to other types of industrial and municipal facilities that discharge continuously. Such action is consistent with the provisions and philosophy of the EPA Region VI General Permit for CAFOs. The 1998 amendments to Subchapter B provided a process of gaining authorization similar in nature and structure to that used by EPA Region VI. Amendments adopted today will complete the process of bringing the technical requirements of the state program up to those of the federal program, allowing the CAFOs in the state to achieve a single set of standards and provide the basis under which the state will efficiently administer assumed administration the TPDES CAFO program upon authorization of the program.

Before institution of permits by rule, in addition to obtaining an individual water quality permit, an applicant wanting to construct a new CAFO facility or amend or renew an authorization for an existing facility was required to obtain a separate air quality authorization through a separate and distinct process under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). These adopted amendments to Subchapter B not only are consistent with the provisions of the EPA Region VI General water quality Permit for CAFOs, and they go even further by including additional requirements which address the commission's responsibilities for protection of both groundwater and air quality.

The permit by rule system initiated by the adoption of Subchapter K; the 1998 and these newly adopted amendments to Subchapter B provide a process under which CAFOs can gain coverage or authorization fully protective of both air and water quality through a single process. This combined process will conserve limited resources and manpower. The 1998 amendments to Subchapter B were adopted, in part, to replace the judicially nullified Subchapter K and to make state requirements for new facilities consistent with existing federal EPA requirements contained in 40 CFR Part 122, relating to CAFOs. In addition to providing more consistency with the federal regulations, the 1998 amendments, and this amendment to this subchapter will enable the commission to regulate these facilities in a manner that conserves scarce resources, and will relieve burdens on the commission and the CAFOs by consolidating air and water quality authorization requirements into a single process.

Subchapter B allows a CAFO to obtain an air quality standard permit through the procedures identified in this amended subchapter, regardless of whether its water quality authorization takes the form of an individual permit, registration under the permit by rule, or coverage under the proposed general permit. Section 382.0518(a) of the Texas Clean Air Act (TCAA) states that a permit is required to construct a new facility or to modify

an existing facility that may emit air contaminants. As authorized by TCAA, §382.051(b)(3), the standard permit under this subchapter satisfies the TCAA requirements for these facilities, that would otherwise be subject to §382.0518, so that a separate air quality authorization will not be necessary. The CAFO standard permit is not a new requirement, but provides an alternative to the New Source Review permit process of Chapter 116, Subchapter B. The standard permit alternative specifies design, location, operational, and maintenance requirements that are typically included in an air quality permit under Chapter 116 and are adequate to protect the public's health, safety, and use of physical property. The air quality requirements of this subchapter essentially reflect the control technology that would be required as best available control technology (BACT) for a facility applying for an individual permit, including the requirement to develop and operate under a pollution prevention plan (PPP), design criteria for lagoons, operational requirements for single and multi-stage lagoon systems, requirements for wastewater irrigation practices and waste application practices, maintenance scheduling and reporting requirements for solids removal from lagoons, requirements for manure stockpiling, minimum buffer distance for nighttime application of liquid and solid waste, flushing and scraping schedules for manure, maintenance and design of earthen pens, operational requirements for settling basins, dead animal disposal regulations, and inspection requirements. Many of these requirements affect both air and water quality, and are required regardless of whether an owner/operator seeks separate air authorization. Those that are required only when seeking air authorization are identified as "(Air quality only)" in this subchapter. In addition, §321.46 outlines minimum buffer distances and the requirement to submit an odor control plan for certain CAFOs. As adopted, §321.46 states that a CAFO is entitled to an air quality standard permit authorization in lieu of the requirement to obtain a separate air quality authorization under Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification) if it either: (1) meets all of the requirements for registration or individual permit outlined in this subchapter; or (2) meets all of the requirements for operating under a CAFO general permit and satisfies all the applicable air quality only requirements including any applicable buffer distances and the odor control plan. If an applicant cannot meet the air quality criteria of this amended subchapter, or if the CAFO is a major source or major modification as defined in Chapter 116 of this title, then a separate air quality permit will be required.

The registration or permit by rule process will relieve the commission of the unproductive burden of processing individual permit applications for those CAFOs that either do not qualify for, or choose not to be, covered by an adopted general permit, but are nevertheless appropriately regulated if they comply with the requirements of the permit by rule. The 1998 and this amendment to Subchapter B also preserve the commission's flexibility to require any facility to apply for and obtain an individual permit, for any reason that within the commission's judgment makes it necessary or appropriate that they do so. In this way, the commission will be able to use its resources efficiently to concentrate individual attention more directly where it is needed. This type of efficiency is possible in the regulation of CAFOs because, as reflected in this amended permit by rule, most CAFOs, if designed and operated properly in conformity with uniform standards, will avoid discharging into surface water except under exceptional circumstances. Those that fall outside of that group will still receive individually tailored permits and provisions.

For registrations, the 1998 and these amendments create a public participation procedure similar to that used by the commission for registrations under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation). These include notice of technically complete applications both published in the locality of the proposed operation and mailed to potentially affected landowners and other interested persons and governmental authorities, opportunity for public comment, consideration by the executive director of such comment timely received, and procedures for commenters or the applicant to ask the commission for reconsideration of the executive director's action on a registration application. For those who have exhausted their administrative remedies and otherwise have standing, there is then the ability to appeal the commission's final decision to state district court under Texas Water Code, §5.351. Thus, these amended rules provide for full public notice, scrutiny and input, as well as commission and judicial review, while reserving for those cases where an individual permit is appropriate the full contested case hearing provided for under §26.028 of the Water Code. Mindful that even the most simple contested case hearing costs the agency several thousand dollars in staff time alone, the commission adopted Subchapter K and then the 1998 amendments and these amendments to Subchapter B, in part, as a way to direct such resources to those cases where circumstances make an individual permit necessary for effective regulation.

In consultations with EPA on this draft permit-by-rule, EPA expressed concerns that the cumulative or individual permitted discharges from CAFOs might result in or contribute to excursions above state water quality standards. In its comments on the proposal, the United States Fish and Wildlife Service (USFWS) recommended that Subchapter B not authorize new CAFOs: (1) in Oldham, Potter, Hutchinson, Roberts, and Hemphill Counties that have the potential to discharge directly into the Canadian River; (2) where into waters in areas designated as critical habitat for the Concho Water Snake; or (3) where they may discharge into aquatic systems designated by USFWS as being of critical concern or high priority. Also, USFWS recommended that these rules establish additional requirements for CAFOs already operating in those watersheds in order to reduce the frequency and volume of permitted discharges.

EPA, USFWS, and TNRCC agree that it is the commission's responsibility to incorporate into its permits those conditions necessary to maintain state water quality standards where they are currently being met and to attain them where they are not. For those Texas waters that are currently maintaining their approved water quality standards, there is little, if any, verifiable evidence that CAFO management practices and discharges that have been permitted under existing EPA and Texas rules and permits have caused or contributed to impairment of aquatic life uses. The commission, EPA, USFWS, and the Texas Parks and Wildlife Department (TPWD) agree, however, that more information is needed in order to accurately assess whether changes are needed in permitting requirements for CAFOs. Therefore, the commission and EPA have agreed that a comprehensive study will be designed and executed under the joint planning and management of our agencies, with participation of USFWS, TPWD, and other state and federal agencies with appropriate expertise. The objective will be to

define and then to answer relevant questions with regard to the effects of permitted CAFO discharges.

The study will be conducted in two phases and its goal will be to produce peer reviewed, verified, and reproducible results in three to five years. Phase I will consist of gathering, cataloging, and analyzing currently available data including, for example, records of rainfall events, reported CAFO discharges, and streamflow data. It will result in the selection of two or more distinct study areas in Texas for study and sampling in Phase II and in sampling in preparation for analysis in during Phase II. In Phase I, we will also analyze available short and long term modeling protocols for use in Phase II. If feasible and agreeable, some aspects of Phase II may be initiated during Phase I.

Phase I will be completed in 12-15 months, at which point EPA and TNRCC will publish in the *Texas Register* for public comment, a joint report consisting of the results of Phase I and the plan for Phase II. Depending on the results of Phase I, the second phase will consist of conducting modeling and instream sampling during discharge events and analysis of best management practices, structural requirements, and other means to affect the quantity, frequency, and content of CAFO discharges. The results will be used by TNRCC as a resource for the determination of what changes, if any, should be made in Subchapter B at its renewal.

At the conclusion of Phase I, EPA and TNRCC will consider whether any amendment to Subchapter B is necessary at that time. As set out in the Memorandum of Agreement governing administration of the TPDES program, TNRCC will propose to amend this CAFO permit by rule in response to a specific and well-grounded request by EPA to do so. Likewise, under TNRCC rules, the commission may also make an appropriate amendment in response to a petition from any governmental agency or member of the public to do so, or if the executive director determines that information not available at the time of issuance of this permit by rule justifies amendment of the permit terms.

Under its rules, the commission may make an appropriate amendment at any time in response to a petition to do so or if the executive director determines that information not available at the time of adoption of this permit by rule justifies amendment of the permit terms. All registrants for the permit by rule adopted today should remain aware of the commission's authority and duty to amend the terms of the permit any time it is necessary to do so in accordance with commission rules implementing state water quality standards, the state permitting program, or TPDES. Such amendments may result from the total maximum daily loads (TMDL) process, the study described in this preamble, or any other appropriate cause. The commission points out, as well, that under §321.33(b), the executive director may at any time require a facility to apply for any individual permit, even if that facility holds a registration under the permit by rule. The adoption of a TMDL or an implementation plan for a TMDL is a factor that would be considered by the commission as grounds for making such a requirement. The commission also has the option of issuing statewide or area-specific general permits in response to TMDLs, and requiring registrants to transfer to those or to obtain a site-specific individual permit.

The commission notes two additional facts in response to EPA's and USFWS' concerns. First, the commission is currently conducting its TMDL analysis in the Upper North Bosque River segment in which CAFO operations have been identified as one factor in existing water quality impairment. That process is scheduled to be completed by the end of 1999, and implementation will begin at that point. The commission will be developing TMDLs in all impaired segments over the next several years in accordance with the schedule and plan approved by EPA. When the results of the TMDL process in the Bosque or any other impaired segment warrant amendment to the Subchapter B permit by rule or any other permit in the subject watershed, the commission will act under the authority of its rules to amend the permit if appropriate to do so at that time.

Second, the Texas Legislature has added §26.0286 to the Texas Water Code to require individual permits, rather than general permits or registrations under Subchapter B, to authorize new CAFOs to operate within certain distances of any body of surface water that is the sole source of drinking water for a municipality. The commission's staff is currently drafting proposed rules to implement that amendment with regard to over 150 such surface water bodies.

EXPLANATION OF ADOPTED RULES

As amended, §321.31, Waste and Wastewater Discharge and Air Emission Limitations, deletes the term "disposed of" in order to clarify that disposal of CAFO waste or wastewater in not authorized by Subchapter B. Rather, the land application of manure and wastewater to cropland may be authorized at levels that do not exceed agronomic rates.

This amended section also clarifies that discharges authorized by subsection (b) are restricted to discharges from properly operated facilities that have valid permits or registrations.

The amended section also provides that facilities authorized under these rules must comply with 30 TAC §305.125 and all applicable permit conditions contained in TNRCC rules.

As amended, in §321.32, Definitions, the term "weaned swine weighing under 55 pounds" was added in the definitions for "animal unit" and "CAFO" to reflect that amended rules regulate weaned swine weighing under 55 pounds. The definition for "new concentrated animal feeding operation" was modified to clarify that a CAFO would be considered new if it was not in operation on August 19, 1998. The definition for "CAFO general permit" was modified to accomplish consistency between state and federal programs. The definition for agronomic rates was changed to provide that land application of animal waste or wastewater must enhance soil productivity.

As amended, §321.33, Applicability, provides that as part of NPDES assumption, TNRCC adopted the EPA's 1993 CAFO general permit, which remains in effect as TPDES authorization for those facilities with notice of intents filed with EPA and approved prior to March 10, 1998. That permit will cease to be effective when replaced by the TPDES permit by rule adopted today. Facilities that were operating under the expired EPA issued general permit must now obtain TPDES authorization from TNRCC. Within 60 days of the effective date of these amended rules, each such facility shall apply for authorization under this amended subchapter and shall continue to operate the facility under the terms of the expired authorization until final disposition of the application. Facilities already holding individual TPDES permits issued by TNRCC need no new or additional authorization.

Any facility that holds an authorization from the TNRCC and that is not required to obtain NPDES authorization shall continue to operate under the terms of its existing TNRCC authorization until expiration, amendment, or termination. All such TNRCC authorizations shall expire five years from the effective date of these amended rules, unless such authorization specifies an earlier expiration date.

Any facility that holds an authorization from the TNRCC and that is required, but does not hold, a current NPDES authorization, shall file an application under this subchapter within 60 days of the effective date of these rules. Failure to timely submit an application may result in enforcement proceedings.

By written request to the executive director, the owner or operator of any facility which is not required to obtain NPDES authorization may request a transfer of its authorization from an individual permit granted by the commission to a registration. If approved, such transfer shall not require any changes to existing structural measures which are documented to meet design and construction standards in effect at the time of installation.

Any facility with an unexpired authorization under Chapter 321, Subchapter K and which is not required to obtain NPDES authorization, may request a transfer of its authorization to a registration under this subchapter if a written request is submitted on forms approved by the executive director and the facility operates in accordance with the provisions of this subchapter. Those holding unexpired authorizations under Subchapter K are not excluded from this transfer provision. Subchapter K was declared invalid, and six specific Subchapter K registrations were set aside by judgment of a State District Court in 1998 which was recently affirmed by the 3rd Court of Appeals. This proposal provides an optional vehicle for facilities with unexpired Subchapter K authorizations not specifically nullified by judicial order to transfer to Subchapter B.

An owner or operator holding a current authorization is required to obtain an amendment prior to making any substantial modification to the facility. Substantial modifications are those that result in an increase in the number of animals authorized to be confined, a change in the required buffer zone or required lagoon capacity, a change in boundaries of the site plan, or a violation of any management practice or physical or operational requirement of this subchapter.

As amended, §321.34, Procedures for Making Application for an Individual Permit, adds an amendment procedure for individual permits. In addition, only facilities which are not required to obtain NPDES authorization under federal law are eligible for automatic renewal of their permit.

In this section as amended, all applications for permit renewal must be administratively and technically complete and meet all applicable technical requirements of this subchapter.

In this section as amended, a facility which is not required under federal law to obtain NPDES authorization may apply for a state-only individual permit, for a term of five years, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event.

In this section as amended, notice, public comment, and hearing on applications shall be conducted in accordance with commission rules governing individual permits issued under Chapter 26 of the Texas Water Code.

As amended, §321.35, Procedures for Making Application for Registration, subsection (a), was amended to clarify that the reference to the adoption of these amended rules is in 1999.

In this section as amended, a facility which is not required under federal law to obtain NPDES authorization may apply for a state-only registration, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event, or may transfer from an individual permit to such a registration in accordance with §321.33(l).

In this section as amended, all applications for permit renewal must be administratively and technically complete and meet all applicable technical requirements of this subchapter. In addition, this section, as amended, clarifies that all renewal applications, except renewal applications for facilities that do not require NPDES authorization and which meet the requirements of subsection (h)(1), will be processed according to §321.36 and §321.37.

In this section as amended, application procedures for registrations were changed to clarify the existing amendment process and to allow the executive director to determine which PPP components are necessary in an application. However, the entire PPP must be made available, with the application, for public inspection at the applicant's place of business and at a public place within the county.

In this section as amended, registrations issued under §321.37 or §321.47 of this subchapter shall expire five years after the effective date of these amendments (1999), and no new registrations shall be issued after that date. If the commission proposes to amend or readopt these rules prior to such expiration date, all registrations shall remain in effect until final commission action on the proposed amendment or readoption.

As amended, in §321.36, Notice of Application for Registration, within five working days of declaration of administrative and technical completeness, the executive director shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative and technical completeness which is suitable for publishing or mailing, under the requirements of subsection (c) of this section, and shall forward that statement to the applicant.

As amended, §321.37, Action on Applications for Registration, requires the executive director, after review of any application for registration, to approve or deny the application in whole or in part.

The section was amended to provide that the executive director may not approve an application for registration to a facility if prohibited under §26.0286 of the Texas Water Code relating to sole source surface water supplies.

As amended, §321.39, Pollution Prevention Plans, establishes requirements for land application of waste or wastewater. Some of the components that must be addressed in the PPP include: a site map showing the location of any land application areas; a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data.

The PPP must include a list of any significant spills at the facility after September 18, 1998.

In the amended section, the proposed requirement for two feet of freeboard was replaced with the existing requirement of one foot of freeboard. This amended section requires the PPP to describe measures that will be used to minimize entry of non-process wastewater into retention facilities. Such measures may include the construction of berms, embankments, or similar structures.

The section was amended to provide that when an annual soil sampling analysis for extractable phosphorus indicates a level greater than 200 parts per million (reported as P) in Zone 1 for a particular waste and/or wastewater land application field, the operator cannot apply wastewater to the affected application area unless the land application is implemented in accordance with a detailed nutrient utilization plan developed and certified by Natural Resource Conservation Service (NRCS), the Texas State Soil and Water Conservation Board, Texas Agricultural Extension Service, agronomist or soil scientist on full-time at an accredited university located in the State of Texas, or any professional agronomist or soil scientist certified by the American Society of Agronomy (ASA) and filed with the executive director. The executive director will issue technical guidance to assist in the development of complete and effective nutrient utilization plans.

The section was amended to provide that land application under the terms of the Nutrient Utilization Plan may commence 30 days after the plan is filed with the executive director, unless prior to that time the executive director has returned the plan for failure to comply with all the requirements of this subsection. The nutrient utilization plan shall, at a minimum, evaluate and address the following factors to assure that the beneficial use of manure is conducted in a manner that prevents phosphorus impacts to water quality: (1) slope of application fields (as a percentage) and distance of the land application area from waters in the state; (2) average rainfall for the area for each month; (3) soil series, soil type, soil family classification, and pH values of all soils in application fields; (4) chemical characteristics of the waste, including total nitrogen and phosphorus; (5) recommended rates, methods, and schedules of application of manure and wastewater for all fields; (6) crop types, maximum crop uptake rate, and expected yield for each crop; and (7) best management practices to be utilized to prevent phosphorus impacts to water quality, including any physical structures and vegetative filterstrips.

As amended, §321.40, Best Management Practices, provides that there shall be no water quality impairment to public and neighboring private drinking water wells or surface water or watercourses due to waste handling at the permitted facility. Vegetative buffer strips shall be maintained in accordance with NRCS guidelines, with a minimum buffer of no less than 100 feet of vegetation to be maintained between waste or wastewater application areas and surface water and watercourses.

Under the amended section, all herbicides and pesticides shall be stored, used, and disposed of in accordance with label instructions. There shall be no disposal of herbicides, pesticides, solvents or heavy metals, or of spills or residues from storage or application equipment or containers, into retention structures. Incidental amounts of such substances entering a retention structure as a result of stormwater transport of properly applied chemicals is not a violation.

As amended, §321.41, Other Requirements, includes grammatical changes which were made.

As amended, §321.42, Monitoring and Reporting Requirements, require that within 14 working days of a discharge from the retention facility the operator shall document the discharge to the PPP and submit that information to the appropriate regional office.

As amended, §321.46, Air Standard Permit Authorization for a CAFO General Permit, clarifies that for the purposes of air quality, the term "CAFO," as used in this subchapter, includes any associated feed handling and/or feed milling operations located on the same site as the CAFO.

As amended, this section replaces the term "date of adoption of these amended rules" with "August 19, 1998."

As amended, §321.47, Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization, establishes procedures under which an existing facility may submit written notice that it will operate as required under this amended subchapter as an authorized TPDES facility.

As amended, this section replaces the term "45 days of the effective date of these amended (1999) rules" with the term "60 days of the effective date of these amended (1999) rules."

As amended, subject to the provisions of §321.35(h) of this title (relating to Procedures for Making Application for Registration), a facility for which a complete and accurate written notice has been submitted in accordance with this section may operate as an authorized TPDES facility under this amended subchapter for the remainder of the unexpired term of their current authorization.

As amended, this section clarifies that initial TPDES authorization under this section does not require compliance with "air quality only" provisions of these rules that can be only accomplished by making structural changes to a structure that is currently in compliance with the design and engineering standards in the facilities latest permit.

REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirement 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, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The adopted rule amendment, which is intended to protect the environment and reduce risks to human health, will not have a material adverse affect on the economy or 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 adopted rule amendment will not have a material adverse affect on the economy or a sector of the economy, productivity, and jobs because the rule changes will allow the TNRCC to fulfill the requirements of TPDES assumption, thereby eliminating the need to obtain separate federal and state authorization for operating a CAFO in Texas. The adopted rule amendment will not have a material adverse affect on the environment or the public health and safety of the state or a sector of the state because the rule changes will not make any of the technical requirements for operating a CAFO less stringent.

TAKINGS IMPACT ANALYSIS

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043.

The following is a summary of that Assessment. The specific purpose of the Subchapter B rule amendments is to allow the TNRCC to fully implement the NPDES CAFO program in Texas by making the existing Subchapter B rules consistent with the EPA Region VI CAFO general permit requirements. The rule changes will also allow the TNRCC to fulfill the requirements of TPDES assumption and to administer one permitting program for both NPDES and state permits. This action will not burden private real property that is the subject of the regulation because the amended rules will enable the TNRCC to fully implement the NPDES program for CAFOs in Texas and thereby eliminate the need to obtain separate federal and state authorization for operating a CAFO.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

Under 31 TAC §505.11, permits for a new CAFO within one mile of a coastal natural resource area (CNRA) must be consistent with the applicable goals and polices of the Coastal Management Program (CMP) contained in Chapter 501, Subchapter B of Title 31. These rules would specifically require CAFOs within one mile of a CNRA to obtain an individual permit for the specific purpose of ensuring consistency with applicable CMP goals and policies.

Consistency Determination: The commission has reviewed this rulemaking for consistency with the applicable CMP goals and policies pursuant to 31 TAC §505.22 and has found the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the adopted rule include the protection, restoration, and enhancement of the diversity, quality, quantity, functions, and values of CNRAs and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rule include the following: 1) discharges in the coastal zone shall comply with water-quality-based effluent limits; 2) discharges in the coastal zone that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development; and 3) to the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because these rules require that any new proposed CAFO located within one mile of a CNRA obtain an individual permit. This will allow the commission to consider the effects of such a facility on the CNRA, establish effluent limits, if necessary, on any discharges from the proposed facility to maintain applicable water quality standards and allow opportunity for notice, public comment, and public hearing.

HEARING AND COMMENTERS

A public hearing was held on February 16, 1999. Oral testimony was received from four persons representing the following: ACCORD Agriculture, Inc.; Agri-Waste Technology, Inc.; Jackson Walker; and Consumers Union Southwest Regional Office.

The 30-day public comment period closed on February 16, 1999. Fourteen commenters submitted written comments. The Texas Pork Producers Association, ProAg, and the Texas Poultry Federation either supported the rules as written or generally supported the rules with suggested changes. The law firm of Henry, Lowerre, Johnson, Hess and Frederick; Greenbelt Municipal and Industrial Water Authority; and National Wildlife Federation either opposed the rules as written or generally opposed the rules and recommended changes be made to the rules as proposed. Agri-Waste Technology, Inc.; Alan Plummer Associates, Inc.; Texas Cattle Feeders Association; Texas Board of Professional Engineers; The law firm of Jackson Walker; The law firm of Lemon, Shearer, Ehrlich, Phillips and Good; McCulley, Frick and Gilman, Inc.; and Consumers Union Southwest Regional Office (Consumers Union) did not generally support or oppose the rulemaking, but suggested changes to the rules as proposed. Written comments provided by Henry, Lowerre, Johnson, Hess and Frederick are listed in the analysis of testimony and comments under the name of ACCORD Agriculture, Inc.

ANALYSIS OF TESTIMONY

§321.31. Waste and Wastewater Discharge and Air Emission Limitations.

Consumers Union recommended that it should be state policy to set more stringent standards for facilities located in watersheds which contain multiple CAFOs. The state should look at the cumulative effects of new CAFOs in light of existing CAFOs. The commission should more stringently regulate watersheds that contain multiple CAFOs before water quality is negatively impacted, not after the environmental damage has already been done. ACCORD Agriculture, Inc. recommended that CAFOs which are located in clusters are more likely to have a negative impact on water quality than isolated CAFOs. The combined discharges can easily overburden receiving waters. CAFOs which are seeking to locate or expand in watersheds where clusters of other CAFOs are already located should be required to apply for an individual permit.

The commission recognizes the significance of the potential for cumulative effects of multiple CAFOs within a given watershed, and is exploring and addressing it as a part of the overall water quality program. The commission has expanded its watershed management program to address impacts of all sources of pollution within a watershed with the initiation of the evaluations of TMDL in a number of watersheds which have been demonstrated to have water quality impairments. The TMDL process provides an opportunity to evaluate all sources of contaminants that might contribute to the impairment and will lead to development of recommended actions that should be implemented to improve and protect water quality in that watershed. The commission considers the TMDL process to be a vital step needed to establish the technical foundation for development of specific regulatory and voluntary actions that need to be implemented to address individual and cumulative impacts of contaminants, and to improve and protect water quality. The commission will apply the recommendations developed in the TMDL by amendments to individual wastewater permits through the TPDES program or by adopting special watershed rules such as those found in 30 TAC Chapter 311. 30 TAC Chapter 311, Subchapter A deals with special water quality protection for the Lake Travis watershed and Subchapter C of this same chapter addresses water quality protection for the Clear Lake/Clear Creek watershed.

The commission has reviewed its data to determine whether there are watersheds with multiple facilities similar to the situation in the Bosque River and Lake Fork Creek watersheds and has not found any other areas of the state where multiple CAFOs have the potential to have a cumulative impact on water

quality. The concern for potential water quality degradation due to cumulative effects of multiple facilities within the Bosque River and Lake Fork Creek watersheds led to the designation of Dairy Outreach Program Areas (DOPAs). Dairy operations within the eight counties included in the DOPAs are required to meet more stringent requirements such as filing for a permit or registration for facilities with 300 animal units or more and a requirement that owners/operators obtain training and education credits for waste handling procedures every two years. In addition to being included in a DOPA, a portion of the Bosque River has been included on the list of impaired waters within the state and is the only listed watershed in which water quality degradation has been linked to CAFO operations.

With assistance from a number of local and state agencies, and a stakeholder group within the watershed, the commission is coordinating the development of a TMDL load evaluation to further identify cumulative water quality impacts from CAFOs as well as other sources of contaminants in the watershed. The commission will use the TMDL process to identify other actions that may be necessary to further improve and protect water quality. The commission will establish an implementation plan that may include revised effluent limits or design and operating parameters for individual wastewater permits or development of a watershed specific rule such as those found in 30 TAC Chapter 311 or development of a watershed specific general permit under §26.040, Texas Water Code as amended by HB 1283, 76th Legislature. These more specific rules, permits, or general permits will supersede more general authorizations such as these rules.

The commission has also initiated a study with cooperation from the TPWD, the Texas State Soil and Water Conservation Board, EPA, USFWS, and NRCS to evaluate potential impacts of discharges from wastewater lagoons and retention ponds during runoff conditions that occur with chronic or catastrophic rainfall. This information will provide additional information on the potential for individual and multiple facilities to impact water quality.

ACCORD Agriculture, Inc., commented in subsection (a) that the commission cannot authorize continued discharges from CAFOs pursuant to its old rules because authorizations pursuant to those rules do not qualify as TPDES authorizations. Any discharge that does not have a TPDES authorization is illegal.

Pursuant to Chapter 1, Part III., Section C (b) of the Memorandum of Agreement between EPA and TNRCC concerning NPDES, any facility operating with a valid NPDES and state coverage may continue to operate under the conditions of their permit until expiration. These amended rules do not forgive any past violations by facilities that have been discharging without proper NPDES authorization if those facilities were required to obtain such authorization under federal law. The commission also points out that not all facilities that are required to have a state permit are also required to have NPDES authorization.

National Wildlife Federation and ACCORD Agriculture Inc. recommended that subsection (b) be amended to state that wastewater may be discharged only from authorized facilities that are properly designed, constructed, and operated. National Wildlife Federation also recommended that the second sentence in subsection (b) be revised to make clear that proper operation is also a condition of not being subject to an effluent limitation. The language should be changed to make clear that proper operation is required in order for any discharge to be authorized.

The commission responds that the rules require that facilities must be properly designed and constructed in §321.39(b). However, the commission agrees that discharges authorized by subsection (b) should be restricted to discharges from properly operated facilities and, therefore, the first sentence in subsection §321.31(b) has been changed to: "...from a facility designed, constructed, and properly operated to contain...." The second sentence has also been changed to: "...discharges from detention structures constructed, operated and maintained to contain...and the retention structure has been properly operated and maintained." In addition, the commission added the following sentence at the end of subsection (b): "Facilities authorized under this rule shall comply with §305.125 of this title (relating to Standard Permit Conditions) and all applicable permit conditions contained in TNRCC rules." In addition, the rule has been modified to clarify that discharges under subsection (b) are only authorized from CAFOs authorized to operate under this subchapter.

Consumers Union recommended that subsection (b) be amended to correspond to the EPA Region VI proposed CAFO general permit, Part I.B., Permit Coverage and to read: "Wastewater may be discharged to waters in the state or of the United States only when rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed, maintained and operated to contain all process generated wastewaters resulting from the operation of the CAFO (including but not limited to contaminated runoff from corrals, stock piled manure or silage piles, overflow from storage ponds, overflow from animal watering systems which are contaminated by manure, drainage of wastewater from land application areas, contaminated runoff from land application fields in which wastewater is applied at greater than the agronomic rate, runoff from fields on which manure has been applied by placement on or in the soil if such runoff results in a direct discharge of manure to waters of the US., and discharge of wastewater from retention structures to surface water via a hydrologic connection) plus the runoff (storm water) from a 25-year, 24-hour rainfall event from the location of the facility authorized under this subchapter." ACCORD Agriculture, Inc., also recommended that rules be amended to read: "discharge limitations include, but are not limited to, the following discharge prohibitions: (1) Discharges of process wastewaters from control structures such as lagoons and animal confinement and maintenance areas to waters of the State or United States by means of a hydrologic connection is prohibited. (2) Contaminated run-off or drainage of land applied wastewater from land application areas is prohibited where it will result in a direct discharge of pollutants to waters of the State or the United States. (3) Contaminated run-off from fields on which manure has been land applied is prohibited where it will result in a direct discharge of pollutants to waters of the State or the United States. Manure will not be applied to land when the ground is frozen or saturated or during rainfall."

The commission responds that under §321.31(a) the rule states that there shall be no discharge of disposal or waste or wastewater from animal feeding operations into or adjacent to waters in the state except in accordance with subsection (b). Under §321.32(36) "wastewater" includes process-generated wastewater. The main difference between the first sentence of subsection (b) and the suggested language from the EPA

Region VI Proposed CAFO General Permit is the reference to "waters of the United States" and the list of examples of discharges of process-generated wastewaters resulting from the operation of a CAFO. It is not necessary to add "waters of the United States" into the subsection (b) because "water in the state" includes "waters of the United States," plus groundwater. It is also unnecessary to add the list of examples of discharges of process-generated wastewater resulting from CAFO operations because this subchapter clearly indicates that such activities are prohibited.

For example, under §321.39(f)(19)(A), the discharge or drainage of irrigated wastewater is prohibited when it will result in a discharge of pollutants into or adjacent to waters in the state. Under §321.39(f)(21), storage and land application of manure shall not cause discharges of pollutants to water in the state. Also, under §321.32(30), "process-generated wastewater" is any water directly or indirectly used in the operation of a CAFO (such as spillage or overflow from animal or poultry watering systems which come in contact with waste; washing, cleaning or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals, and dust control) which is produced as wastewater. The examples of discharges in the suggested language clearly fall within the definition of "process-generated wastewater" which would be prohibited under §321.31 and, therefore, inclusion into the rule is unnecessary.

ACCORD Agriculture, Inc. and Consumers Union recommended that all references to "waters in the state" in the rules be amended to include waters of the United States since Texas now exercises NPDES authority.

The commission disagrees with this comment because the term "water in the state" includes all waters of the United States plus groundwater. Although TPDES is a federally authorized program it is implemented under Texas law, which determines what is covered by the program (see Texas Water Code, §26.121).

§321.32. Definitions.

Texas Cattle Feeders Association recommended that in the definition of "agronomic rate," the word "productivity" be replaced with "quality."

The commission responds that "agronomic rate" as defined in §321.32(a) sets the limits for the land application of waste and wastewater. The standard is that land application must enhance the productivity of soil and crop production. While improved soil quality may produce the result of increased productivity, it is productivity that is the regulatory standard. Therefore, no change has been made to the rule.

National Wildlife Federation and Consumers Union recommended that the definition for agronomic rates be expanded, in order to be consistent with sewage sludge requirements, to include the following language: (1) minimize the amount of nutrient runoff to surface waters; and (2) which minimizes the nitrogen and phosphorus in the wastes and/or wastewater that passes below the root zone of the crop or vegetation grown on the land to the groundwater. National Wildlife Federation indicated that this would also make the definition more consistent with that found in the draft EPA Region VI CAFO General Permit.

The commission responds that the adopted definition for agronomic rate is not consistent with requirements for land application of sewage sludge related to nutrient runoff or minimization of nutrients that pass below the rootzone, but it is consistent with the definition in the draft EPA Region VI CAFO general permit. In addition, §321.39(f)(19)(A), 321.39(f)(19)(D), 321.39(f)(21), 321.39(f)(24)(G), and 321.40(9) prohibit the discharge of pollutants into water in the state resulting from the land application of waste and wastewater.

Greenbelt Municipal and Industrial Water Authority recommended that the definition of animal feeding operation (AFO) be revised to clarify its applicability to facilities that feed individual animals only for a short period of time before moving them on to other locations.

The commission responds that no changes are necessary because the rule is clear that the determination of whether a facility is an AFO is based on the total number of animals in confinement for the time specified, regardless of the term of confinement of any individual animal.

Consumers Union commented that the definition of animal feeding operation, the terms "beneficial use" and "disposal" are not completely interchangeable. Beneficial use should be defined to mean land application based on crop requirements that does not pose an environmental/water quality hazard.

The commission responds that land application of animal waste in accordance with these rules is beneficial use, not disposal. The term "beneficial use" means the land application of animal waste or wastewater at agronomic rates. Manure applications at agronomic rates will supply nutrients and other elements necessary for increased productivity for agricultural products. The change from "disposal" to "beneficial use" was made to clarify that waste disposal is not authorized under these rules.

ACCORD Agriculture, Inc. recommended that the definition for AFO be expanded to ensure that confinement areas that do not sustain vegetative growth throughout virtually the entire area are included in the definition. It is unclear what associated areas, in addition to the actual confinement area, fall within this definition. ACCORD Agriculture, Inc. also commented that EPA has indicated that the provision regarding vegetative growth is intended to distinguish between feedlots and pastures. Because confined animals tend to cluster around feed areas and in the center of lots, there is often vegetation in portions of pens that are clearly parts of a CAFO. If there is not sufficient coverage in the actual pen areas to prevent significant runoff of manure, the facility should qualify as a CAFO.

The commission responds that the current definition of AFO is consistent with the federal definition found in 40 CFR §122.23. This federal definition is applicable to state NPDES programs; therefore, the commission has not changed this definition. The definition of AFO is comprehensive and provides the agency staff with the necessary elements to determine whether an individual facility is an AFO rather than an open-range type operation.

Texas Pork Producers Association offered support for the amendment to the definition of animal unit which added a multiplier for pigs weighing less than 55 pounds of 0.1.

The commission appreciates the comment of support for this rule.

Jackson Walker and Agri-Waste Technology, Inc. recommend in the definition of animal unit that "swine weighing 55 pounds or less" should be modified to include only "weaned swine

weighing 55 pounds or less" and offered support for the amendments to paragraph (9)(A)(iii) and (9)(B)(iii) which added swine weighing 55 pounds or less. In addition, Jackson Walker and Agri-Waste Technology, Inc. recommend in paragraph (9)(A)(iii) and (9)(B)(iii) that "swine weighing 55 pounds or less" should be modified to include only "weaned swine weighing 55 pounds or less."

The commission agrees with this suggested language. The commission will include the term "weaned" to swine weighing less than 55 pounds because unweaned swine are housed with their mothers (sows) and, therefore, their wastes are accounted for and managed with the sows' waste. However, waste from weaned swine weighing less than 55 pounds were not accounted for under these rules prior to this amendment.

Consumers Union recommended in the definition for best management practices (BMPs) that while "land application" is one method of disposing of animal wastes, it is not a substitute for "waste disposal." The definition of BMPs should be left intact or changed to read: "...spillage or leaks, sludge, waste disposal including land application or drainage from raw material storage." Consumers Union further recommended that the commission reconsider substitution of the term "land application" for waste disposal throughout these rules.

The commission responds that land application of animal waste in accordance with this rule is not disposal of waste. In these rules the term "beneficial use" means the land application of animal waste or wastewater at agronomic rates. As defined in §321.32(1), land application at agronomic rates will enhance soil productivity and will not pose a water quality hazard. The change from "disposal" to "beneficial use" was made to clarify that waste disposal is not authorized under these rules. Therefore, the commission has not modified the rule as suggested by the comment.

Consumers Union commented that large poultry operations pose many of the same waste management issues as other animal operations; however, the current rule states only that poultry operations may be regulated as CAFOs but gives no clear guidelines under which a particular operation will indeed be regulated as such. Alan Plummer and Associates, on behalf of the City of Longview, also requested that application of litter from broiler houses be regulated under this rule and stated that a recent study confirmed that runoff impacted by litter is reaching area waterways.

The commission responds that under §321.32(9)(C), it may determine that a poultry facility that applies litter to land such that the litter is transported to waters in the state is a CAFO. The facility would then be required to obtain an authorization or individual permit which might include additional requirements for land application of litter. While the study in the Cypress Basin indicated higher levels of some nutrients in some instances, the data was inconclusive as identify specific sources of the elevated nutrients. The agency will continue to evaluate individual facilities that are suspected of causing problems and has the authority under §321.33(b) to designate these facilities as a CAFOs and require them to obtain individual permits.

Alan Plummer and Associates also expressed concern that the disposal of poultry carcasses is not addressed in these rules.

The commission is already addressing this issue in a different rule. On May 21, 1999, the commission published a proposed rule (24 TexReg 3829-3840), 30 TAC Chapter 335, Subchapter A, §335.25, which defines approved disposal methods for poultry carcasses as authorized by statute. These proposed rules can be found at *www.tnrcc.state.tx.us* , Rule Log Number 97157-335-WS. They are scheduled for consideration for final adoption by the commission on August 11, 1999.

ACCORD Agriculture, Inc. and Consumers Union recommended in §321.32(9)(A)(x) that swine less than 55 pounds be added to the list of animals which, in combination, count toward qualification as a CAFO. National Wildlife Federation recommended that §321.32(9)(A)(x) and (9)(B)(x) be amended to refer to swine generally, without being limited to swine over 55 pounds.

The commission agrees with the comment, however, the proposed change would constitute a substantive change beyond the original scope of the proposed rule. Therefore, the commission will consider making this proposed change during a future rulemaking affecting this rule.

ACCORD Agriculture, Inc. recommended that the definition of CAFO should be further amended to include procedures and criteria for designating AFOs which are significant contributors of pollution as CAFOs. There needs to be a mechanism for adversely affected persons to initiate the process of having such a determination made.

Sufficient authority exists under §321.33(b) for the TNRCC to determine that a feeding operation should be designated a CAFO. There are no restrictions for anyone, affected or not, to provide the commission with information that would provide grounds to initiate an investigation or to support such a determination. TNRCC Regional Offices are also available to respond to individual concerns or complaints relating to CAFOs. The commission welcomes and encourages all citizen input and inquiries through any of the formal and informal procedures that are available. Formal procedures include public meetings and public hearings. Informal procedures include contacts with staff at regional offices or the TNRCC central office by letters, telephone calls, and electronic mail.

National Wildlife Federation commented the proposed change to paragraph (9)(C) is not consistent with EPA's definition of CAFOs as it relates to poultry operations and as explained in the *Draft Unified National Strategy for Animal Feeding Operations* (USDA and EPA, September 11, 1998). The proposed definition of CAFO as it relates to poultry operations is much narrower than the definition set out by EPA because the proposed definition does not acknowledge that exposure of waste to rainfall constitutes a liquid manure system. The proposed definition seems to indicate that stockpiling outdoors will trigger regulation only if the stockpile is located near a watercourse. National Wildlife Federation recommended that the commission must revise its definition to be as broad as the federal definition or it will leave point source discharges of pollutants unregulated in a manner inconsistent with its responsibilities pursuant to permitting under the federal Clean Water Act. Because large poultry operations, whether they use a wet or dry process, present a significant pollution risk, the commission should include them in the permitting process.

The definition for CAFO in the adopted rule is consistent with the definition in the Region VI CAFO general permit. Although the *Unified National Strategy for Animal Feeding Operations* states that the storage of poultry waste in areas exposed to rainfall may be considered a crude liquid manure handling system, the commission responds that if manure storage is handled

in accordance with the provisions of this rule (§321.39(f)(21)), storage of manure will not cause a discharge of pollutants to waters in the state. Inappropriate handling of litter such as exposure to rainfall such that it would constitute a liquid manure system would be sufficient reason for the executive director to use his discretionary authority to designate this facility as a CAFO.

Texas Poultry Federation recommended that the term "freeboard" should be defined.

The commission responds that the term "freeboard" need not be defined because it is a commonly used engineering term that is well-understood by the profession.

Greenbelt Municipal and Industrial Water Authority noted that the rule does not address "water quality buffer zones" as they had previously requested. In comments submitted to the previous proposed rule, Greenbelt requested that a subsection be added to require a new or expanding CAFOs located within the drainage area of a public water supply should not be allowed within ten miles of the conservation pool level. If this change is not made, then additional technical requirements should be made applicable to facilities that locate in these buffer zones.

The commission responds that HB 801 76th Legislative Session (1999), adding §26.0286 of the Texas Water Code, requires CAFOs that are sufficiently close to an intake of a public water supply system in a sole-source surface drinking water supply to obtain an individual permit rather than registration for authorization to operate. The commission will implement HB 801 in a future rulemaking by adopting rules amending Subchapter B to require those facilities covered by §26.0286 of the Water Code to obtain an individual permit. In addition, the commission has modified §321.37(b) to provide that the executive director may not approve an application for registration in conflict with §26.0286.

Greenbelt Municipal and Industrial Water Authority recommended that the definition for qualified groundwater scientist should be revised to ensure that non-engineers are not authorized to engage in the practice of engineering.

The commission responds that these amended rules do not authorize non-engineers to perform actions that constitute the practice engineering. They do authorize non-engineering activities to be performed by a qualified groundwater scientist, such as documentation of the lack of hydrologic connections or documentation that any leakage from retention structures will not migrate to water in the state.

§321.33. Applicability.

Texas Pork Producers Association commented that subsection (a)(1), (2), and (3) provide the procedures and opportunity for all CAFO operations in the state to become covered by this revised rule. This subsection also provides the opportunity to have coverage under the TCAA within the same authorization. The design, construction, and management of a CAFO under these rules incorporates all of the necessary features that will provide sufficient protection of air related issues. Texas Cattle Feeders Association recommended that in subsection (a)(1) the statement "within sixty days of expiration of the existing NPDES authorization" should be modified to read "Within sixty days of the effective date of these amended (1999) rules, the facility owner/operator shall apply...."

The commission agrees with this comment because the proposed language more clearly sets out the commission's intent that a facility must apply for TPDES authorization within 60 days after the facility is no longer covered under the EPA Region VI CAFO General Permit. Therefore, the rule has been modified to read: "Within 60 days of the effective date of these amended (1999) rules, the facility shall apply...."

Jackson Walker and the Texas Poultry Federation recommended adding the following language to the first sentence in subsection (a) "or submit to the Executive Director written notice as required in §321.47 of this title."

The commission agrees with the comment and has modified the final rules to reflect the change to clarify the commission's intent that an existing facility may submit notice under §321.47 in order to obtain initial TPDES authorization.

ACCORD Agriculture, Inc. commented in subsection (a)(1) and (3) that these rules authorize facilities to operate without any kind of authorization for 60 days after their authorizations expire. These facilities will be operating illegally for those 60 days and will be subject to enforcement actions. They conclude that the commission should not adopt rules which will lead facilities to think they are operating legally when they are not. Consumers Union recommended that CAFOs should be required to renew their authorizations before the existing authorizations expire. No CAFO should be granted specific permission to operate without a permit.

The commission disagrees with the comment because the 60-day timeline is consistent with EPA's deadline for having a facility reapply for authorization under a renewed CAFO general permit. Facilities should be allowed the same opportunity under the amended subchapter because most facilities with federal authorization are authorized by EPA's Region VI CAFO general permit and will continue to be so authorized until EPA reissues the general permit. The commission also disagrees with the comment suggesting that the rule must address the situation where the state authorization expires prior to the federal authorization, because in that case, the NPDES authorization is also a TPDES authorization affording both federal and state authorization for the facility.

National Wildlife Federation commented that the structure of subsection (a) does not appear to make sense. The introductory phrase limits the subsection's application only to facilities that have either an existing authorization from the commission or an existing NPDES authorization from EPA. However, paragraph (1) refers to facilities possessing both. In addition, subsection (a) purports to allow facilities with expired permits to apply, after the date of expiration, for additional authorization and to continue operation. That result is inconsistent with applicable statutes, the Texas Surface Water Quality Standards, and the commission's assumption of permitting authority under the federal Clean Water Act. The paragraph also appears to assume that NPDES authorization always will expire before the commission authorization. If that assumption is not always true, the paragraph does not address how the situation will be addressed. The last sentence also does not make clear that if a federal permit is continued in effect, the facility must continue to be operated in accordance with both the federal permit and the existing state authorization. The paragraph also should make clear that, in the case of inconsistency between the commission and federal authorization, the more stringent provision will control.

The commission agrees with some parts of this comment and disagrees with others. In order to make clear that subsection (a) also applies to CAFOs operating under both a currently effective state authorization granted by TNRCC and a currently effective federal authorization granted by EPA, subsection (a) is modified to read: "...under state law only by the TNRCC or federal law by EPA...." In addition, a facility must be operated in accordance with both the federal permit and existing state authorization, and that in case of conflict the more stringent provision will control; the last sentence of paragraph (1) has been modified to read: "...the applicant shall continue to operate the facility under the terms of the expired federal authorization and any existing state authorization until final disposition of the application in accordance with this subchapter." Finally, the commission has deleted the first sentence of §321.33(a)(1) because the sentence is redundant and is cover by the last sentence of subsection (a)(1).

The commission disagrees with the commenter's suggestion that allowing a facility to apply for authorization under this amended subchapter within 60 days after expiration of their NPDES authorization is inconsistent with applicable statutes, the Texas Surface Water Quality Standards, and TNRCC's assumption of the TPDES program. The provision has been changed to require all facilities currently registered for the expired EPA General Permit, which expired last year, to apply for a TPDES permit or registration under these rules within 60 days. The expired EPA General Permit was adopted by TNRCC on the date the TPDES program went into effect. Consistent with NPDES regulations, the old EPA-issued permit will cease to be effective for its registrants 60 days after its replacement is issued, unless before than they have applied for authorization under the new permit. In this instance, the replacement is not a new federal general permit, but the Subchapter B permit-by-rule adopted today. Therefore, all holders of registrations under the expired federal permit will be given 60 days to apply for a new permit or registration under these rules. In response to other comments, the requirement that the application be filed within days after expiration of their NPDES authorization has been changed to within 60 days of the effective date of these amended rules.

Consumers Union commented that subsection (a)(3) appears to allow existing facilities that have been operating without a required federal permit to come into compliance by filing under these rules, and this "initial" permit may never expire. Operations that have operated legally under federal permits will see their "initial" TPDES permit expire at the time their current authorization is due to expire, facilities that were not operating under an existing federal permit have no permit expiration date. Consumers Union recommended that any facility now operating illegally be required to file for an original permit under §321.34.

The commission disagrees with this comment. Under §321.33, a facility is required to apply for authorization under the amended rules within 60 days of the effective date of the amended rules or within five years of the effective date of the amended rules, depending on the nature of their current authorization. Also, under §321.47, as modified, a facility which seeks initial TPDES authorization under that section must file for a renewal under the amended rules upon expiration of the facility's state authorization if it expires before the registration itself under §321.35(h).

ACCORD Agriculture, Inc. recommended in subsection (b)(2) that this standard should not be limited to protection of fresh water. Salt water also should be protected from pollution that would result in adverse effects.

The commission agrees with this comment. This change was made previously during the adoption of Subchapter B, effective on September 18, 1998, and published on September 11, 1998 in the *Texas Register* (23 Tex Reg 9364). The term "fresh water" was replaced with the term "water in the state" to cover both "fresh water" and "salt water" resources in the state.

ACCORD Agriculture, Inc. commented that subsection (d) does not appear to provide any limit on facilities that legally could be covered by a "certified water quality management plan." This exemption is not authorized by statute. Section 26.121 exempts from regulation only discharges of "other wastes."

The commission disagrees, because this provision implements §201.026 of the Texas Agriculture Code and §26.1311 of the Texas Water Code. In addition, this provision implements a Memorandum of Understanding (MOU) developed between the commission and the Texas State Soil and Water Conservation Board (TSSWCB) memorialized in 30 TAC §7.102. The MOU specifies which facilities the TSSWCB can work with to provide technical and financial assistance. In addition, the MOU and statutes are clear that the commission has the authority to enforce against any animal feeding facility which does not maintain compliance with a certified water quality management plan approved by the TSSWCB.

ACCORD Agriculture, Inc. recommended that the language in subsection (h) should require a PPP for an AFO in a DOPA.

The commission disagrees with the comment because §321.33(g) requires any AFO with more than 300 animal units in a DOPA to submit an application for registration under these rules. These rules requires all AFOs to "locate, construct and manage waste control facilities" in accordance with the standard and technical requirements in these rules. This subsection does not require AFO operators to actually develop a PPP, but it does hold them to the requirements for waste discharge and air emissions under §321.31 of this title (relating to Waste and Wastewater Discharge and Air Emissions Limitations) and operational requirements for pollution prevention under §§321.38-321.40. The requirement that they comply with these provisions is as protective as requiring them to prepare a PPP, and exceeds requirements of federal law, under which such facilities are generally not regulated at all.

ACCORD Agriculture, Inc. recommended that the language in subsection (i) be amended because it is inconsistent with §382.0518 of the Health and Safety Code.

The commission disagrees that §382.0518 is applicable for air standard permit authorization. The creation of air quality standard permits is authorized by §382.051(b)(3) of the Texas Health and Safety Code. The commission agrees that prior authorization is needed; however, no change to the rule is needed now because subsection (i) was changed in the previously adopted version of the rules to require written authorization prior to construction for those CAFOs seeking the air quality standard permit under this subchapter.

ACCORD Agriculture, Inc. recommended that the language in subsection (j) be changed to read simply that a CAFO having an existing, valid air emissions permit need not obtain other authorization.

The commission responds that the intent of the opening sentence in subsection (j) is to clarify that the air quality standard permit contained under this subchapter is an optional authorization in lieu of obtaining traditional air authorization (such as an individual air quality permit under Chapter 116), and that the design, location, and operational requirements that make up the standard permit are not applicable if the facility currently holds a Chapter 116 authorization. The statement "...does not have to meet the air quality criteria of this subchapter" is not intended to suggest that certain CAFOs are exempt from the prohibition against creating a nuisance in §321.31(c), since that prohibition is included in §101.4 of the commission's General Rules. In addition, the commission does not agree that "valid air emissions permits" adequately describes the various types of air authorizations that are available to operators (for example: exemptions, standard exemptions, special exemptions, other standard permits, and "grandfathered" facilities as defined in Chapter 116).

National Wildlife Federation commented that subsection (j) seems to grant a standard air permit to facilities even if they do not comply with all of the requirements of the subchapter. The existing standard air permit already was problematic because the requirements of the subchapter did not guarantee the use of best available control technology (BACT) or consistency with the intent of the TCAA. Those deficiencies are only heightened by the proposed changes.

The commission disagrees that the changes made to subsection (j) relax any of the requirements for obtaining an air quality standard permit under this subchapter. After the original proposal of this section, it was pointed out to the commission that the language in subsection (j) was not clear regarding the procedures for requesting air quality authorization when no water quality application was pending. The intent of the changes made to subsection (j) was to ensure that operators desiring air quality authorization must submit a written request and receive authorization in writing from the commission in order to be covered by the air quality standard permit in this subchapter. This is consistent with current practice and with the intent of the original subsection (j) adopted in 1998. In addition, the changes to §321.46 clarify that the applicant must still demonstrate compliance with "...all the requirements in this subchapter."

National Wildlife Federation commented that before issuing a standard air permit, the commission must ensure that BACT will be used and that nuisance conditions will be avoided.

The commission's opinion is that the requirements in the rule substantially reflect the application of BACT and any that facilities constructed and operated in accordance with these rules will not adversely affect human health or welfare of off-site receptors. The air quality requirements of this subchapter are similar to those that would be required in a traditional permit issued under 30 TAC Chapter 116, including the requirement to develop and operate under a PPP, design criteria for lagoons, operational requirements for single and multi-stage lagoon systems, requirements for wastewater irrigation practices and waste application practices, maintenance scheduling and reporting requirements for solids removal from lagoons, requirements for manure stockpiling, minimum buffer distance for nighttime application of liquid and solid waste, flushing and scraping schedules for manure, maintenance and design of earthen pens, operational requirements for settling basins, dead animal disposal limitations, and inspection requirements. It should be pointed out that because this is a permit by rule, a case-by-case determination of BACT for each facility seeking authorization under this rule will not be required. Based upon the commission's experience with CAFOs, the commission does not expect that facilities constructed and operated pursuant to the requirements of this subchapter will cause nuisance conditions to occur.

National Wildlife Federation commented that it is unclear what type of application is being referenced. Certainly an application for renewal which does not even involve public notice would not be sufficient to meet the requirements of §382.061 of the Texas Health and Safety Code requiring the availability of commission review for executive director actions. Section 321.37 provides only for the filing of a Motion for Reconsideration by the applicant or a person filing comments in response to public notice.

The commission disagrees that the language in subsection (j) is insufficient to meet the requirements of §382.061 of the Texas Health and Safety Code. The issuance of air quality standard permits is specifically excepted from Subchapter C of 30 TAC Chapter 50 by 30 TAC §50.31(c)(1) (which excepts air quality standard permits under Chapter 116). Therefore, 30 TAC §50.39(a), authorizing motions for reconsideration of an executive director action on an application, does not apply to authorizations under Chapter 321 except where motions for reconsideration are specifically authorized by §321.37 9 (see also 30 TAC §50.31(d)), i.e., by an applicant or a person filing comments in response to a public notice.

Regarding the format of the application and the need for public notice requirements, the commission's opinion is that it is not necessary to create a specific form in the rules or to require separate public notice for air quality standard permit requests. In most cases, it is expected that facilities seeking both air and water authorization will submit a combined application and will provide public notice under §321.36 if seeking registration or under Chapter 39 if seeking an individual permit. In a case where an applicant is requesting only air authorization, they must have previously obtained water quality authorization under this subchapter and provided the applicable public notice at that time; therefore, additional public notice would not be deemed necessary for subsequent air quality authorization.

National Wildlife Federation commented that a transfer pursuant to §321.33(l) cannot qualify for a standard air permit because such a facility is not even required to meet the substantive standards of Subchapter B.

The commission disagrees with the comment. Facilities that have successfully undergone a case-by-case review under Chapter 116 and received an individual air quality permit should be able to transfer into this subchapter and operate under an air quality standard permit without making structural design changes and still accomplish the desired effect of those buffer distances and design criteria required by this subchapter. Facilities transferring under this subsection must still comply with the special conditions and provisions from the existing individual permit, as well as the appropriate provisions of §§321.38-321.42 of this subchapter (including proper CAFO operation and maintenance, PPPs, BMPs, and monitoring and reporting requirements). For facilities previously authorized under Chapter 116, the necessity of conducting a regulatory review has already been accomplished; therefore, it is not necessary to repeat that review as described in this subchapter.

National Wildlife Federation commented that the "air quality only" requirements in §321.46, if applicable to such a facility, do not address many aspects of CAFO operations that result in

air emissions. For example, those requirements do not address emissions from the actual confinement areas, manure storage activities, or land application activities. As a result, a standard air permit cannot be granted.

The commission disagrees that the requirements in these rules are insufficient to constitute a standard air permit. These rules contain many design and operational requirements that affect both air and water quality protection, and not all of these requirements are identified as "air quality only." As such, these items are required regardless of whether an applicant is seeking air quality authorization when operating under this subchapter. The commenter is correct that air emissions can be generated from sources such as the confinement areas and manure handling activities; however, the commission does not believe it is reasonable to dictate one set of mandatory control measures for all facilities in this permit by rule. When applicable, the odor control plan required for certain facilities will address site-specific measures for controlling emissions in the PPP. For other facilities that do not require an odor control plan, a larger buffer zone will be established.

Consumers Union commented that subsection (l) assures operators with existing individual permits–no matter how old–that no new requirements will be imposed upon them. This means that existing CAFOs may obtain new authorization without upgrading any facilities to meet current BMPs. This undermines enforcement of these rules. Some CAFOs authorized under these rules will, in practice, be held to lower standards than others authorized under the same rules. Consumers Union recommended that the rules specify a time period during which CAFOs with existing permits must upgrade their facilities to meet all the requirements of the rules. ACCORD Agriculture, Inc. commented that subsection (l) offers no justification for waiving the requirements of these rules for facilities that transferred registrations from individual authorizations, suggesting that facilities may not be authorized by these rules unless they meet the requirements of the rules, both for air and water quality purposes.

The commission responds that existing facilities with current water or air quality authorizations are required to meet the requirements for water and air quality protection as provided by agency rules. Subsection (l) allows facilities that are not required under federal law to obtain NPDES authorization and that are covered by individual state permits to transfer to Subchapter B for state-only authorization by registration without imposing any additional conditions or other requirements for the unexpired term of the existing permit. However, upon renewal of the registration, the facility will be required to meet all applicable technical requirements of the amended subchapter under §321.35(h).

Texas Cattle Feeders Association offered support for subsections (l) and (o) for the process where an existing CAFO authorized by an individual permit or valid Subchapter K authorization can submit a written request to the executive director to request a transfer of their authorization to a registration under the amended Subchapter B rules (1999).

The commission appreciates the support for these subsections, and notes that these provisions will assist the commission to provide uninterrupted regulation of all existing CAFO facilities that are currently under the commission's regulatory umbrella.

ACCORD Agriculture, Inc. recommended in subsection (o) that the Subchapter K rules were declared invalid by the Travis County District Court. Because those rules were never valid, none of the authorizations issued pursuant to those rules were valid. TNRCC cannot "transfer" those invalid authorizations.

The commission disagrees with this comment because the District Court's order invalidating Subchapter K addressed only the actual permits-by-rule at issue in the case and the effect of the order, if any, on other permits-by-rule issued prior to the District Court's order was not before the court. In addition, the recent Court of Appeals decision upholding the District Court's decision invalidating the Subchapter K rules did not address the effect of the decision on other permit-by-rules.

Consumers Union commented that subsection (o) in combination with §321.47 appears to allow any CAFO holding a Subchapter K permit to transfer to authorization merely by mailing in a notice that they will operate the facility in accordance with these provisions. The content of the notice is yet to be determined. This appears to assure that CAFOs approved without appropriate public participation will enjoy continued authorization even if the Subchapter K process is overturned by a court. Companies holding Subchapter K permits that have actually been invalidated may also file notice of intent to comply and continue to operate as if they have held a valid permit all along. Facilities with invalid permits should be required to file for their permits again, with full public notice, comment, and participation.

The commission disagrees both parts of this statement. Facilities with Subchapter K authorization specifically invalidated by the Court are not eligible for transfer under this section. The court in *ACCORD v. TNRCC* specifically declined to set aside the other Subchapter K authorizations granted prior to the judgment in that case. Contrary to the commenter's statement, those Subchapter K applications were subject to the public comment process, and aggrieved persons had the opportunity to challenge them in court under §5.351 of the Water Code, consequently they received the full public scrutiny opportunity for comment and judicial challenge that is required by law and that Subchapter B registrations receive.

ACCORD Agriculture, Inc. and National Wildlife Federation commented that subsection (p) should clarify what changes qualify as "amendments" and what changes qualify as "nonsubstantial modifications." Substantial change needs to be defined. ACCORD Agriculture, Inc. questioned if an increase in the number of animals confined, a change in the required buffer zone or lagoon capacity, a change in boundaries of the site plan, or a violation of any management practice or physical or operational requirement were the only "amendments" changes. National Wildlife Federation commented that it is inappropriate to limit amendments only to changes in the authorized number of animals, the site plan, or buffer distance determination. Any significant change in a PPP should require an amendment. The listed examples of changes that would not qualify as nonsubstantive modifications is not helpful. Texas Cattle Feeders Association recommended that the phrase "...or a violation of any management practice or physical or operational requirement of this subchapter" should be removed from the last sentence in subsection (p). It seems excessive and rules out most, if not all, changes or modifications at the site.

The commission agrees that the rule should be explicit. The subsection has been changed to list those changes that are classed as substantial.

Jackson Walker and Texas Poultry Federation recommended modifying the last sentence in subsection (p) by adding the

words "in the outer" in between "change" and "boundaries." Texas Cattle Feeders Association recommended adding the word "in" between "change" and "boundaries."

The commission responds that the term "boundary" means the outer perimeter or border of a site plan. The commission agrees with the comment that the word "in" should be inserted in the third sentence and the section has been modified to reflect this change.

Greenbelt Municipal and Industrial Water Authority proposed that new subsections be added which would prohibit CAFOs if: 1) any CAFO levee would put one person at risk; 2) embankment materials used for the levee are dispersive soil or contain sufficient quantities of soluble gypsum; and 3) the pond or levee is situated in a 100-year floodplain.

The commission responds that the requested changes are not necessary because §321.39(a) requires that CAFO facilities must be constructed with good engineering practices. Licensed professional engineers consider issues such as risk, embankment materials, and the flood plain characteristics in designing facilities for CAFOs. Any structures located in the floodplain must be certified by a licensed professional engineer as being designed specifically to protect the facility from damage and failure.

§321.34. Procedures For Making Application For an Individual Permit.

Texas Cattle Feeders Association recommended that in subsection (a) that the sentence beginning "An annual Clean Rivers Program fees is also required...." The word "fees" should be changed to "fee."

The commission agrees with this comment and has made the recommended change to the final rule.

ACCORD Agriculture, Inc. recommended that TPDES permits, including any permits-by-rule or general permits, must expire after five years. The commission cannot authorize facilities to seek renewals under these rules outside that five-year window. The five-year limitation ensures the public's ability to comment on and participate in the formulation of the permits that will be used to authorize CAFOs at least once every five years. The commission cannot take away this participation right by purporting to allow renewal of its permits-by-rule that will allow those permits-by-rule, or general permits, to remain effective for more than five years.

The commission responds that under subsection (a), individual permits granted under Subchapter B shall be effective for a term not to exceed five years. Under §321.35(f), the permit-by-rule under Subchapter B shall be effective for a term of five years; individual registrations expire with the permit. Language has been added to §321.35(h) to make this clear.

ACCORD Agriculture, Inc. stated that subsection (b)(2) should be amended to address compliance history for other violations of air requirements, such as property line standards for dust, regardless of whether the violation is considered to constitute a nuisance.

Although emissions from CAFOs have historically been compared to the nuisance rule to determine compliance with applicable standards, the commission agrees that any violation of an applicable property line standard or nuisance should be considered a violation subject to major enforcement action when renewing a permit under this subchapter. The 1998 amendments to these rules incorporated changes to reference nuisance and "any violation of a state property line standard or federal ambient air quality standard."

ACCORD Agriculture, Inc. recommended that some form of public participation process is needed for renewals of permits. Greenbelt Municipal and Industrial Water Authority also commented that the public should have the opportunity to comment on the renewal of a permit if there has been a change in ownership since the last renewal.

On the issue of public participation, the commission disagrees with the commenter's statement that there will be no public participation process for renewal of permits. The renewal of individual permits without any public notice under subsection (b)(2) applies only to a limited set of facilities that meet a very demanding standard: they are not those making a substantial change to their operation, are not required to obtain NPDES authorization, and within the last 36 months they have not had a reasonably foreseeable and controllable unauthorized discharge or other violation that contributed to surface or ground water pollution or an air nuisance violation or violation of any applicable federal or state air quality control requirement. All other permit renewal applications will be subject to the public notice requirements applicable to the renewal of water quality permits in Chapter 39 of this title (relating to Public Notice) along with an opportunity for the public to comment on the application.

National Wildlife Federation recommend in subsection (b)(1) and (2) that the granting of a renewal of an individual permit without public notice is inconsistent with TNRCC's responsibilities under the Clean Water Act and 40 CFR Part 124 Subpart A. The rules must be revised to provide a notice process consistent with those requirements. The public needs to be made aware when facility authorizations are being considered for renewal to provide a mechanism for TNRCC to learn of problems that may have developed in the local area during the previous permit term.

The commission responds that renewal of individual permits under subsection (b)(2) applies only to facilities that are not required to obtain NPDES authorization; therefore, such renewal does not conflict with requirements of the federal Clean Water Act and 40 CFR Part 124, Subpart A. Likewise, with respect to subsection (b)(1), the commission responds that this provision does not conflict with the requirements of the federal Clean Water Act and 40 CFR Part 124, Subpart A because it applies to facilities that do not discharge into or adjacent to water in the state and therefore also are not required to obtain NPDES authorization.

National Wildlife Federation recommended in subsection (b)(2) that the reference to "Section 305.63(3)" be corrected to read "Section 305.63(a)(3)."

The commission agrees with this comment and has made the recommended change to the final rule.

ACCORD Agriculture, Inc. commented that subsection (h) is unintelligible. First, §321.33(p) does not define "amendment." Second, the requirement that an application "be filed and processed as set out in this section" is unclear. Applications for amendment will be processed as set out in which subsection of this section? The phrase "accordance with subsection (a) of" should not be deleted.

The commission agrees that the proposed language is unclear and has changed the subsection to read: "If an application

requests an amendment under §321.33(p) of this title (relating to Applicability) of an existing individual permit, the application shall be filed and processed under this section."

§321.35. Procedures For Making Application For Registration.

Greenbelt Municipal and Industrial Water Authority commented that the rule did not address "water quality buffer zones" as they had requested in comments on the previous amendments to the rule. Consumers Union recommended that the commission reconsider the importance of additional water quality standards for CAFOs located near and particularly down gradient of local drinking source waters.

The commission responds that HB 801 76th Legislative Session (1999), adding §26.0286 of the Texas Water Code, requires CAFOs that are sufficiently close to an intake of a public water supply system in a sole-source surface drinking water supply to obtain an individual permit rather than registration for authorization to operate. The commission will implement HB 801 in a future rulemaking by adopting rules amending Subchapter B to require those facilities covered by §26.0286 of the Water Code to obtain an individual permit. In addition, the commission has modified §321.37(b) to provide that the executive director may not approve an application for registration to a facility covered by §26.0286.

ACCORD Agriculture, Inc. suggested that language in subsection (c)(5) does not make clear what is intended by "land operated or controlled by the applicant." The rules should state explicitly that storage areas for all wastes must be included in the site plan. Information on owners of all land located within the appropriate buffer zone should be included in order to assess buffer zone compliance.

The commission disagrees that the subsection is unclear, and notes that "land operated or controlled by the applicant" clearly includes all land owned or leased by the applicant and used as part of the CAFO. The subsection requires all types of control or retention facilities to be included in the site plan, including storage areas. For air quality applications, §321.35(c)(12) requires submission of an area land use map identifying residences, AFOs, businesses, or occupied structures within a mile of the permanent odor sources. The buffer zone requirement in §321.46 was modified in the previously adopted amendments to apply to air authorizations only.

ACCORD Agriculture, Inc. recommended that additional language be added to subsection (c)(7) to require that additional information be provided for areas downstream of any part of the facility where waste materials are, or may be, present. One mile is not an appropriate cut-off for larger facilities. They have a greater potential to cause significant problems for many miles downstream.

The commission responds that there are no reliable data to support any particular cutoff for facilities of any particular size, and disagrees that size is necessarily the appropriate indicator. In the absence of data, the commission considers one mile to be appropriate because it is consistent with the commission's requirement for comparable no-discharge municipal and industrial wastewater facilities.

ACCORD Agriculture, Inc. and National Wildlife Federation recommended in subsection (c)(8) that the application should contain the complete PPP. Unless the complete PPP is included in the application, the public, including nearby landowners, will have no way to review what measures are being proposed. Without all of that information, the executive director will not have the information to undertake a complete review of the application. National Wildlife Federation also suggested at minimum, that if the complete PPP is not required for submission, then certain key elements of the PPP must be included.

The commission responds that key elements of the PPP that are necessary for evaluating the application will be required to be submitted. However, the commission is also committed to the reduction of paper required in the application process and, therefore, certain parts of the PPP which are unnecessary in evaluating the proposed application will not be required to be submitted to the executive director. Examples include data submitted by the applicant showing actual rainfall amounts (§321.39(f)(14)), weekly water level measurements (§321.39(f)(11)), and quarterly structural control inspections (§321.39(f)(3)). This data becomes voluminous over a five-year period and it becomes a substantial burden on the agency to provide sufficient space to store these records. To address the commenter's concern about the availability of a copy of the complete PPP for review during the public comment period, paragraph (13) has been changed to require that the copies of the application made available at the applicant's place of business and in the county where the facility is located include a copy of the full PPP.

ACCORD Agriculture, Inc. recommended that language in both subsection (c)(11)(B) and (c)(11)(C) be modified as follows: monitoring should be required in addition to the installation of appropriate control measures not as an alternative to use of such measures; and language is too broad, there needs to be some standard to measure protectiveness against.

The commission disagrees that in all cases, monitoring is necessary to protect recharge features. However, monitoring of groundwater is appropriate as required under §26.048 of the Texas Water Code. A licensed professional engineer will determine the elements of each plan on a case-by-case basis necessary, in best professional judgment, to protect both surface and ground water.

Jackson Walker and Texas Poultry Federation recommended in the second sentence of subsection (c)(13) that the word "either" should be deleted.

The commission agrees with this comment and has made the change to the final rule in order to correct a grammatical error and to clarify the commission's intent that the applicant make available a copy of the application both at its place of business and at a public place for review by any interested persons.

Greenbelt Municipal and Industrial Water Authority suggested in subsection (g) that, for reasons of law and policy, the TNRCC should not allow individuals to "consent" to violations of the public rights created by the TCAA.

The commission disagrees that allowing land owners to consent to CAFOs, regarding siting criteria, is a violation of any "public" rights. The commission believes that under some circumstances, with input from those potentially affected, the adjacent land owners, buffer requirements can appropriately be optional.

National Wildlife Federation recommended in subsection (h)(1) that the reference to "Section 305.63(3)" be corrected to read "Section 305.63(a)(3)."

The commission agrees with this comment and has made the recommended change.

ACCORD Agriculture, Inc. recommended that in subsection (h)(1), other violations of air requirements such as property line standards for dust must be addressed with respect to compliance history regardless of whether the violation is considered to constitute a nuisance.

Although emissions from CAFOs have been historically compared to the nuisance rule to determine compliance with applicable standards, the commission agrees that any violation of an applicable property line standard or nuisance should be considered a major violation when renewing a permit under this subchapter. The previously adopted version of the rule was modified to clarify that any violation of a state property line standard under this title, or federal ambient air quality standard shall be considered a major enforcement action in addition to violations of the nuisance rule.

ACCORD Agriculture, Inc. and National Wildlife Federation recommended that a public participation process is needed for renewals of registrations. ACCORD Agriculture, Inc. also commented that in subsection (h)(3) renewals should never be automatic.

On the issue of public participation, the commission disagrees with the comment's statement that there will be no public participation process for renewal of registrations. The renewal of registrations without any public notice under subsection (h)(1) applies only to a limited set of facilities that meet a very demanding standard: they are not those making a substantial change to their operation, are not required to obtain NPDES authorization, and they have not had a reasonably foreseeable and controllable unauthorized discharge or other violation that contributed to surface or ground water pollution or an air nuisance violation or violation of any applicable federal or state air quality control requirement. All other registration renewal applications will be subject to the public notice requirements in §321.36 (relating to Notice of Application for Registration) along with an opportunity for the public to comment on the application.

ACCORD Agriculture, Inc. commented that the executive director should have the discretion to require an individual permit, if determined to be appropriate.

The commission responds that the executive director has the authority, under §321.33(b) (Relating to Applicability), to require a facility to submit an application for an individual permit.

ACCORD Agriculture, Inc. recommended that in subsection (h)(5) the language should make it clear that the failure of the executive director to provide notice does not excuse the registrant's obligation to submit a timely application. Applications should never be allowed to be submitted less than one month before the expiration date. Texas Cattle Feeders Association recommended that in subsection (h)(5) the notice of expiration should be sent by certified mail, return receipt requested.

The commission agrees that registrants are responsible for timely submission of an application for renewal. The commission agrees that the notice of expiration should be sent by certified mail, return receipt requested, and made the change in the previous amendments to Subchapter B in 1998.

Greenbelt Municipal and Industrial Water Authority proposed a reduction (to 300 animal units) in the total number of animals allowed at a CAFO qualifying for the registration process.

The commission disagrees for several reasons. First, under the federal regulations, the minimum number of animal units to bring a facility into the definition of CAFO, and therefore, into the NPDES system, is 1,000. The commission has generally followed that guideline with some exceptions appropriate under the circumstances in particular watersheds. The commission requires AFOs between 300 and 1,000 animal units to obtain authority under Subchapter B within DOPA areas because the watershed in these areas include multiple facilities and there is reliable evidence of related water quality problems. The commission has examined its database to find other watersheds with multiple facilities similar to the situation in the DOPA area and has not found that other areas of the state have experienced cumulative impacts on water quality.

Greenbelt Municipal and Industrial Water Authority suggested that the commission should revise its proposal to prevent installation of multiple CAFOs in a given area under the authority of the registration process.

The commission does not agree with this comment because there is no evidence that it is necessary to restrict the number of CAFOs in a given area provided that the CAFOs are being operated in a manner consistent with Subchapter B. Further, the commission does not have any statutory authority to limit land use development except through its authority to limit discharges in accordance with state law.

§321.36. Notice of Application For Registration.

ACCORD Agriculture, Inc. recommended that subsection (e) be modified to include the following: mailed notice should be provided to any owners or operators of any public drinking water source located within five miles of the proposed facility. The county judge and health officials of the county immediately downstream should also be notified. River authorities should always receive notice. The rules should provide that a registration will not be granted if notice requirements have not been met.

The commission responds that the purpose of the notice requirements is to notify those individuals who are most likely to be affected by a facility. The commission does not believe that all owners or operators of public drinking water facilities located within five miles of the proposed facility are likely to be affected. However, the rule provides that notice may be sent to persons who may in the judgement of the executive director be affected. Similarly, persons who request to be on the mailing list will be sent notice. The rules require that notice be sent to the county judge and the health officials of the county in which the facility is located or in which waste will be used. The commission does not believe it is also necessary to notify the county judge and health officials of any counties downstream, as the rules are designed to preclude their being affected by a compliant, authorized facility.

§321.37. Actions on Applications For Registration.

National Wildlife Federation recommended in subsection (b) that the proposed change to allow conditional approval is inconsistent with the right of affected persons to comment on applications. If an application does not meet requirements, the application must be amended or denied. The amendment of the application must result in revised public notice so that the public can comment on the application actually being considered. The proposed change would deprive the public of this right.

The commission agrees, and therefore has deleted that language from the final rule. In addition, the commission has deleted the references to denial with prejudice and suspending the authority to conduct an activity for a specified period of time in order to clarify the executive director's only options are to approve or deny an application for registration in whole or in part.

§321.38. Proper CAFO Operation and Maintenance.

ACCORD Agriculture, Inc. recommended that the commission needs to make a determination about the adequacy of NRCS management plans. The rules must provide a process and the standards against which those plans will be measured.

The commission responds that this section is sufficiently clear that NRCS animal waste management plans may be submitted for the BMPs and PPP requirements as long as the NRCS plan has applicable and equivalent measures. This rule also provides that the executive director can request a copy of a PPP, evaluate such PPP, and require the owner to change such plan if the executive director determines that such plan does meet the requirements of these rules. Under §321.39(b), NRCS plans are considered equivalent to similar provisions in Subchapter B. NRCS is the agency within the USDA with the responsibility and expertise for developing agricultural plans to protect natural resources and employs specialists with appropriate training and experience to develop these plans in accordance with generally accepted scientific principles.

§321.39. Pollution Prevention Plans.

Greenbelt Municipal and Industrial Water Authority recommended that subsection (a) be modified to require the PPP to be prepared and sealed by a licensed professional engineer.

The commission responds that certain components of the plan which directly involve engineering are required to be prepared and sealed by an licensed professional engineer, but the plan includes many components which are not practice of engineering. For example, the determination of a lack of significant hydrologic connection between wastewater and waters in the state and documentation that any leakage from retention structures will not migrate to waters in the state may be accomplished by a groundwater specialist. Nutrient management plans can be developed by soil scientists, soil chemist, or environmental scientists under §321.39(f)(28)(G).

Accord Agriculture, Inc. requested that subsection (b) include a specific process for determining adequacy of NRCS plans with explicit, enforceable requirements.

The commission considers the current rule regarding adequacy of NRCS plans to be sufficient because the NRCS is the agency within the USDA with the responsibility and expertise for developing agricultural plans to protect natural resources. It employs specialists with appropriate training and experience to develop these plans in accordance with generally accepted scientific principles. Such plans reflect current research in agricultural practices and provide protection of natural resources. PPP is an enforceable part of these rules; therefore, when the NRCS plan is included in the PPP, it must followed by the permittee.

ACCORD Agriculture, Inc. suggested in subsection (d) that it is not clear how PPP reviews relate to actions on registration applications. Registration applications without adequate PPPs should be denied. The executive director should have authority to require changes more quickly than 90 days if the risks are significant enough to support it.

The commission responds that §321.39(a) requires that a PPP be developed for each CAFO covered by this subchapter. The review process for plans submitted with registrations is the same as for other CAFOs. A PPP that is adequate at the time of application may become inadequate at a later date, for a number of reasons such as substantial changes to the facility. Such a change requires a formal amendment. This provision allows the executive director at any time, such as during an inspection, to notify the permittee of deficiencies in the plan. The provision does not prohibit the executive director from requiring that changes to the PPP be made during a time period of less than 90 days.

ACCORD Agriculture, Inc. recommended in subsection (e) that PPPs must be amended when a change affects the potential for odor generation from the facility.

The commission responds that odor control measures are addressed in §321.46 by an odor control plan. The commission disagrees that an odor control plan must be amended for any change that potentially affects air emissions. An operator required to develop an odor control plan must operate in compliance with that plan at all times and the plan should be updated as needed when changes occur. When measures in the current odor control plan are changed, an updated odor control plan shall be forwarded to the executive director to update existing files.

Consumers Union recommended that in subsection (f)(1) the term "land application" be replaced with the term "waste disposal" which was deleted from the original rule.

The commission responds that land application in accordance with this rule will enhance the productivity of soil and therefore is beneficial use, not disposal of wastes. These changes were made to clarify that waste disposal is not authorized by this rule.

ACCORD Agriculture, Inc. recommended that in subsection (f)(1)(A) the site plan or map should show the drainage pattern of the CAFO area and include arrows indicating the direction of surface water flow.

The commission responds that the drainage pattern and the direction of surface water flow on a site is a key consideration in the development of a PPP developed in accordance with other provisions of this section. Nevertheless, the requested change is not necessary because the inclusion of this information on the site map is considered to be consistent with standard engineering practices and most applications include a topographic map which typically shows slope and flow characteristics.

National Wildlife Federation Recommended in subsection (f)(1)(C) that the list of significant spills must include at least those occurring since the requirement was first put into the rules. ACCORD Agriculture, Inc. further recommended that a facility should be required to maintain a list of all spills occurring since the facility was subject to regulation.

The commission agrees that the effective date of the 1998 amendments is more appropriate and has revised subsection (f)(1)(C) to read "after September 18, 1998." The commission considers it appropriate that all significant spills should be recorded and this requirement will be applied to all spills that occurred since requirement was first added to the rule.

ACCORD Agriculture, Inc. recommended in subsection (f)(3) that the PPP should include the location and a description of all existing structural and nonstructural controls.

The commission did not make this change because this subsection requires that the PPP include the location and description of structural controls and subsection (f)(2) requires the applicant to include management controls that will be implemented. Therefore, these subsections adequately address the need for a description of structural and nonstructural controls.

ACCORD Agriculture, Inc. recommended that subsection (f)(4)(B) be changed to require that runoff from areas between open lots be included in the volumes for determining the retention facility capacity.

The commission responds that this subsection states that all runoff from areas between open lots that is directed into the retention basins should be included in the calculation of lagoon size. Therefore, the current language adequately addresses this issue.

ACCORD Agriculture, Inc. recommended that in subsection (f)(4)(E) the following phrase should be added after the word "period": "including (1) volume of wet manure that will enter pond; (2) volume of water used for manure waste removal; (3) volume of cleanup/wastewater; and (4) other water such as drinking water that enters facilities."

The commission responds that these items are included in the term "all waste and process generated wastewater," and, therefore, the issue is adequately addressed in the proposed version and no change is needed. In addition, animal drinking water is considered process-generated wastewater which is also included in that term.

Greenbelt Municipal and Industrial Water Authority requested that subsection (f)(6) be revised to require that minimum freeboard requirements also account for settling and that the initial freeboard should exceed two feet. They also requested an additional requirement for a ten-foot top width and a slope no flatter than a horizontal to vertical ratio of 3:1.

The commission responded to this comment in the 1998 proposal by changing §321.39(f)(6) to require that the design for freeboard take into consideration settling and slope stability. The commission notes that the levee width and slope should be determined on a site-specific basis. This change and other provisions requiring good engineering practices in the design of these facilities adequately addresses this issue.

ProAg, Lemon, Shearer, Ehrlich, Phillips & Good; Texas Poultry Federation; Texas Pork Producers Association; Texas Cattle Feeders Association and Jackson Walker commented that the change in freeboard requirements to two feet rather than the current requirement of one foot in subsection (f)(8) is a structural change which is not justified in the rules, and is an unnecessary and burdensome requirement given the design requirement for sizing of evaporation systems which mandates that such systems be designed with a water balance based upon withstanding a ten-year (consecutive) period of maximum recorded monthly rainfall (other than catastrophic), without overflow. Agri-Waste Technology recommended that the language associated with freeboard requirements be changed to be consistent with the language in the proposed statewide and impaired watersheds EPA Region VI NPDES General Permits for CAFOs. Texas Cattle Feeders Association recommended that no changes be required in the structural requirements for existing facilities.

The commission agrees that it is unnecessary to increase the freeboard requirement to two feet for evaporation systems because the design requirement for sizing of evaporation systems provides sufficient protection to prevent overflows because evaporation systems must be designed to withstand a ten-year (consecutive) period of maximum recorded monthly rainfall (other than catastrophic) without overflow. Therefore, subsection (f)(8) has been revised to read "not less than one foot."

Greenbelt Municipal and Industrial Water Authority requested that subsection (f)(10) be revised to require that retention facility embankments be designed in accordance with the standards of the NRCS, United States Army Corps of Engineers, United States Bureau of Reclamation, and the American Society of Civil Engineers (ASCE). They also requested that subsection (f)(10)(C) be clarified to ensure that required certification include specific elements.

The commission responds that embankment design and construction should be in accordance with appropriate engineering standards as specified in the rules. The commission added language in the previous amendment of Subchapter B in response to this same comment to include engineer certification of embankment design in accordance with NRCS, Corps of Engineers, Bureau of Reclamation, or ASCE requirements and post-construction certification of compaction testing with accompanying test results and documentation. The language was added to subsection (f)(10)(C) and this provision continues to adequately address this concern.

Consumers Union recommended in subsection (f)(18) that lagoons should be inspected before and after construction by an independent engineer. A final inspection by an individual who was not involved in the construction of the facility itself will ensure the integrity of the inspection process.

The commission responds that requiring this in all instances would be an unnecessary expense to the agency since the rules require that the facilities be designed and constructed in accordance with standard engineering practices and the facilities are subject to the inspection of the executive director at any time. The owner or operator is subject to enforcement, penalties, and order requiring appropriate repairs to the facility to achieve compliance.

Consumers Union recommended that subsection (f)(18) require the use of low-cost leak detection systems for all lagoons sited near drinking water sources to insure that leaks are detected quickly before groundwater is contaminated. The rule requires groundwater monitoring once contamination has been identified, but the baseline for measuring the degree of contamination will be the first year's data from monitoring wells. This baseline will not reflect a "clean" water standard because presumably the wells are in place because the damage has been done. Consumers Union further recommended the use of monitoring wells at all lagoon sites, with a baseline established when the wells are first installed.

The commission responds that leak detection systems are not appropriate for all retention structures because the lagoons are required to be designed in accordance with standard engineering practices and a recharge feature evaluation that has been prepared by a qualified groundwater scientist and certified by a licensed professional engineer in accordance with

§321.39(f)(16)(A). If a lack of hydrologic connection cannot be documented by the owner, either a leak detection system, other monitoring system, or increased liner thickness will be required, so as to address the potential contamination of groundwater.

Consumers Union offered support for the proposed amendment to subsection (f)(19)(B). Although rates are still based on nitrogen content and uptake by plants (as opposed to environmental risk), the proposed amendment does restrict land application until the facility conforms to "a detailed nutrient utilization plan" if annual soil sampling indicates phosphorus levels higher than 200ppm.

The commission appreciates the support for this provision, noting that it is intended to encourage the responsible use off animal waste for beneficial purposes, thereby discouraging stockpiling other less environmentally appropriate practices.

Consumers Union and National Wildlife Federation recommended in subsection (f)(19)(B) that TNRCC adhere to the proposed EPA Region VI general permit requirement that facilities conduct more frequent soil analyses to determine whether nutrient levels are too high.

The commission responds that under subsection (f)(28)(F), soil is analyzed on an annual basis regardless of any known water quality problems. Soil characteristics do not vary significantly over short periods of time, and samples collected on a quarterly basis will not provide a more definitive characterization of nutrient levels in the soil. Annual sampling is satisfactory to determine any changes in soil characteristics and more frequent sampling is an unnecessary and burdensome expense.

ACCORD Agriculture, Inc. recommended in subsection (f)(19) that the following language be added: "Disposal of wastewaters shall not contribute to the taking or harming of any endangered or threatened species of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory birds. The operator shall notify the TNRCC and TPWD in the event of any significant fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied, and which could reasonably have resulted from waste management at the facility."

The commission shares the concern for the protection of endangered species and migratory birds. However, the commission's authority to issue these rules is under Chapter 26 of the Texas Water Code, which protects water quality and maintains Texas water quality standards, including aquatic life uses. The executive director's staff currently coordinates with the TPWD and the USFWS on permit applications , when appropriate, by requesting that applicants consult with these agencies and actively work to address issues such as this.

ACCORD Agriculture, Inc. recommended that subsection (f)(19)(B) land application rates of wastewaters always be based on both the available nitrogen and phosphorous content. Application rates should not exceed the agronomic rate for either nitrogen or phosphorous. The current permit allows phosphorous concentrations in the soil to increase to unacceptable levels before the addition of phosphorous is curtailed. It is poor management to allow the concentration to reach a critical level before it is curtailed. Greenbelt Municipal and Industrial Water authority also commented that the proposed changes in subsection (f)(19)(B) delete provisions that allow limitations on wastewater land applications when local water quality is threatened by phosphorus. They suggested that TNRCC include language to address local situations which might dictate lower phosphorus levels (less than 200 ppm) to better reflect local conditions.

The commission responds that soil scientists across the country continue to conduct research on the levels of phosphorus that can be placed on various types of soils before phosphorus thresholds are exceeded. The commission will continue to monitor research in this area and to determine, based on stream monitoring or other reliable data that become available, if changes are needed in land application procedures.

ACCORD Agriculture, Inc. recommended that in subsection (f)(19)(D) irrigation practices should be required to avoid, rather than just reduce or minimize, contamination of waters in the state or of the United States.

The commission responds that the language in §321.39(f)(19)(D) does not authorize wastewater from irrigation practices to be discharged to waters in the state. The prohibition on discharges of wastewater from land application areas is contained under §321.39(f)(19)(A), and therefore no change is necessary.

ACCORD Agriculture, Inc. recommended that in subsection (f)(19)(I), the PPP require the inclusion of the methods and procedures for analyzing nutrients in the land application area soils, manure, and wastewater. National Wildlife Federation commented in subsection (f)(19)(I) and (J) that the record-keeping provisions would be strengthened by including a requirement that the actual nutrient budget calculations be included. This would provide inspectors with a method for determining whether the nutrient budget calculation procedures in the PPP were properly being implemented.

The commission responds that the modifications to §321.39(f)(19)(B) and §321.39(f)(28)(F) regarding methods and procedures for chemical analysis, other calculation procedures address this concern. PPPs should include these issues to be considered technically complete.

Consumers Union and National Wildlife Federation offered support for changes to subsection (f)(19)(I) and (J) that requires additional elements for the PPP and recordkeeping.

The commission appreciates the support for these changes.

Greenbelt Municipal and Industrial Water Authority requested that the term "significant pollutants" be defined.

In response to this comment on the 1998 proposed amendments, the commission removed the word "significant" to make the subsection consistent with §321.31.

ACCORD Agriculture, Inc. recommended in subsections (f)(21) and (f)(22) that land application rates should not exceed the agronomic rate for either nitrogen or phosphorous.

The commission responds that the rules require that waste be applied at the nitrogen uptake rate unless the soil phosphorus level of 200 ppm is exceeded. The nitrogen uptake rate is necessary to achieve optimal crop production, but the commission recognizes that this approach causes phosphorus to rapidly increase in the soil. When this happens, the operator must either obtain professional assistance to develop a comprehensive nutrient management plan or seek other land for application of wastes. In either case, land application will be at the agronomic rate for manure, but not always tied to the uptake rate a particular nutrient.

ACCORD Agriculture, Inc. recommended in subsection (f)(22) that the following language be added: "The disposal of manure shall not cause or contribute to the taking or harming of any endangered or threatened species of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory birds. The operator should be required to notify the commission and TPWD in the event of a fish, wildlife, or migratory bird/ endangered species kill or die-off on or near retention ponds or in fields where waste has been applied."

The commission shares the concern for the protection of endangered species and migratory birds. However, the commission's authority to issue these rules is under Chapter 26 of the Texas Water Code, which protects water quality and maintains Texas water quality standards, standards including aquatic life uses. The executive director's staff currently coordinates with TPWD and USFWS on permit applications, when appropriate, by requesting that applicants consult with these agencies and actively work to address issues such as this. In addition, in order to clarify that this subsection applies to land application of manure or pond solids, the commission has modified the second sentence of the subsection as follows: "... the operator may apply manure or pond solids to the affected application are only in accordance with ...."

Consumers Union recommended in subsection (f)(23) that a sustainable AFO should not produce more animal waste than the operation itself can utilize and that more stringent guidelines be set for off- site land application.

The commission responds that issue of whether an AFO should be sustainable operations is a policy issue beyond the scope of this rulemaking and is not germane to this rulemaking.

ACCORD Agriculture, Inc. recommended that subsection (f)(24)(A) should specify what qualifies as "adequate berms or other structures." Land application should never be allowed in the 100-year floodplain because of the risk of pollution during flooding events.

The commission agrees that the word "adequate" is unclear in the context of the referenced subsection and it has been removed. In addition, the term "berms or other structures" refers to protection from the 25-year, 24-hour rainfall event. There may be cases, where land application of manure is beneficial within the 100-year floodplain, provided that the safeguards of the subsection are complied with.

USFWS recommended in the second sentence of subsection (f)(24)(A) that the term "surface application" be replaced with the term "surface disposal."

The commission agrees with this comment and has made the change as suggested. This change will make it clear that improper application of manure in the floodplain is disposal and therefore prohibited.

Greenbelt Municipal and Industrial Water Authority commented that §321.39(f)(24)(A) should be clarified to delineate what is "adequate" berms and what "other structures" might be identified to prevent pollution from manure storage areas. The commenter also requested that application or storage of manure be precluded within 500 feet of a drinking water source or recharge feature.

The commission agrees that the word "adequate" is unclear in the context of the referenced subsection and it has been removed. Further definition of "other structures" is not necessary because §321.39(f)(24)(B) adequately addresses the issue of areas where manure can be stored and applied.

ACCORD Agriculture, Inc. recommended that in subsection (f)(24)(B) the commission should require that at least at large facilities, manure stockpile areas must be lined, as must areas collecting runoff from such areas.

The commission responds this rule requires stockpiled manure be stored in a well-drained area with no ponding of water, with the top and sides of the stockpiles adequately sloped to ensure proper drainage area. Therefore, if manure stockpiling is managed according to these rule requirements, downward migration of contaminants will be minimized because the lack of ponding will prevent downward migration of pollutants and runoff will be channeled and collected in a storage lagoon.

ACCORD Agriculture, Inc. recommended that in subsection (f)(24)(F) the permit should establish some minimum width for grassed strips and for determining when land is subject to excessive erosion.

The commission agrees that the rule should require filter strips when necessary and set out parameters for determining appropriate width. Therefore, the commission has added language to §321.40(7) that requires compliance with NRCS technical guidelines and specifically refers to the minimum of a 100-foot grass buffer between the waste application areas and any surface waters/watercourse. Under the rule, registrants are required to maintain a 150-foot buffer between waste application areas and private water wells, and a 500-foot buffer between waste application areas and public water wells.

ACCORD Agriculture, Inc. recommended in subsection (f)(24)(G) that land application rates should not be allowed to exceed nutrient crop uptake rates and that this provision should be deleted.

The commission does not agree. This provision applies only in cases where application sites are so isolated that there is no potential to reach water in the state. Such land application may not cause or contribute to violation of the surface water quality standards, contaminate groundwater, or create a nuisance condition. Finally, once the concentration of phosphorus reaches the 200 ppm, further application can only occur under a nutrient utilization plan pursuant to §321.39(f)(28)(G).

Greenbelt Municipal and Industrial Water Authority recommended that in subsection (f)(25) changes should be made to require that levee maintenance must be in accordance with commission "Guidelines for Operation and Maintenance of Dams in Texas."

The commission disagrees, because retention structures are not dams or levees subject to the dam safety and maintenance requirements under §12.052 of the Texas Water Code. In addition, the commission believes it is better policy to limit maintenance requirements only to those included in "Guidelines for Operation and Maintenance of Dams in Texas." The consulting engineer may add specific maintenance requirements based on the engineer's design criteria. The commission publishes the guidance and other similar documents to provide the owner and consulting engineer with recommendations on ways in which required maintenance schedules and programs should be implemented.

ACCORD Agriculture, Inc. recommended in subsection (f)(28) that permittees should be required to conduct analytical tests to

determine the nutrient contents of the manure and wastewater generated by the facility, and soils within the land areas prior to the first land application event at new CAFOs and the first seasonal land application event at existing facilities, then once per quarter thereafter. The commission should be able to increase sampling frequencies if there are identified or suspected water quality standard violations. The permittee should be required to compare the nutrient contents of the manure and wastewater with residual nutrient contents of the land application soils to determine the needed fertility and application rates for pasture production or production of other targeted crop yields.

The commission responds that in order to develop a nutrient management plan required by this subsection, the recommended analytical test will be necessary. In addition, under subsection (f)(28)(F), soil is analyzed on an annual basis regardless of any known water quality problems. Soil characteristics do not vary significantly over short periods of time and samples collected on a quarterly basis will more a definitive characterization of nutrient levels in the soil. Annual sampling is more appropriate to determine any changes in soil characteristics and more frequent sampling is unnecessary and burdensome expense. The commission will continue to monitor research in this area to determine, based on stream monitoring, if changes are needed in land application procedures.

USFWS recommended in subsection (f)(28)(F) that the width of filter strips require a 50 meter wide buffer strip.

The commission agrees that the rule should require filter strips when necessary and set out parameters for determining appropriate width. Therefore, the commission has added language to §321.40(7) that requires compliance with NRCS technical guidelines and specifically requires a minimum of a 100-foot grass buffer between the waste application areas and any surface waters/watercourse. Under the rule, registrants are required to maintain a 150-foot buffer between waste application areas and private water wells, and a 500-foot buffer between waste application areas and public water wells. Permittees are also required to maintain a 150-foot buffer between waste application areas and private water wells, and a 500-foot buffer between waste application areas and public water wells.

ACCORD Agriculture, Inc. recommended in subsection (f)(28)(G) that land application rates should not exceed the agronomic rate for nitrogen or phosphorous.

The commission responds that the rules require that waste be applied at the nitrogen uptake rate unless the soil phosphorus level of 200 ppm is exceeded. The nitrogen uptake rate is necessary to achieve optimal crop production, but the commission recognizes that this approach causes phosphorus to rapidly increase in the soil. When this happens, the operator must either obtain professional assistance to develop a comprehensive nutrient management plan or seek other land for application of wastes. In either case, land application will be at the agronomic rate for manure, but not always tied to the uptake rate of a particular nutrient.

Texas Board of Professional Engineers, Jackson Walker, and McCulley, Frick, and Gilman, Inc. recommended that subsection (f)(28)(G) be clarified to allow nutrient utilization plans to be developed by Texas licensed professional engineers.

The commission agrees that licensed professional engineers should not be precluded from developing a nutrient utilization plan provided they receive certification by the ASA. The commission has also modified the rule to specify that the plan may also be developed by the TSSWCB, the Texas Agricultural Extension Service, or any professional agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas. The commission has also deleted the language regarding an active member of ASA holding a Masters or Doctorate degrees from an accredited United States institution. The commission will issue technical guidance to assist in the development of complete and effective nutrient utilization plans and the certified plans will be filed with executive director. In addition, the rule allows land application to commence 30 days after the plan is filed with the executive director unless prior to that time the executive director has returned the plan for failure to comply with the requirements of this subsection.

Texas Cattle Feeders Association recommended that subsection (f)(28)(G) be clarified to allow nutrient utilization plans to be developed by Certified Crop Advisors. The technical education and training level should not exceed the level of training required for the qualified groundwater scientist which recognizes a baccalaureate degree with appropriate experience.

The commission agrees that Certified Crop Advisors should be allowed to develop a nutrient utilization plan provided they receive certification by the ASA. The commission has also modified the rule to specify that the plan may also be developed by the TSSWCB, the Texas Agricultural Extension Service, or any professional agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas. The commission has also deleted the language regarding an active member of ASA holding a Masters or Doctorate degrees from an accredited United States institution. Under the rule, the executive director will issue technical guidance to assist in the development of complete and effective nutrient utilization plans and the certified plans will be filed with executive director. In addition, the rule allows land application to commence 30 days after the plan is filed with the executive director unless prior to that time the executive director has returned the plan for failure to comply with the requirements of this subsection.

National Wildlife Federation recommended in subsection (f)(28)(G) that the following language be added to the end of the last sentence, "and the nutrient utilization plan must be prepared with the specific goal of avoiding causing or contributing to such a violation or the creation of nuisance conditions." The inclusion of such language would ensure that the specific goal of avoiding pollution was a driving force in the development of the nutrient utilization plan rather than a secondary consideration.

The commission responds that changes throughout this rule have focused on the goal of protecting water resources. The requirement for the development of a nutrient management plan is designed to prohibit the disposal of waste and to promote the use of waste and wastewater and to improve soil productivity. The rule goes further than the commenter's suggestions; it prohibits application that will cause or contribute a violation of water quality standards.

ACCORD Agriculture, Inc. recommended that in subsection (f)(31), relating to playa lakes, samples should be required from all wells subject to the control or management of the owner or operator, and located within the general area of the operation, rather than just those providing water for the facility.

The commission responds that the provisions of this subsection are consistent with the requirements for monitoring wells in §26.048 of the Texas Water Code when a playa lake is used as a wastewater retention facility.

ACCORD Agriculture, Inc. recommended in subsection (f)(31) that playa lakes are waters of the United States. TNRCC must prohibit any discharge into those waters except in compliance with a TPDES permit.

Under state and federal regulation, playas may be waste treatment facilities. For those that EPA determines to be waters of the United States, rather than treatment facilities, the TPDES Memorandum of Agreement provides that EPA retains NPDES jurisdiction.

ACCORD Agriculture, Inc. recommended in subsection (f)(32) that the rules should reinstate the requirement that the PPP include a plan for odor abatement. The rule should include criteria against which to measure the adequacy of such a plan.

The commission responds that it is not necessary for odor control measures be added to the PPP requirements because the requirement to submit an odor control plan is included in 321.46.

§321.40. Best Management Practices.

Consumers Union recommended that wastewater retention facilities, holding pens, or land application sites should be no closer than 1,000 feet from a public water supply and 300 feet from a private well.

The commission responds that buffer zone restrictions in other provisions of this rule (500 feet from a public water supply well and 150 feet from a private well) are based on construction standards to protect the quality of water produced from the wells and have not been demonstrated to be inadequate for the protection of public water supplies and private wells. In addition, the buffer distances in these rules are consistent with such distances in rules codified in 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers) and 30 TAC Chapter 290 (relating to Water Utilities).

ACCORD Agriculture, Inc. recommended that the qualification of the requirement for use of BMPs, as appropriate, based upon "existing physical and economic condition, opportunities, and constraints" makes the requirement illusory. The BMPs set out in this section are basic design and construction or operational requirements, not BMPs. These types of basic requirements may not be waived.

The commission responds that the listed practices are recognized as BMPs in documents developed by the NRCS and TSSWCB and they are recognized as appropriate control measures by the American Society for Agricultural Engineers (ASAE). Although all the practices listed are appropriate for CAFO operations, some flexibility within the regulatory parameters is necessary to accommodate the unique features of each facility. To establish new practices and standards as BMPs would constitute a substantive change to the rules and is beyond the scope of the rules as proposed.

ACCORD recommended that subsection (l) be amended to read: "Control facilities and retention structures must be designed, constructed, maintained and operated...."

The commission responds that the recommended additions are not necessary to enhance the provision as it is proposed. Retention facilities are considered to be part of the control facilities and the proper operation of such facilities require that they will be maintained. Specific requirements related to maintenance and operation methods for these facilities are covered in detail in other provisions of this subchapter, such as §321.39 relating to PPPs.

Greenbelt Municipal and Industrial Water Authority recommended that in paragraph (4) the terms "stream, river, lake, wetland and playa lake" should be defined.

The commission responds that the words "stream," "river," and "lake" are commonly understood terms for which no definition in this rule is necessary. In addition, "wetland" is defined in §307.3(49) of commission rules and "playa" is defined in §26.048 of the Texas Water Code.

ACCORD Agriculture, Inc. recommended that in paragraph (4) no CAFO that has been built in a "stream, river, lake, wetland, or playa lake" should be authorized by any mechanism other than an individual permit, if it is authorized at all. Special conditions would be essential to provide adequate protection in such situations.

The commission responds that the provisions in these rules related to the location of facilities in relation to a stream, river, lake, wetland, or playa lake provides for adequate protection of the water resources of the state. The rules provide a distinction between existing versus new construction in a manner such that §26.048 of the Water Code prohibits the use of playas as a retention basin for new facilities after 1993. Also, under §321.31(a), the rules prohibit discharge of waste into waters in the state except in the event of a chronic or catastrophic rainfall event in compliance with §321.31(b).

ACCORD Agriculture, Inc. recommended that in paragraph (6) if retention ponds are going to be allowed within the 100-year floodplain, the permit must provide specific performance standards for ensuring that failure of those structures will be prevented. Particular construction techniques are needed.

The commission responds that any structures located in the floodplain must be certified by a licensed professional engineer that the design is appropriate and adequate to protect the facility from damage and failure. Design standards described in §321.39(f)(10) are minimum design standards for construction of retention facilities. Standard engineering practices should allow adaptation of these design standards to accommodate situations that are unique to construction in a 100-year floodplain.

Greenbelt Municipal and Industrial Water Authority requested that in paragraph (6) the location of a levee or retention pond within a 100-year floodplain be prohibited. The term "100-year floodplain" should be defined.

The commission responds that any structures located in the floodplain must be certified by a licensed professional engineer that the design is appropriate and adequate to protect the facility from damage and failure. The term "100-year floodplain" is a commonly used term which is defined in section §301.2 of this title.

ACCORD Agriculture, Inc. and Consumer Union recommended that in paragraph (7) the indicated proximity to water wells is inadequate to provide adequate protection and should be 1,000 feet from public water supply wells and 300 feet from private water wells. ACCORD Agriculture, Inc. suggested that

in paragraph (7) if a facility seeks to locate more closely, an individual review of the potential for pollution is needed.

The commission responds that buffer zone restrictions in other provisions of this rule (500 feet from a public water supply well and 150 feet from a private well) are based on construction standards to protect the quality of water produced from the wells and have not been demonstrated to be inadequate for the protection of public water supplies and private wells. In addition, the buffer distances in these rules are consistent with such distances in rules codified in 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers) and 30 TAC Chapter 290 (relating to Water Utilities).

ACCORD Agriculture, Inc. suggested that paragraph (8) is so general as to be virtually meaningless and fails to provide useful guidance. In addition, ACCORD Agriculture, Inc. inquireed about what state guidelines are being referred to in this subsection.

The commission responds that this subsection provides regulatory parameters for the development and utilization of management practices. Such practices may not create a nuisance or health hazard, result in contamination of drinking water, or be in noncompliance with agency regulations. In response to the previous submission of this comment, the commission removed the term "guideline" from this subsection, to evidence its regulatory nature.

USFWS commented that paragraph (10) is not consistent with the requirements of the EPA proposed general permit which, if adopted, will prohibits the discharge of hazardous chemicals including pesticides, herbicides, solvents, and toxic metals into retention structures, as well as waters of the state. In addition, ACCORD Agriculture, Inc. recommended that paragraph (10) be amended to read: "prevent the discharge of pesticide contaminated waters into retention structures ...such as to prevent pollutants from entering retention structures or from creating a nuisance condition. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the management of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent pollutants from entering the retention structures." To be consistent with federal law, the rule should require that all discharges to containment structures be composed entirely of wastewaters from the proper operation and maintenance of a CAFO and the precipitation runoff from the CAFO areas. The disposal of any materials, other than discharges associated with proper operation and maintenance of the CAFO, into the containment structures should be prohibited. If the reference to "significant pollutants" is retained in the rule, the term needs to be defined. It is not clear if this is intended to be a category of pollutants or a quantitative limitation.

The commission's opinion is that the prohibition of discharges of pesticide contaminated waters into water in the state is much broader and applies to the whole facility and all its components. Changes were incorporated into §321.40(12) to clarify that disposal of hazardous chemicals including pesticides, herbicides, solvents, and toxic metals into retention structures is prohibited.

ACCORD Agriculture, Inc. recommended that in paragraph (11) the reference to "proper disposal" of dead animals is too general to be meaningful. The permit must set out the specific procedures to be followed for disposing of dead animals.

The commission responds that proper disposal of dead animals should be consistent with air quality permitting requirements and to reduce the potential for nuisance conditions. Proper disposal may include rendering, burial, or other methods which do not cause nuisance or detrimental impact to water quality. On May 21, 1999, the commission published a proposed rule (24 TexReg 3829-3840), 30 TAC Chapter 335, Subchapter A, §335.25, which provides approved disposal methods for poultry carcasses as authorized by statute. These proposed rules can be found at *www.tnrcc.state.tx.us*, Rule Log Number 97157-335-WS. They are scheduled for consideration for final adoption by the commission on August 11, 1999.

ACCORD Agriculture, Inc. recommended that in paragraph (12) the reference to "recognized practices of good agricultural management" is too general to be meaningful.

The commission responds that the wide scope of the provision demands a general reference to agricultural management practices. Section 321.39 addresses required management practices regarding the collection, storage, and land application of waste and wastewater. These require practices are consistent with ASAE standards developed by the NRCS.

ACCORD Agriculture, Inc. recommended that in paragraph (13) this requirement belongs in the PPP and must be reviewed as part of the approval process.

The commission responds that BMPs will be considered in meeting the technical and administrative requirements in the approval process. Practices included in this subsection are to be implemented, if appropriate, based upon existing physical and economic conditions, opportunities, and constraints.

§321.41. Other Requirements.

ACCORD recommended in subsection (e) that the report documenting inspections should include a signed certification which states: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." This certification is used for NPDES reporting requirements and assures that the owner or operator is aware of the significance of falsifying any entries.

The commission responds that under §321.42(c) any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under these rules is subject to administrative penalties and may also be subject to civil and criminal penalties. The site inspection report under §321.41(e) is a document covered under §321.42(c). Therefore, the recommended change is not necessary.

§321.42. Monitoring And Reporting Requirements.

ACCORD Agriculture, Inc. recommend revising subsection (a) to include: "The executive director should be orally notified immediately, and at least within 24 hours of any discharge to waters in the State or of the United States. Further, the information contained in § 321.42(a)(l)-(7) should be submitted

to the Commission in the written report filed within 14 days of the discharge to be consistent with federal NPDES requirements."

The commission disagrees that immediate oral notification to the executive director rather than oral notification within 24 hours is necessary because 24-hour oral notification provides sufficient notice to the executive director to allow for any investigation or inspection if necessary and is consistent with unauthorized discharge notification requirements for other water quality programs where the noncompliance may endanger human health or safety, or the environment. In addition, the commission disagrees that adding "waters of the United States" to the rule is necessary because "water in the state" encompasses "waters of the United States" as well as groundwater. The commission agrees that the information contained in §321.42(a)(1)-(7) should be submitted to the commission in order to provide the agency appropriate data about CAFO discharges. Therefore, the commission has modified the second sentence in §321.42(a) to the following: "... shall document the following information to the pollution prevention plan and submit that information to the appropriate regional office within 14 days...."

ACCORD Agriculture, Inc. recommended that in subsection (a)(4) monitoring should be required for any discharges to waters in the state from the facility regardless of whether they are from the retention facilities. ACCORD Agriculture, Inc. also recommended that in subsection (a)(7) to ensure enforceability, the commission should be rewritten to require sample collection for all discharges and then create an exception for adequately documented situations where sample collection was not possible.

The commission responds that it is not feasible to require the facility to sample discharges from areas other than the retention facility because of the difficulty in obtaining a representative sample from those areas and the difficulty of identifying a representative sampling point. The rule requires sampling for all discharges except under conditions where the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples. This exception is necessary to account for dangerous conditions when sampling cannot take place.

Consumers Union offered support for requiring an operator to maintain records on-site for three years and making them available to the executive director upon request. Consumers Union also recommended that pollution prevention information and the results of any pollution monitoring should be filed with the commission and available for public inspection. This enables local residents to determine the effect a CAFO may have on local water and air quality.

The commission responds that the pollution monitoring information should be made available for inspection and has amended §321.42(a) to require that the information required under subsection (a)(1)-(7) be submitted to the appropriate regional office within 14 days. This information will be available for review by the public.

§321.46. Air Standard Permit Authorization.

ACCORD Agriculture, Inc. commented that the rules must comply with the Health and Safety Code prerequisites for issuance of a air quality standard air permit. The rules must ensure BACT and avoidance of conditions of air pollution.

The commission disagrees that §382.051 does not authorize the creation of an air quality standard permit such as the one in this subchapter. Section 382.051(b)(3) authorizes the commission to create standard permits by rule for numerous similar facilities subject to 382.0518. Additionally, the commission believes that the air quality requirements of this subchapter essentially reflect what would be required of similar facilities seeking individual permits under §382.0518, and will protect the public's health and safety and use of physical property.

Jackson Walker and the Poultry Federation recommended that existing CAFOs be allowed to submit a request in writing with the commission to gain coverage under the Air Standard Permit Authorization, in the case where no water quality application is pending. The rules provide "if no water quality application is pending, a separate request may be submitted in writing which demonstrates compliance with all the requirements in this Subchapter." This proposed language appears overly broad, and while presumably intended to require the filing of a simple document (such as a notice of intent), the provision could be construed to require filing a full blown application which demonstrates compliance with all the terms of the Subchapter B rules. Given that the provision involves a "standard permit," a person should be able to gain coverage under the standard permit merely by certifying compliance with those terms of the §321.46 which pertain to air quality issues, rather than filing a new permit application. The rule language should be clarified to this effect.

The commission agrees with the concept of a simple notice of intent (as opposed to a "full blown application") when applying only for air quality standard permit, but believes it is appropriate for the applicant to somehow demonstrate compliance with all of the subchapter because authorization cannot be obtained for air quality without also obtaining water quality authorization under this subchapter. This demonstration of water quality compliance could be in the form of submitting a copy of the letter of authorization of the registration, individual permit, or CAFO general permit previously issued by the commission. No changes are being made to the adoption version in response to this comment.

Jackson Walker and the Texas Poultry Federation recommended that paragraphs (1) and (2) should be clarified as to the meaning of "amended rules" in the phrase "in operation on the date of adoption of these amended rules...." These phrases plainly refer to the amendments adopted in 1998 (rather than the current proposal which is being referred to throughout as the 1999 amendments), and a reference should be included to make this clear.

The commission agrees with this statement and has replaced the language "...the date of adoption of these amended rules..." with "...August 19, 1998...," the date of adoption of the 1998 amendments.

Texas Cattle Feeders Association recommended in the fourth sentence that the word "all" should be deleted and the words "air quality only" should be inserted between the words "the" and "requirements."

The commission disagrees. As stated in the first sentence of §321.46, in order to qualify for air quality coverage under this subchapter, an applicant must first demonstrate compliance with all requirements of the subchapter. The air quality standard permit available in this subchapter was never intended to be a stand-alone authorization and must be accompanied with water quality authorization in the form of a registration, individual permit, or CAFO general permit. The change being adopted in these amended rules simply clarifies the opportunity to obtain

air quality authorization after one has already received water quality authorization.

§321.47. Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization.

Texas Cattle Feeders Association offered support for the process where an existing CAFO can submit a written notice to the executive director for initial TPDES authorization that indicates they will operate the facility in accordance with the provisions of Subchapter B.

The commission acknowledges this statement of support.

ACCORD commented that this section appears to circumvent the procedures set out in the rest of the rule and should be eliminated.

The commission responds that this section does not circumvent the procedures set out in the rest of the rule because the initial TPDES authorization available under this section is available only to those CAFOs operating under a currently effective authorization granted under state law by the commission. As such, their current state authorization has been subject to public notice and comment and will be subject to all the technical provisions of the TPDES permit-by-rule contained in this subchapter. In addition, if the initial TPDES authorization expires before the permit-by-rule expires, the owner or operator must file for renewal under the full procedures of §321.34 or §321.35 (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration).

National Wildlife Federation commented that this section is unjustified and should be deleted. The term "existing facility" is not defined in the rules. It certainly is not defined, or even referred to, in §321.33(a). In effect, this section would appear to purport to allow a facility that has operated illegally (that is, without a required federal permit) to obtain authorization pursuant to federal law without undergoing any public notice or substantive review process. This provision is inconsistent with the basic approach the commission has taken elsewhere in these proposed rules and previously in regulating CAFOs. In particular, it would mean that PPPs are not reviewed by the commission. The commission has consistently taken the position that individualized review of applications for authorization are needed. This sudden departure from that position appears to be unjustified. This provision also could be interpreted as allowing existing authorizations without expiration dates to continue in effect indefinitely. This provision, as well as some of the §321.33 provisions, would appear to authorize continued use of playa lakes as treatment facilities. Such authorization is inconsistent with the commission's responsibilities under federal law.

The commission responds that while the term "existing facility" is not defined in the rules, the meaning of the term "existing facility" as used in this section is described in §321.33(a)(3) as any facility holding an authorization from the commission under state law as of the effective date of these amended rules (1999) and which under federal law is required to, but does not, hold a current NPDES authorization. Some of the facilities that will be eligible for initial TPDES authorization under this provision are facilities that have not been able to obtain federal authorization because the EPA Region VI CAFO general permit expired in March 1998 and has yet to be renewed. In any event, the key point is that only those facilities that have gone through the state application and public participation process will be allowed to initiate their TPDES coverage by submitting a notice under §321.47. Those facilities will be required to meet all the technical requirements of these amended rules, including the requirement in §321.39 that the facility prepare a PPP. If their state authorization expires during the term of this permit-by- rule they must file for renewal under §321.34 or §321.35 (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). The renewal application will include the PPP for the facility. Nothing in this section forgives any past unpermitted operation.

The commission agrees that the section should be more explicit about expirations. Therefore, the commission has added two new sentences at the beginning of §321.35(h) which read as follows: "Registrations issued under §321.37 or §321.47 of this subchapter shall expire five years after the effective date of these amendments (1999), and no new registrations shall be issued after that date. If the commission proposes to amend or readopt these rules prior to such expiration date, all registrations shall remain in effect until final commission action on the proposed amendment or readoption."

Jackson Walker, Texas Poultry Federation, ProAg, and Lemon, Shearer, Ehrlich, Phillips & Good offered support and commented that this section provides a procedure for existing CAFOs to obtain their initial TPDES authorization by filing written notice with the executive director that they will operate in accordance with the provisions of Subchapter B. Given the delegation of the NPDES program to Texas by EPA last year, this provision is of great importance to owners and operators of CAFOs. This provision of the rule appropriately recognizes the need for a streamlined process to obtain initial TPDES authorization for existing CAFOs, following NPDES delegation and in light of the pending adoption by EPA Region VI of a new CAFO general permit. Absent such a streamlined process, the commission would be flooded with renewals of CAFO authorizations following EPA's adoption of its new CAFO general permit, and such a result would unduly burden the permit staff at the agency and also owners and operators of CAFOs in Texas. The proposal properly implements a process which will lead to a staggering of renewal applications.

The commission acknowledges this comment supporting the proposed procedure for existing CAFOs to obtain initial TPDES authorization.

Jackson Walker and the Poultry Federation recommend adding the following language "or within 45 days of the issuance of a new registration or permit for any facility for which a technically and administratively complete application was pending prior to the effective date of these amended (1999) rules." to the end of the sentence "...and submitted within 45 days of the effective date of these amended (1999) rules."

The commission disagrees with this suggested change because these facilities are not existing facilities as described by §321.33(a). Furthermore, the proposed change is unnecessary because pending permit applications under the existing Subchapter B rules are being processed as applications for TPDES permits under which the applicant will have both federal and state authorization, and applications for registration under the existing Subchapter B rules are being processed only for facilities that either already have federal authorization or are not required to have federal authorization.

Texas Cattle Feeders Association recommended changing "45 days" to "60 days" in the sentence "...and submitted within 45 days of the effective date of these amended (1999) rules."

The commission agrees with this comment in order to be consistent with §321.33(a) and has made the change.

Texas Cattle Feeders Association recommended that the word "the" should be inserted between "of" and "unexpired" in the sentence "A facility for which a complete and accurate...."

The commission agrees with this statement and has made the recommended change in the final rule.

Texas Cattle Feeders Association recommended that the rules should clarify in all sections related to applicability and application that the air quality buffer requirement is not applicable to any CAFO currently holding a valid authorization from the commission that transfers into the amended rules (1999) or obtains initial TPDES authorization in accordance with §321.47. The rules should also specify that these CAFOs are not subject to the air quality buffer requirement or associated documentation when the CAFO is required to renew the permit.

The commission responds that CAFOs holding a current authorization from the commission must meet the appropriate air quality buffer requirements under §321.46 if they are obtaining an air quality standard permit in conjunction with a TPDES authorization under these rules. However, the air quality buffers are not required to be met at the time of initial TPDES coverage if the facilities have separate coverage for air quality under Chapter 116 of this title. Facilities that have undergone a traditional permit review under Chapter 116 are subjected to operational requirements that are at least as stringent as those required by this subchapter; therefore, the desired effect of the buffer zones required by this subchapter will still be accomplished.

Texas Cattle Feeders Association recommended that the rules should clarify in all sections related to applicability and application that the recharge feature certification requirement is not applicable to any CAFO currently holding a valid authorization from the commission that transfers into the amended rules (1999) or obtains initial TPDES authorization in accordance with §321.47. The rules should also specify that these CAFOs are not subject to the recharge feature certification requirement or associated documentation when the CAFO is required to renew the permit.

The commission responds that a recharge feature certification is a mechanism for ensuring the protection of groundwater resources; therefore, the commission does not agree that a CAFO holding a valid authorization should never be required to prepare a recharge feature certification. Accordingly, the rules require that a recharge feature certification be submitted as part of the application of a new facility, or an application for renewal of an authorization.

Texas Cattle Feeders Association recommended that this section clarify that an application for initial TPDES authorization does not require an application fee. The facilities holding perpetual permits will be subject to a renewal fee five years from the effective date of the amended rules (1999).

The commission responds that initial TPDES authorization is not an application and therefore no fee is required.

Consumers Union commented that in §321.33 and §321.47 taken together will allow all existing operations, whether or not they have appropriate permits today, to continue operating as they do now indefinitely, without public review or significant improvements to bring them into compliance with current standards. Consumers Union recommended deleting §321.47.

The commission disagrees with this comment. Under §321.33, all existing facilities will be required to apply for authorization under the amended rules either within 60 days of the effective date of these amended rules or within five years of the effective date of the amended rules, depending on the type of their existing authorization.

On the second point, under §321.35(h) a registration issued under §321.47 expires, at the latest, five years after the effective date of these amendments at which time, the registrant will submit an application for renewal under the full procedures set out in §321.34 or 321.35. This is the same schedule of renewal and public notice that would have applied to these facilities without these amendments.

GENERAL COMMENTS

Jackson Walker and the Poultry Federation suggested that the rules should clarify that no structural changes are required by any change in a rule requirement or definition for permit applications which are pending at the agency and which have been deemed administratively and technically complete by the time the rules are adopted and effective.

The commission disagrees that no structural changes should ever be required of a facility which has an administratively and technically complete application under the previous rules. In order to obtain TPDES authorization under these amended rules, the facility will be required to comply with the technical requirements in these rules, even if doing so will require structural changes to the facility.

Greenbelt Municipal and Industrial Water Authority suggested that the proposal improperly delegates discretionary decision making authority to the executive director.

The commission responds that the proposed rules do not improperly delegate discretionary decision making authority to the executive director. The executive director's determination of whether to approve or deny an application for a new or amended registration is based on the requirements of the rule, and subject to review by the commission through a motion for reconsideration.

Consumer Union opposed the application of a general permit-by-rule to AFOs, contending that the CAFO industry consists of several industries with different waste management practices. ACCORD Agriculture, Inc. commented that issuing a permit-by-rule that allows registration rather than individual permitting for all CAFOs, other than those in CNRAs, will not adequately address the water quality problems that CAFOs are known to cause. In addition to the variety of facilities that would be regulated by the proposed rules, site conditions such as soil topography, climate, and size can vary greatly from operation to operation. Such site-specific variations require individual treatment of each CAFO.

The commission responds that the nature of CAFOs is such that uniform standards of performance and management, as reflected in these rules, are sufficient to carry out the state and federal regulatory mandates and provide ample protection of the state's air and water resources. Waste management practices for different types of CAFOs are sufficiently similar to allow inclusion in a permit-by-rule. Under §321.33(b), the executive

director may designate any AFO as a CAFO and require it obtain an individual permit in order to protect surface or ground water resources.

Consumers Union requested information on how the rules implement the Clean Water Act with respect to operations allowed to use playa lakes for wastewater retention under state law.

The TPDES program describes the scope of the jurisdiction over discharges from CAFO operations. The Memorandum of Agreement between the EPA and the TNRCC specifies that the EPA shall retain permitting and enforcement jurisdiction over CAFOs that are not subject to TNRCC jurisdiction. In this manner, any CAFO which TNRCC cannot permit due to state statutory restrictions will be permitted by the EPA.

ACCORD Agriculture, Inc. commented that permitted CAFOs are likely to discharge significantly more than once every 25 years. Large CAFOs have the potential to significantly degrade water quality in their receiving streams with discharges that are in compliance with the permit-by-rule. Any CAFO whose discharge, albeit from a properly designed facility, during a catastrophic rainfall, is likely to significantly impair water quality should not be eligible for authorization pursuant to a permit- by-rule. Facilities which contain more than 2,000 animal units are clearly above the threshold of facilities whose discharges will significantly impair water quality. Facilities over this size should be required to obtain individual permits.

ACCORD Agriculture, Inc. recommended their opposition to any authorization by rule or general permit which applies to CAFOs located in impaired watersheds. These facilities need individualized review to ensure that they do not contribute to further degradation of their receiving waters and violations of water quality standards. CAFOs in impaired watersheds should be authorized only through individual permits which contain such individual control measures as are necessary to prevent further degradation of the watershed. A list of impaired watersheds should be developed using the 303(d) and 305(b) lists. The §314 list of trophic states for reservoirs also should be considered, with streams tributary to reservoirs demonstrating unacceptably high trophic levels also being singled out for special protection.

EPA, the Service, and TNRCC agree that it is the commission's responsibility to incorporate into its permits those conditions necessary to maintain state water quality standards where they are currently being met and to attain them where they are not. For those Texas waters that are currently maintaining their approved water quality standards, there is little, if any, verifiable evidence that CAFO management practices and discharges that have been permitted under existing EPA and Texas rules and permits have caused or contributed to impairment of aquatic life uses. The commission, EPA, the Service, and the TPWD agree, however, that more information is needed in order to accurately assess whether changes are needed in permitting requirements for CAFOs. Therefore, the commission and EPA have agreed that a comprehensive study will be designed and executed under the joint planning and management of our agencies, with participation of USFWS, TPWD, and other state and federal agencies with appropriate expertise. The objective will be to define and then to answer relevant questions with regard to the effects of permitted CAFO discharges.

The study will be conducted in two phases and its goal will be to produce peer reviewed, verified and reproducible results in three to five years. Phase I will consist of gathering, cataloging, and analyzing currently available data including, for example, records of rainfall events, reported CAFO discharges, and streamflow data. It will result in the selection of two or more distinct study areas in Texas for study and sampling in Phase II and in sampling in preparation for analysis in during Phase II. In Phase I, we will also analyze available short and long tem modeling protocols for use in Phase II. If feasible and agreeable, some aspects of Phase II may be initiated during Phase I.

Phase I will be completed in 12-15 months, at which point EPA and TNRCC will publish in the *Texas Register* for public comment, a joint report consisting of the results of Phase I and the plan for Phase II. Depending on the results of Phase I, the second phase will consist of conducting modeling and instream sampling during discharge events and analysis of BMPs, structural requirements, and other means to affect the quantity, frequency, and content of CAFO discharges. The results will be used by TNRCC as a resource for the determination of what changes, if any, should be made in Subchapter B at its renewal.

At the conclusion of Phase I, EPA and TNRCC will consider whether any amendment to Subchapter B is necessary at that time. As set out in the Memorandum of Agreement governing administration of the TPDES program, TNRCC will propose to amend this CAFO permit by rule in response to a specific and well-grounded request by EPA to do so. Likewise, under TNRCC rules, the commission may also make an appropriate amendment in response to a petition from any governmental agency or member of the public to do so, or if the executive director determines that information not available at the time of issuance of this permit by rule justifies amendment of the permit terms.

Under our rules, the commission may make an appropriate amendment at any time in response to a petition to do so or if the executive director determines that information not available at the time of adoption of this permit by rule justifies amendment of the permit terms. All registrants for the permit by rule adopted today should remain aware of the commission's authority and duty to amend the terms of the permit any time it is necessary to do so in accordance with commission rules implementing state water quality standards, the state permitting program, or TPDES. Such amendments may result from the TMDL process, the study described in this preamble, or any other appropriate cause. The commission points out, as well, that under §321.33(b), the executive director may at any time require a facility to apply for any individual permit, even if that facility holds a registration under the permit by rule. The adoption of a TMDL or an implementation plan for a TMDL is a factor that would be considered by the commission as grounds for making such a requirement. The commission also has the option of issuing statewide or area-specific general permits in response to TMDLs, and requiring registrants to transfer to those or to obtain a site-specific individual permit.

ACCORD Agriculture, Inc. commented that they are involved in a lawsuit with TNRCC and are contesting the Subchapter K rules and the Subchapter B rules that were recently adopted. They also are contesting all 56 CAFO permits that were issued under Subchapter K and the 24 pending permits that would be considered by the TNRCC. TNRCC is not legally able to accept the EPA delegation and is strongly encouraged not take on this added task until our court case is settled.

EPA has determined that TNRCC meets all legal requirements for administering the NPDES program in Texas. The commission declines to refrain from exercizing its responsibilities under the TPDES program and the Water Code due to pending unresolved litigation. The commission will, of course, make any change to its rules or program that may ultimately be required by court decision.

ACCORD Agriculture, Inc. and National Wildlife Federation suggested that the TNRCC does not have the authority for the creation of new permits-by-rule. The "savings clause" included in the recent amendment to §26.040 of the Water Code does not authorize the creation of these proposed new permits-by-rule whether they are created overtly or through the artifice of a rule amendment such as that proposed here. TNRCC lacks the authority for the proposed standard air permits included in the proposed rules, and have not demonstrated that CAFOs meet the statutory prerequisites of §382.051(b)(3) and §382.0518 of the Health and Safety Code. There is no adequate mechanism for ensuring that BACT will be employed by each facility. ACCORD Agriculture, Inc. suggested that the rules must ensure that each individual facility, as that term is defined in §382.003 of Health and Safety Act, making up an AFO will utilize BACT.

The commission disagrees with the comment. As the commenter points out, the savings clause continued the effectiveness of all the rules existing as of the date of the amendment, including both Subchapters K and B. The legislature authorized the commission to continue to regulate by rule all the facilities that were so regulated prior to the amendments to §26.040. The savings clause just as clearly authorizes the commission to continue to amend its existing rules as circumstances require. Nothing in the APA or in the savings clause of §26.040 limits the agency's amendment authority as posited by the commenter. The commenter has raised these issues in litigation and the commission will continue to respond as appropriate in that forum.

Even if the commenter's narrow interpretation of the savings clause were correct, it would not preclude adoption of these amendments. These amendments do not "bring whole new groupings of facilities into the permit-by-rule scheme." Subchapter B, as it read before the 1998 amendments, provided that "all feedlot operations may be regulated by rule...provided such operations comply with §§321.35 through 321.39 of this title. The provisions of this subsection are applicable to all feedlot operations, either housed or open lots, including beef cattle; dairy cattle or milk production areas; swine; sheep; goats; horses; chickens, including broilers, layers and/or breeders; turkeys, including breeders and/or feeders; and auction markets" (30 TAC §321.33(a)).

Former §321.33(d) set maximum numbers of animals above which an operator was required to obtain an individual permit. The 1998 amendments to the rule altered the standard under which a facility is automatically required to obtain an individual permit from one determined by number of animals to one determined by the location of the facility or its status as a source of air emissions. However, the 1998 amendment and this amendment to Subchapter B continued the scheme of the original Subchapter B by: (1) specifying which CAFO facilities can be regulated by rule; and (2) setting out uniform terms for those facilities. As amended, Subchapter B continues to regulate by rule what the original Subchapter B called "feedlots"; it amends only the terms of the permit by rule to require higher standards both for operating practices and for registration, recordkeeping, and reporting to the TNRCC.

The commission disagrees that case-by-case BACT determinations must be conducted in standard permits-by-rule. TCAA, Texas Health and Safety Code, §382.051(b)(3) states that "the commission may issue: ...; (3) a standard permit developed by rule for numerous similar facilities subject to §382.0518." The only reasonable interpretation of the language "subject to §382.0518" is that standard permits developed by rule are allowed for facilities that would otherwise be subject to §382.0518. The language of §382.0518 sets out requirements that logically apply to individual facilities seeking permits, including application of BACT, impacts review, and opportunity for hearing under §382.056(d). This type of case-by-case process is antithetical to the entire concept of permits by rule, since there would be no savings of effort, time, or procedure by applicants or TNRCC staff. The Legislature could not have intended such an absurd result, and such a statutory reading flies in the face of the Code Construction Act's presumption that "a just and reasonable result is intended." (Government Code, §311.021(3)). The TNRCC's long-standing "administrative construction of the statute" is also entitled to deference. *Id.* §311.023; *State v. Public Util. Comm'n*, 883 S.W.2d 190, 196 (Tex. 1994).

However, the commission is mindful of its obligation to protect human health and the environment. In light of this, the TNRCC has reviewed the control measures set forth by the proposed rule, and has confirmed that they essentially reflect the level of control technology that would typically be required of a similar facility seeking an individual air quality permit under 382.0518. The air quality requirements of this subchapter substantially reflect the application of best available control technology for CAFOs, including the requirement to develop and operate under a pollution prevention plan, design criteria for lagoons, operational requirements for single and multi-stage lagoon systems, requirements for wastewater irrigation practices and waste application practices, maintenance scheduling and reporting requirements for solids removal from lagoons, requirements for manure stockpiling, minimum buffer distance for nighttime application of liquid and solid waste, flushing and scraping schedules for manure, maintenance and design of earthen pens, operational requirements for settling basins, dead animal disposal limitations, and inspection requirements. The commission also affirms that the adopted rule will be protective of human health and the environment, based upon the commission's experience with Texas CAFOs.

STATUTORY AUTHORITY

The amendments and new section are adopted under the Texas Water Code, §26.040, under which the commission has authority to amend rules adopted under §26.040 prior to its amendment by HB 1542 in 1997, and §5.102, which provides the commission with the authority to carry out duties and general powers of the commission under its jurisdictional authority as provided by Texas Water Code, §5.103. These amendments are also adopted under Texas Water Code, §26.028(c), which provides that the commission may renew a permit for a CAFO which was issued between July 1, 1974 and December 31, 1977 without holding a public hearing, and §26.041 of the Texas Water Code under which the commission may use any means provided by Chapter 26 of the Texas Water Code to prevent a discharge of waste that is injurious to public health. These amendments are also adopted under Texas Health and Safety Code, §382.011, which provides the commission the authority

to establish the level of quality to be maintained in the state's air; §382.017,which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §382.051, which provides the commission the authority to issue standard permits by rule.

§321.31. Waste and Wastewater Discharge and Air Emission Limitations.

(a) Pursuant to §305.1 of this title (relating to Scope and Applicability), it is the policy of the Texas Natural Resource Conservation Commission that there shall be no discharge or disposal of waste or wastewater from animal feeding operations into or adjacent to waters in the state, except in accordance with subsection (b) of this section, any individual permits issued by the commission prior to the effective date of these rules, or a CAFO general permit issued or adopted by the commission. Waste and wastewater generated by a CAFO under this subchapter shall be retained and utilized in an appropriate and beneficial manner as provided by commission rules, orders, registrations, authorizations, CAFO general permits, or individual permits.

(b) Wastewater may be discharged to waters in the state from CAFOs authorized to operate under this subchapter whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed, and properly operated to contain process generated wastewaters plus the runoff (storm water) from a 25-year, 24-hour rainfall event for the location of the facility authorized under this subchapter. There shall be no effluent limitations on discharges from retention structures constructed, operated, and maintained to contain the 25-year, 24-hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity, and the retention structure has been properly operated and maintained. Retention structures shall be designed in accordance with §321.39 of this title (relating to Pollution Prevention Plans). Facilities authorized under this rule shall comply with §305.125 of this title (relating to Standard Permit Conditions) and all applicable permit conditions contained in TNRCC rules.

(c) (No change.)

§321.32. Definitions.

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

(1) Agronomic rates-The land application of animal wastes or wastewater at rates of application which will enhance soil productivity and provide the crop or forage growth with needed nutrients for optimum health and growth.

(2) (No change.)

(3) Animal feeding operation-A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the beneficial use of wastes.

(4) Animal unit-A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of weaned swine weighing 55 pounds or less multiplied by 0.1, plus the number of sheep multiplied by 0.1, plus the number of horses/mules multiplied by 2.0.

(5) (No change.)

(6) Best management practices ("BMPs")-The schedules of activities, prohibitions of practices, maintenance procedures, and other management and conservation practices to prevent or reduce the pollution of waters in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, land application, or drainage from raw material storage.

(7) CAFO general permit-A general permit issued or adopted by the commission in accordance with Chapter 26 of the Texas Water Code for the express purpose to regulate discharges from CAFOs on a statewide or geographic basis.

(8) (No change.)

(9) Concentrated animal feeding operation ("CAFO")-Any animal feeding operation which the executive director designates as a significant contributor of pollution or any animal feeding operation defined as follows:

(A) any new and existing operations which stable and confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

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

(iii) 2,500 swine weighing over 55 pounds or 10,000 weaned swine weighing 55 pounds or less;

(iv)-(x) (No change.)

(B) any new and existing operations covered under this subchapter which discharge pollutants into waters in the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into the waters in the state, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

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

(iii) 750 swine weighing over 55 pounds or 3,000 weaned swine weighing 55 pounds or less;

(iv)-(x) (No change.)

(C) Poultry facilities that have no discharge to waters in the state normally are not considered a CAFO. However, poultry facilities that use a liquid waste handling system or stockpile litter near watercourses or dispose of litter on land such that stormwater runoff will be transported into surface water or groundwater may be considered a CAFO.

(10) Control facility-Any system used for the retention of wastes on the premises until their ultimate use or disposal. This includes the collection and retention of manure, liquid waste, process wastewater, and runoff from the feedlot area.

(11)-(20) (No change.)

(21) New CAFO-A CAFO which was not authorized under a rule, order, or permit of the commission in effect on August 19, 1998.

(22)-(38) (No change.)

§321.33. Applicability.

(a) Any CAFO operating under currently effective authorization granted under state law only by the TNRCC or under federal law by EPA prior to the effective date of these amended rules (1999) shall submit to the executive director written notice as required in §321.47 of this title (relating to Initial TPDES Authorization) or do one of the following.

(1) Within 60 days of the effective date of these amended (1999 rules), the facility owner or operator shall apply for authorization under this amended subchapter (1999) in accordance with the provisions of either §321.34 or §321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). If such application is filed within the 60-day period, and is administratively and technically complete, the applicant shall continue to operate the facility under the terms of the expired authorization until final disposition of the application in accordance with this subchapter.

(2) Any facility holding an authorization from the TNRCC and which is not required under federal law to obtain National Pollutant Discharge Elimination System (NPDES) authorization shall continue to operate under the terms of its existing TNRCC authorization until expiration, amendment, or termination. All such TNRCC authorizations shall expire five years from the effective date of the amendments (1999) to these rules, unless such authorization specifies an earlier expiration date.

(3) Any facility holding an authorization from the TNRCC under state law only and which under federal law is required to, but does not, hold a current NPDES authorization, shall file an application in accordance with provisions of this subchapter within 60 days of the effective date of these amended (1999) rules.

(b)-(e) (No change.)

(f) Any existing, new, or expanding CAFO which is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of such general permit or authorized pursuant to subsections (a) or (b) of this section and which is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in the definition of CAFO in §321.32(9)(A) of this title (relating to Definitions) shall apply for registration in accordance with §321.35 of this title (relating to Procedures for Making Application for Registration) or individual permit in accordance with §321.34 of this title.

(g) Any existing, new, or expanding animal feeding operation which is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of such general permit nor authorized pursuant to subsections (a) or (b) of this section, which is located in areas specified in the definition of Dairy Outreach Program Areas in §321.32(11) of this title, and which is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the number of animals specified in the definition of CAFO in §321.32(9)(B) of this title, but less than or equal to the number of animals specified in the definition of CAFO in §321.32(9)(A) of this title shall apply for registration in accordance with §321.35 of this title or individual permit in accordance with §321.34 of this title.

(h)-(i) (No change.)

(j) Any CAFO which has existing authority under the Texas Clean Air Act (TCAA) does not have to meet the air quality criteria of this subchapter. Upon request, pursuant to the TCAA, §382.051, any CAFO which files an application, meets the requirements of §321.46 of this title (relating to Air Standard Permit Authorization), and obtains approval of such application in accordance with the provisions of this subchapter is hereby entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Those CAFOs which would otherwise be required to obtain an air quality permit under Chapter 116 of this title, and which do not satisfy all of the requirements of this subchapter, shall apply for and obtain an air quality permit pursuant to Chapter 116 of this title in addition to any authorization required under this subchapter. Those animal feeding operations which are not required to obtain authorization under this subchapter may be subject to requirements under Chapter 116 of this title. Any change in conditions such that a person is no longer eligible for authorization under this section requires authorization under Chapter 116 of this title. No person may concurrently hold an air quality permit issued under Chapter 116 of this title and an authorization with air quality provisions under this subchapter for the same site. Any application for a permit renewal, amendment, or transfer for any permit issued under the TCAA shall be reviewed and/or issued under the provisions of Chapter 116 of this title.

(k) (No change.)

(l) By written request to the executive director, the owner or operator of any facility described in subsection (a)(2) of this section may request a transfer of its authorization from an individual permit granted by the commission to a registration. Such transfer shall be processed in accordance with the provisions of §§321.35-321.37 of this title (relating to Procedures for Making Application for Registration, Notice of Application for Registration, and Actions on Applications for Registration). If approved, such transfer under this subsection shall include all special conditions or provisions from the existing individual permit, and in addition, shall not impose any additional conditions or other requirements unless there is substantial modification to the facility constituting a major amendment as defined by §305.62 of this title (relating to Amendment) or to address compliance problems with the facility or its operations in accordance with a commission order or amendment. If approved, transfer of authorization under this subsection will require compliance with the appropriate provisions of §§321.38-321.42 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements). If approved, such transfer shall not require any changes to existing structural measures which are documented to meet design and construction standards in effect at the time of installation.

(m) No person may concurrently hold both an individual permit or approved registration under this subchapter and an authorization under a CAFO general permit in accordance with the notice of intent requirements of the general permit for the same site.

(n) (No change.)

(o) By written request to the executive director, the owner or operator of any facility described in §321.33(a)(2) of this title (relating to Applicability) and holding an unexpired authorization granted under Subchapter K of this chapter (relating to Concentrated Animal Feeding Operations) may request a transfer of their authorization to a registration under this subchapter. Written request shall be on the same form as required under §321.47 of this title and continued authorization shall be in accordance with the terms of §321.47 of this title. A Subchapter K authorization that has been specifically set aside by court order shall not be eligible for transfer under this subsection.

(p) Any owner or operator holding a current authorization issued at any time under this subchapter shall obtain an amendment pursuant to §321.34 of this title (relating to Procedures for Making Application for an Individual Permit) or §321.35 of this title (relating to Procedures for Making Application for Registration) prior to any increase in the number of animals authorized for confinement or to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination as specified in §321.46 of this title (relating to Air Standard Permit Authorization). Nonsubstantial modifications may be made to the site plan or the pollution prevention plan submitted with the approved application without prior authorization from the commission. Substantial modifications are those that result in an increase in the number of animals authorized to be confined, a change in the required buffer zone or required lagoon capacity, a change in boundaries of the site plan, or a violation of any management practice or physical or operational requirement of this subchapter.

§321.34. Procedures for Making Application for an Individual Permit.

(a) A CAFO that was not authorized under a rule, order, or permit issued or adopted by the commission and in effect at the time of the adoption of these amended rules (1999) shall apply for an individual permit in accordance with the provisions of this section or shall apply for registration in accordance with the provisions of §321.35 of this title (relating to Procedures for Making Application for Registration). Application for an individual permit shall be made on forms provided by the executive director. The applicant shall provide such additional information in support of the application as may be necessary for an adequate technical review of the application. A facility which is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only individual permit, for a term of five years, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event. At a minimum, the application shall demonstrate compliance with the technical requirements set forth in §§321.38-321.42 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements) and shall demonstrate compliance with the requirements specified in §321.35(c)(1)-(13) of this title (relating to Procedures for Making Application for Registration). Applicants shall comply with §§305.41, 305.43, 305.44, 305.46, and 305.47 of this title (relating to Applicability, Who Applies, Signatories to Applications, Designation of Material as Confidential, and Retention of Application Data). Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each permittee as required by §305.503 and §305.504 of this title (relating to Fee Assessments and Fee Payments). An annual Clean Rivers Program fee is also required as required under §220.21(d) of this title (relating to Water Quality Assessment Fees). Except as provided in subsections (b)-(e) of this section, each permittee shall comply with §§305.61 and 305.63-305.68 of this title (relating to Applicability, Renewal, Transfer of Permits, Permit Denial, Suspension and Revocation; Revocation and Suspension Upon Request or Consent; and Action and Notice on Petition for Revocation or Suspension). Notice, public comment, and hearing on applications shall be conducted in accordance with commission rules governing individual permits issued under Chapter 26 of the Texas Water Code. Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions). Individual permits granted under this subchapter shall be effective for a term not to exceed five years. To qualify for the air quality standard permit, the applicant must meet the requirements in §321.46 of this title (relating to Air Standard Permit Authorization).

(b) All applications for permit renewal must be administratively and technically complete, meet all applicable technical requirements of this subchapter, and be in accordance with one of the following.

(1) An application to renew an individual permit for an animal feeding operation which was issued between July 1, 1974, and December 31, 1977, may be renewed by the commission at a regular meeting without holding a public hearing if the applicant does not seek to discharge into or adjacent to waters in the state and does not seek to change materially the pattern or place of land application.

(2) Except as provided by §305.63(a)(3) of this title (relating to Renewals), an application for a renewal of an individual permit for a facility as described in §321.33(a)(2) of this title (relating to Applicability) may be granted by the executive director without public notice if it does not propose any change which constitutes a major amendment as defined in Chapter 305 of this title (relating to Consolidated Permits) or a major source as defined under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the permit in which the commission has determined that:

(A)-(C) (No change.)

(3) If the application for renewal does not meet all of the criteria in this subsection, then an application for renewal shall be filed in accordance with subsection (a) of this section.

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

(e) Any permittee with an issued and effective individual permit shall submit an application for renewal at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall provide the permittee notice of deadline for the application for renewal at least 240 days before the permit expiration date. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(f) Notice provided by the executive director under subsection (e) of this section shall be sent by certified mail, return receipt requested.

(g) A facility owner or operator shall submit a complete application within 90 days of notification from the executive director that an individual permit is required.

(h) If an application requests an amendment as defined by §321.33(p) of this title (relating to Applicability) of an existing individual permit, the application shall be filed and processed under in this section.

(i) If a renewal application has been filed before the individual permit expiration date, the existing individual permit will remain in full force and effect and will not expire until action on the application for renewal is final.

§321.35. Procedures for Making Application for Registration.

(a) A CAFO that is not authorized under a rule, order, or permit of the commission in effect at the time of the adoption of these amended rules (1999) shall apply for and receive registration under this section or shall apply for an individual permit in accordance with the provisions of §321.34 of this title (relating to Procedures for Making Application for an Individual Permit). A person who

requests a registration or renewal of such registration granted under this subchapter, or an amendment as defined in §321.33(p) of this title (relating to Applicability), shall submit a complete and accurate application to the executive director, according to the provisions of this section.

(b) (No change.)

(c) Application for registration under this section shall be made on forms prescribed by the executive director. A facility which is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only registration, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event, or may transfer from an individual permit to such a registration in accordance with §321.33(l) of this title. The applicant shall submit an original completed application with attachments and one copy of the application with attachments to the executive director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate Texas Natural Resource Conservation Commission regional office. The completed application shall be submitted to the executive director signed and notarized and with the following information:

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

(5) A proposed site plan for the facility showing the boundaries of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO, the locations of all pens, lots, ponds, on-site and off-site land application areas, and any other types of control or retention facilities, and all adjacent landowners within 500 feet of the property line of all tracts containing facilities and all on-site or off- site land application areas, including their name and address. As used in this subchapter, the term "land application area" does not apply to any lands not owned, operated, or controlled by the CAFO operator for the purpose of off-site land application of manure, wherein the manure is given or sold to others for land application.

(6)-(7) (No change.)

(8) Sections of the pollution prevention plan to be designated by the executive director. Prior to utilization of wastewater retention facilities, documentation of liner certifications by a licensed professional engineer must be submitted (if applicable).

(9)-(10) (No change.)

(11) Where the applicant cannot document the absence of recharge features on the tracts for which an application is being filed, the proposed site plan shall also indicate the specific location of any and all recharge features found on any property owned, operated, or controlled by the applicant under the application as certified by a NRCS engineer, licensed professional engineer, or qualified groundwater scientist. The applicant shall also submit a plan, developed by a NRCS engineer or licensed professional engineer, to prevent impacts on any located recharge feature and associated groundwater formation which may include the following:

(A) installation of the necessary and appropriate protective measures for each located recharge feature such as impervious cover, berms, or other equivalent protective measures covering all affected facilities and land application areas; or

(B) submission of a detailed groundwater monitoring plan covering all affected facilities and land application areas. At a minimum, the ground-water monitoring plan shall specify procedures to annually collect a ground-water sample from representative wells, have each sample analyzed for chlorides, nitrates, and total dissolved solids, and compare those values with background values for each well; or

(C) any other similar method or approach demonstrated by the applicant to be protective of any associated recharge feature.

(12) (No change.)

(13) The applicant shall indicate in the application the location and times where the application may be inspected by the public. Within 48 hours of receiving notice of administrative and technical completeness, the applicant shall make a copy of the application and the entire pollution prevention plan available for public inspection at the applicant's place of business during normal business hours, Monday through Friday, and at a public place within the county where the proposed facility is to be located so that the copy may be made available for inspection at a public place during normal business hours. For the purposes of this section, normal business hours shall be at a minimum of: 9:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday allowing for the observance of state and/or federal holidays. Such places may include, but are not limited to, public libraries; district, county, or municipal offices; community recreation centers; or public schools.

(d)-(g) (No change.)

(h) Registrations issued under §321.37 or §321.47 of this title (relating to Action on Applications for Registration or Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization) shall expire five years after the effective date of these amendments (1999), and no new registrations shall be issued after that date. However, if the commission proposes to amend or readopt these rules prior to such expiration date, all registrations shall remain in effect until final commission action on the proposed amendment or readoption. An application for renewal of a registration under this section must be administratively and technically complete, meet all applicable technical requirements of this subchapter, and, except as otherwise provided in paragraphs (1) - (5) of this subsection, be processed according to §321.36 and §321.37 of this title (relating to Notice of Application for Registration and Action on Application for Registration). A registration for a facility described in §321.33(a)(2) of this title (relating to Applicability) may be renewed, according to the following procedures:

(1) Except as provided by §305.63(a)(3) of this title (relating to Renewals), an administratively and technically complete application may be granted by the executive director without public notice if it does not propose any other change to the registration as approved. Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the registration in which the commission has determined that:

(A)-(C) (No change.)

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

§321.36. Notice of Application for Registration.

(a) Administrative and technical review.

(1) (No change.)

(2) Within five working days of declaration of administrative and technical completeness, the executive director shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative and technical completeness which is suitable for publishing

or mailing, under the requirements of subsection (c) of this section, and shall forward that statement to the applicant.

(b) Notice of application. The notice of application for registration and administrative and technical completeness shall contain the following information:

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

(5) a brief summary of the information included in the application for registration, including, but not limited to, the general location of facilities and land application areas associated with the application, the proposed size of the facility, a description of the receiving water for any discharge, and the location where a copy of the application for registration may be reviewed by interested persons;

(6)-(7) (No change.)

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

(e) Notice by mail.

(1) (No change.)

(2) the notice shall be mailed by the chief clerk to the following:

(A) the potentially affected landowners named on the site plan submitted with the application;

(B)-(J) (No change.)

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

§321.37. Actions on Applications for Registration.

(a) Public comment on applications for registrations. A person may provide the commission with written comments on any application for registration for which notice has been issued under this subchapter. The executive director shall review any written comments received within 30 days of mailing the notice. Only written comments received within the 30-day period must be considered. The written information received will be utilized by the executive director in determining what action to take on the application for registration, pursuant to subsection (b) of this section.

(b) The executive director shall, after review of any application for registration, approve or deny it in whole or in part. The determination of the executive director shall include review and action on any new applications or changes, renewals, and requests for amendment of any existing registration. In considering an application for registration, the executive director will consider all relevant requirements of this subchapter and consider all information pertaining to those requirements timely received by the executive director regarding the application for registration. The executive director may not approve an application for registration by a facility that is required to obtain an individual permit under Texas Water Code, §26.0286. The written determination on any application for registration, including any authorization granted, shall be mailed by the Office of Chief Clerk to the applicant upon the decision of the executive director. At the same time the executive director's decision is mailed to the applicant, a copy or copies of this decision shall also be mailed by the Office of Chief Clerk to all persons who timely submitted written information on the application, as described in subsection (a) of this section. The written determination of the executive director shall include a response to all significant comments received during the 30-day comment period.

(c) Motion for reconsideration. The applicant or any person submitting comments in accordance with subsection (a) of this section may file with the chief clerk a motion for reconsideration, under the procedures of §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application. Any person who was entitled to but not given proper notice of an application and who subsequently did not submit comments within the 30-day comment period may file a motion for reconsideration.

§321.39. Pollution Prevention Plans.

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

(f) The plan shall include, at a minimum, the following items.

(1) Each plan shall provide a description of potential pollutant sources. Potential pollutant sources include any activity or material that may reasonably be expected to add pollutants to waters in the state from the facility. An evaluation of potential pollutant sources shall identify the types of pollutant sources, provide a description of the pollutant sources, and indicate all measures that will be used to prevent contamination from the pollutant sources. The type of pollutant sources found at any particular site varies depending upon a number of factors, including, but not limited to: site location, historical land use, proposed facility type, and land application practices. The evaluation shall encompass all land that will be used as part of the CAFO as indicated in the site plan. Each potential pollutant source must be identified in the plan. A thorough site inspection of the facility is recommended to ensure that all sources have been identified. Potential pollutant sources found at CAFO facilities include, but are not limited to, the following: manure; sludge; wastewater; dust; silage stockpiles; fuel storage tanks; pesticide storage and applications; lubricants; disposal of any dead animals associated with production at the CAFO; land application of waste and wastewater; manure stockpiling; pond clean-out; vehicle traffic; and pen clean-out. Each plan shall include:

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

(C) A list of any significant spills of these materials at the facility after September 18, 1998, or for new facilities, since date of operation.

(D) (No change.)

(2)-(7) (No change.)

(8) Evaporation systems shall be designed to withstand a ten-year (consecutive) period of maximum recorded monthly rainfall (other than catastrophic), as determined by a hydrologic needs analysis (water balance), and sufficient freeboard (not less than one foot) shall be maintained to dispose of rainfall and rainfall runoff from the 25-year, 24-hour rainfall event without overflow. In the hydrologic needs analysis determination, in any month in which a catastrophic event occurs, the analysis shall replace such an event with not less than the long-term average rainfall for that month.

(9)-(18) (No change.)

(19) The pollution prevention plan shall describe measures that will be used to minimize entry of non- process wastewater into retention facilities. Such measures may include the construction of berms, embankments, or similar structures. Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The pollution prevention plan must include all calculations, as well as, all factors used in determining land application rates, acreage, and crops. Land application rates must take into account the nutrient contribution of any land applied manures. If land application is utilized, the following requirements shall apply.

(A) (No change.)

(B) When wastewater is used to irrigate land application areas, the plan shall include: a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data. Application rates shall not exceed the nutrient uptake of the crop coverage or planned crop planting with any land application of wastewater and/or manure. Land application rates of wastewaters shall be based on the available nitrogen content, however, where annual soil sampling analysis for extractable phosphorus as described in paragraph (28)(F) of this subsection indicates a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste or wastewater land application field, the operator may apply wastewater to the affected application area only in accordance with the conditions established in paragraph (28)(G) of this subsection.

(C)-(H) (No change.)

(I) The pollution prevention plan shall include the following information:

(i) a site map showing the location of any land application areas, either on-site or off-site which are owned, operated, or under the control of the facility owner or operator which will be utilized for land application of waste or wastewater;

(ii) the location and description of the major soil types within the identified land application areas;

(iii) crop types and rotations to be implemented on an annual basis;

(iv) predicted yield goals based on the major soil types within the identified land application areas;

(v) procedures for calculating nutrient budgets to be used to determine application rates;

(vi) a detailed description of the type of equipment and method of application to be used in applying the waste or wastewater;

(vii) projected rates and timing of application of the manure and wastewater as well as other sources of nutrients that will be applied to the land application areas.

(J) The owner or operator shall maintain on-site and update records of all waste and wastewater either utilized at the facility or removed from the facility.

(i) For facilities where waste or wastewater is applied on property owned, operated, or controlled by the owner or operator, such records shall include the following information: date of waste or wastewater application; location of the specific application site and the number of acres utilized during each application event; acreage of each individual crop on which waste or wastewater is applied; number of dry tons, percent nitrogen based on a dry basis, and the percent moisture content of the manure; and actual annual yield of each harvested crop.

(ii) Where waste or wastewater is removed from the facility, records must be maintained in accordance with paragraph (23) of this subsection.

(20)-(21) (No change.)

(22) Where the operator decides to land apply manures or pond solids, the plan shall include: a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data. Land application rates of wastes shall be based on the available nitrogen content of the solid waste, except however, where annual soil sampling analysis for extractable phosphorus as described in paragraph (28)(F) of this subsection indicates a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste or wastewater land application field, the operator may apply manure or pond solids to the affected application area only in accordance with the conditions established in paragraph (28)(G) of this subsection.

(23) If manure is sold or given to other persons for off-site land application or disposal, the operator must maintain a log of: date of removal from the CAFO; name of hauler; and amount, in wet tons, dry tons, or cubic yards, of waste removed from the CAFO. (Incidental amounts, given away by the pick- up truck load, need not be recorded.) Where the wastes are to be land applied by the hauler, the operator must make available to the hauler any nutrient sample analysis of the manure from that year.

(24) The procedures documented in the pollution prevention plan must ensure that the handling and land application of wastes as defined in §321.32 of this title (relating to Definitions) comply with the following requirements.

(A) Manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface disposal of manure in the 100-year flood plain, near water courses or recharge feature is prohibited unless protected by berms or other structures. The land application of wastes at agronomic rates shall not be considered surface disposal in this case and is not prohibited.

(B)-(C) (No change.)

(D) Manure shall be uniformly applied to suitable land at appropriate times and at agronomic rates. Discharge (run-off) of waste from the application site is prohibited. Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions.

(E)-(G) (No change.)

(H) Nighttime application of liquid or solid waste shall be allowed only in areas with no occupied residence(s) within 0.25 mile from the outer boundary of the actual area receiving waste application. In areas with an occupied residence within 0.25 mile from the outer boundary of the actual area receiving waste application, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current occupants of such residences have in writing agreed to such nighttime applications.

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

(25)-(27) (No change.)

(28) Prior to commencing wastewater irrigation or waste application on land owned or operated by the operator, and annually thereafter, the operator shall collect and analyze representative soil samples of the wastewater and waste application sites according to the following procedures.

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

(E) Soil samples shall be submitted to a soil testing laboratory along with a previous crop history of the site, intended crop use, and yield goal. Soil test reports shall include nutrient recommendations for the crop yield goal.

(F) (No change.)

(G) When results of the annual soil analysis for extractable phosphorus in subparagraph (F) of this paragraph indicates

a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste or wastewater land application field or if ordered by the commission to do so in order to protect the quality of waters in the state, then the operator shall not apply any waste or wastewater to the affected area unless the waste or wastewater application is implemented in accordance with a detailed nutrient utilization plan developed by NRCS, the Texas State Soil and Water Conservation Board, Texas Agricultural Extension Service, an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas, or any professional agronomist or soil scientist certified by the American Society of Agronomy (ASA) The executive director will issue technical guidance to assist in the development of complete and effective nutrient utilization plans. No land application under an approved nutrient utilization plan shall cause or contribute to a violation of water quality standards or create a nuisance. Land application under the terms of the Nutrient Utilization Plan may commence 30 days after the plan is filed with the executive director, unless prior to that time the executive director has returned the plan for failure to comply with all the requirements of this subsection. The nutrient utilization plan shall, at a minimum, evaluate and address the following factors to assure that the beneficial use of manure is conducted in a manner that prevents phosphorus impacts to water quality:

(i) slope of application fields (as a percentage) and distance of the land application area from waters in the state;

(ii) average rainfall for the area for each month;

(iii) soil series, soil type, soil family classification, and pH values of all soils in application fields;

(iv) chemical characteristics of the waste, including total nitrogen and phosphorus;

(v) recommended rates, methods, and schedules of application of manure and wastewater for all fields;

(vi) crop types, maximum crop uptake rate, and expected yield for each crop; and

(vii) best management practices to be utilized to prevent phosphorus impacts to water quality, including any physical structures and vegetative filterstrips.

(29)-(31) (No change.)

§321.40. Best Management Practices.

The following Best Management Practices (BMPs) shall be utilized by CAFOs owners or operators, as appropriate, based upon existing physical and economic conditions, opportunities, and constraints. Where the provisions in a NRCS plan are equivalent or more protective, the operator may refer to the NRCS plan as documentation of compliance with the BMPs required by this subchapter.

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

(7) There shall be no water quality impairment to public and neighboring private drinking water wells or surface water or watercourses due to waste handling at the permitted facility. Vegetative buffer strips shall be maintained in accordance with NRCS guidelines. The minimum buffer shall be no less than 100 feet of vegetation to be maintained between waste or wastewater application areas and surface water and watercourses. Wastewater retention facilities, holding pens, or waste/wastewater land application sites shall not be located closer than 500 feet of a public water supply well or 150 feet of a private water well.

(8)-(11) (No change.)

(12) Collection, storage, and land application of liquid and solid waste shall be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land application site shall be secondary to the proper application of waste and wastewater. All herbicides and pesticides shall be stored, used, and disposed of in accordance with label instructions. There shall be no disposal of herbicides, pesticides, solvents or heavy metals, or of spills or residues from storage or application equipment or containers, into retention structures. Incidental amounts of such substances entering a retention structure as a result of stormwater transport of properly applied chemicals is not a violation of this rule.

(13) (No change.)

§321.41. Other Requirements.

(a) Education and training.

(1) Any CAFO owner or operator with greater than the number of animals specified in §321.32(9)(B) of this title (relating to Definitions) and located within an area specified in the definition of Dairy Outreach Program Areas in §321.32(11) of this title (relating to Definitions) shall obtain authorization under this subchapter and, within 12 months of receiving such authorization, the owner or operator or his designee with operational responsibilities shall complete an eight-hour course or its equivalent on animal waste management. In addition, that owner or operator shall also complete at least eight additional hours of continuing animal waste management education for each two- year period after the first 12 months. The minimum criteria for the initial eight hours and the subsequent eight hours of continuing animal waste management education shall be developed by the executive director and the Texas Agricultural Extension Service. Verification of the date and time(s) of attendance and completion of required training shall be documented to the pollution prevention plan.

(2) Where the employees are responsible for work activities which relate to compliance with provisions of this subchapter, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and land application of waste. Employee training shall inform personnel at all levels of responsibility of the general components and goals of the pollution prevention plan. Training shall include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary recordkeeping requirements, and spill response and clean up. The operator is responsible for determining the appropriate training frequency for different levels of personnel, and the pollution prevention plan shall identify periodic dates for such training.

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

§321.42. Monitoring and Reporting Requirements.

(a) If, for any reason there is a discharge to waters in the state, the operator shall notify the executive director orally within 24 hours and in writing within 14 working days of the discharge from the retention facility or any component of the waste handling or land application system. In addition, the operator shall document the following information to the pollution prevention plan and submit that information to the appropriate regional office within 14 days of becoming aware of such discharge:

(1)-(7) (No change.)

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

(d) The operator shall retain copies on-site of all records required by this subchapter for a period of at least three years from the date reported or received, and shall make them available to the executive director upon request. This period may be extended by request of the executive director at any time.

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

(h) The operator shall maintain ownership, operation, or control over the retention facilities, land application areas, and control facilities identified in the site plan submitted with the application under §321.34 or §321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). In the event the owner loses ownership, operation, or control of any of these areas, the operator shall notify the executive director prior to such loss of control and immediately request and file an application to amend the existing authorization to reflect an alternate method for beneficially utilizing the waste or wastewater or to add new or additional land application areas to the authorization, an application for a new authorization under this subchapter or present the executive director with a plan to cease all CAFOs at that site.

(i) Any operator required to obtain authorization under §321.33 of this title (relating to Applicability) shall locate and maintain all facilities in accordance with the site plan submitted with the application as required under §321.34 or 321.35 of this title. In the event the operator does not properly locate and maintain such facilities in accordance with the site plan and the provisions of §321.33(p) of this title, they shall be deemed in noncompliance with the provisions of this subchapter.

(j) The operator shall furnish to the executive director soil testing laboratory results of all soil samples within 60 days of the date the samples were taken in accordance with the requirements of this subchapter.

§321.46. Air Standard Permit Authorization.

For the purposes of air quality, the term "CAFO," as used in this subchapter, includes any associated feed handling and/or feed milling operations located on the same site as the CAFO. Pursuant to Texas Clean Air Act, §382.051, any CAFO which meets all of the requirements for registration or individual permit outlined in this subchapter or all the requirements for operating under a CAFO general permit and which satisfy this section is hereby entitled to an air quality standard permit authorization in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Facilities which meet all the "Air Quality Only" requirements in §321.39 of this title (relating to Pollution Prevention Plans) and obtain either a registration or individual permit or a CAFO general permit are eligible for an air quality standard permit. The air quality standard permit may be obtained in conjunction with a water quality application. If no water quality application is pending, a separate request may be submitted in writing which demonstrates compliance with all the requirements in this subchapter. In addition to meeting the "Air Quality Only" requirements, the applicant must also demonstrate compliance with the following:

(1) Construction or expansion of a new animal feeding operation. Animal feeding operations not in operation on August 19, 1998, must document compliance with either subparagraph (A) or (B) of this paragraph at the time of application for amendment, transfer, registration, or an individual permit under this subchapter or for a CAFO general permit.

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

(2) Expansion of an existing animal feeding operation. Animal feeding operations in operation on August 19, 1998 must document compliance with either subparagraph (A) or (B) of this paragraph at the time of application for transfer, amendment, registration, or an individual permit under this subchapter or for a CAFO general permit.

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

§321.47. Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization.

In lieu of the procedure specified in §321.33 of this title (relating to Applicability), the owner or operator of any existing facility as described in §321.33(a) of this title (relating to Applicability) may submit to the executive director written notice that they will operate the facility in accordance with the provisions of this subchapter. Such notice shall be on forms approved by the executive director and submitted within 60 days of the effective date of these amended (1999) rules. Subject to the provisions of §321.35(h) of this title (relating to Procedures for Making Application for Registration), a facility for which a complete and accurate written notice has been submitted in accordance with this section may operate as an authorized TPDES facility under this amended subchapter for the remainder of the unexpired term of their current authorization. Such initial TPDES authorization shall not require compliance with "air quality only" provisions of this title that can be accomplished only by making structural changes to a structure that is currently in compliance with the design and engineering standards in the facility's latest permit. Upon expiration of the specified term of the facility's current state-only authorization, the owner or operator shall file for renewal in accordance with either §321.34 or §321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). If the existing authorization contains any special conditions or provisions, the owner or operator shall operate such facility in accordance with the provisions of this subchapter and any additional special provisions or conditions specified in the authorization.

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 July 7, 1999.

TRD-9904083
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: July 27, 1999
Proposal publication date: January 8, 1999
For further information, please call: (512) 239–1966

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter C. Crude Oil Production Tax

34 TAC §3.35

The Comptroller of Public Accounts adopts an amendment to §3.35, concerning reporting requirements for producers and purchasers, without changes to the proposed text as published

in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3460).

This section is being amended pursuant to prior legislation and to clarify reporting requirements. Section (h) is being amended to clarify reporting requirements for purchasers. Section (k) is being amended to change reporting requirements from county level reporting to lease level reporting. A new section (k)(1)(C) is being added to clarify reporting requirements for oil where the producer and purchaser are the same entity. Sections (k)(3) and (k)(4) are being amended to correct references to information to be included on the Crude Oil Special Report and records to be maintained by operators or producers not required to file reports.

No comments were received regarding adoption of the amendment.

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

The amendment implements the Tax Code, §202.201 and §202.202.

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 July 9, 1999.

TRD-9904103
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Effective date: July 29, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 463–4062

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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 Review

Comptroller of Public Accounts

Title 34, Part I

The Comptroller of Public Accounts proposes to review and consider for readoption, revision, or repeal all sections of Texas Administrative Code, Title 34, Part I, Chapter 5, Subchapter A (relating to Judiciary Department Procedures), Subchapter B (relating to Claims Processing–Electronic Funds Transfers), Subchapter C (relating to Claims Processing–Travel Vouchers), Subchapter D (relating to Claims Processing–Payroll), Subchapter E (relating to Claims Processing–Purchase Vouchers), Subchapter F (relating to Claims Processing–General Requirements), Subchapter L (relating to Claims Processing–Duplicate Warrants), Subchapter N (relating to Funds Accounting–Accounting Policy Statements) and Subchapter O (relating to Uniform Statewide Accounting System). This review and consideration is being conducted in accordance with Article IX, Section 167, of H. B. 1, 75th Texas Legislature. The review will include, at a minimum, whether the reasons for adopting or readopting the rules continue to exist.

In accordance with the above referenced Section 167, the Comptroller will accept comments regarding whether the reason for adopting or readopting each of these rules continues to exist. The comment period will last for 30 days beginning with the publication of this notice in the *Texas Register*.

Comments pertaining to this notice to review Subchapters A, B, C, D, E, F, L, N, and O may be submitted to T. C. Mallett, Director, Fiscal Management, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-9904100
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Filed: July 9, 1999

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Adopted Rule Reviews

Texas Motor Vehicle Board, Texas Department of Transportation

Title 16, Part VI

The Texas Motor Vehicle Board of the Texas Department of Transportation readopts 16 TAC Chapter 107, Warranty Performance Obligations, relating to lemon law and warranty complaint procedures and hearings, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. Notice of the proposed review was published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 1004). The Board finds that the reasons for adopting Chapter 107, Warranty Performance Obligations, continue to exist.

No comments were received related to the rule review requirement as to whether the reason for adopting the rules continue to exist. As a result of the review process, the Board will propose amendments to §§107.1-107.11 and the repeal of §107.12. The proposals will be published in the *Texas Register* in accordance with the Administrative Procedure Act.

These rules are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

TRD-9904093
Brett Bray
Division Director
Texas Motor Vehicle Board, Texas Department of Transportation
Filed: July 9, 1999

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Texas Optometry Board

Title 22, Part XIV

The Texas Optometry Board has reviewed Title 22, 277, Practice and Procedure; 279, Interpretations; and 280, Therapeutic Optometry; pursuant to H.B. 1, Article IX, Section 167, 75th Leg., R.S. (1997), and the review plan previously filed by the agency. The agency reviewed for re-adoption the following rules:

§277.1. Complaint Procedures

§277.2. Disciplinary Proceedings

§277.3. Probation

§277.4. Reinstatement

§277.5. Felony Convictions

§277.6. Administrative Fines and Penalties

§279.1. Board Interpretation Number One

§279.2. Board Interpretation Number Two

§279.3. Board Interpretation Number Three

§279.4. Board Interpretation Number Four

§279.5. Board Interpretation Number Five

§279.6. Board Interpretation Number Six

§279.7. Board Interpretation Number Seven

§279.9. Board Interpretation Number Nine

§280.1. Application for Certification

§280.2. Required Education

§280.3. Certified Therapeutic Optometrist Examination

§280.4. Utilization of Pharmaceutical Agents

§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry

§280.6. Advertising by Therapeutic Optometrists

The proposed review of these rules was published in the May 7, 1999, *Texas Register* (24 TexReg 3548). There were no comments on the review as proposed.

The Texas Optometry Board finds that the reasons for adopting these rules continue to exist. Therefore the agency re-adopts these rules.

The Board did not review Rule 279.11 which is proposed for repeal because of amendments to Rule 279.13. The proposed repeal will be published in the appropriate section of the *Texas Register*. Amendments to Rule 279.13 were proposed and published in the May 7, 1999, *Texas Register* (24 TexReg 3443). The adopted rule will be published in the appropriate section of the *Texas Register*.

The Board did not review Rule 279.17 which is proposed for repeal because of amendments to the Act under HB 1051. The proposed repeal will be published in the appropriate section of the *Texas Register*.

TRD-9904201
Lois Ewald
Executive Director
Texas Optometry Board
Filed: July 12, 1999

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State Securities Board

Title 7, Part VII

Pursuant to the notice of proposed rule review published in the *Texas Register* (24 TexReg 1644) March 5, 1999, the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal, all sections of the following chapters of Title 7, Part VII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature (1997): Chapter 113, Registration of Securities; Chapter 114, Federal Covered Securities; Chapter 123, Administrative Guidelines for Registration of Open-End Investment Companies; Chapter 125, Minimum Disclosures in Church and Nonprofit Institution Bond Issues; Chapter 135, Industrial Development Corporations and Authorities; and Chapter 137, Administrative Guidelines for Regulation of Offers.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these Chapters, without changes, pursuant to the requirements of Section 167.

As part of the review process, the Board is proposing that Chapter 135, Industrial Development Corporations and Authorities, be repealed and replaced with a simple, distinct exemption addressing these types of securities. The proposed repeal of this chapter and its replacement with an exemption will be published in the "Proposed Rules" section of the *Texas Register*, in accordance with the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

No comments were received regarding the readoption of Chapters 113, 114, 123, 125, 135, or 137.

TRD-9904105
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: July 9, 1999

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

Prenatal Genetic Screen

Name _____ Date _____

1. Will you be 35 years or older when your baby is born? Yes___No___

2. Have you, the baby's father, or anyone in either of your families ever had any of the following disorders.

   * Down's Syndrome (mongolism) Yes___No____

   * Other Chromosomal abnormality Yes___No____

   * Neural Tube defect, i.e., spina bifida (myelomeningocele or open spine), anencephaly Yes___No____

   * Hemophilia Yes___No____

   * Muscular Dystrophy Yes___No____

   * Cystic fibrosis Yes___No___

   If yes, indicate the relationship of the affected person to you or to the baby's father:___
   _____
   _____
   _____

3. Do you or the baby's father have a birth defect? Yes___No____
   If yes, who has the defect and what is it?_____
   _____
   _____
   _____
   _____

4. In any previous marriages, have you or the baby's father had a child, born dead or alive, with a birth a defect not listed in question 2 above? Yes___No___
   If yes, what was the defect and who had it?_____
   _____
   _____
   _____
   _____

5. Do you or the baby's father have close relatives with mental retardation? Yes___No___
If yes, indicate the relationship of the affected person to you or to the baby's father:___
_____

6. Do you or the baby's father, or a close relative in either of your families have a birth defect, any familial disorder, or chromosomal abnormality not listed above? Yes___No___
If yes, indicate the condition and the relationship of the affected person to you or to the baby's father:_____
_____
_____
_____

7. In any previous marriages, have you or the baby's father had a stillborn child or three or more first trimester spontaneous pregnancy losses? Yes___No___

Have either of you had a chromosomal study? Yes___No___
If yes, indicate who and the results:_____
_____
_____
_____

8. If you or the baby's father are of Jewish ancestry, have either of you been screened for Tay-Sachs disease? Yes___No___
If yes, indicate who and the results:_____
_____
_____
_____

9. If you or the baby's father are black, have either of you been screened for sickle cell trait? Yes___No___
If yes, indicate who and the results:_____
_____
_____

10. If you or the baby's father are of Italian, Greek, or Mediterranean background, have either of you been tested for B-thalassemia? Yes___No___
If yes, indicate who and the results:_____
_____
_____

11. If you or the baby's father are of Philippine or Southeast Asian ancestry, have either of you been tested for α-thalassemia? Yes_____No_____
If yes, indicate who and the results:_____
_____

12. Excluding iron and vitamins, have you taken any medications or recreational drugs since being pregnant or since your last menstrual period (include nonprescription drugs)?
Yes___No___
If yes, give name of medication and time taken during pregnancy:_____
_____
_____
_____
_____

(Any patient replying "YES" to questions should be offered appropriate counseling. If the patient declines further counseling or testing, this should be noted in the chart. Given that genetics is a field in a state of flux, alteration or updates to this form will be required periodically.)

Figure: 1 40 TAC §3.3701

Noncaretaker Cases

Family Size	[Maximum] [Income] [(185%)]	Budgetary Needs (100%)	Recognizable Needs (25%)
1	[$ 474.00]	$ 256.00	$ 64.00
2	[683.00]	369.00	92.00
3	[958.00]	518.00	130.00
4	[1141.00]	617.00	154.00
5	[1467.00]	793.00	198.00
6	[1584.00]	856.00	214.00
7	[1976.00]	1068.00	267.00
8	[2170.00]	1173.00	293.00
9	[2490.00]	1346.00	337.00
10	[2683.00]	1450.00	363.00
11	[3003.00]	1623.00	406.00
12	[3193.00]	1726.00	432.00
13	[3513.00]	1899.00	475.00
14	[3706.00]	2003.00	501.00
15	[4022.00]	2174.00	544.00
Per each additional member	[320.00]	173.00	43.00

Figure: 2 40 TAC §3.3701

Caretaker Cases without Second Parent

Family Size	[Maximum] [Income] [(185%)]	Budgetary Needs (100%)	Recognizable Needs (25%)
1	[$ 579.00]	$ 313.00*	$ 78.00*
2	[1203.00]	650.00	163.00
3	[1389.00]	751.00	188.00
4	[1671.00]	903.00	226.00
5	[1856.00]	1003.00	251.00
6	[2133.00]	1153.00	288.00
7	[2316.00]	1252.00	313.00
8	[2636.00]	1425.00	356.00
9	[2827.00]	1528.00	382.00
10	[3147.00]	1701.00	425.00
11	[3337.00]	1804.00	451.00
12	[3657.00]	1977.00	494.00
13	[3848.00]	2080.00	520.00
14	[4168.00]	2253.00	563.00
15	[4359.00]	2356.00	589.00
Per each additional member	[320.00]	173.00	43.00

*Caretaker of SSI Child (child not included in family size)

Figure: 3 40 TAC §3.3701

Caretaker Cases with Second Parent

Family Size	[Maximum] [Income] [(185%)]	Budgetary Needs (100%)	Recognizable Needs (25%)
1	[---]	---	---
2	[$ 921.00**]	$ 498.00**	$ 125.00**
3	[1524.00]	824.00	206.00
4	[1711.00]	925.00	231.00
5	[1985.00]	1073.00	268.00
6	[2176.00]	1176.00	294.00
7	[2440.00]	1319.00	330.00
8	[2631.00]	1422.00	356.00
9	[2951.00]	1595.00	399.00
10	[3141.00]	1698.00	425.00
11	[3461.00]	1871.00	468.00
12	[3654.00]	1975.00	494.00
13	[3972.00]	2147.00	537.00
14	[4164.00]	2251.00	563.00
15	[4483.00]	2423.00	606.00
Per each additional member	[320.00]	173.00	43.00

** Caretaker and Second Parent of SSI Child (child not included in family size)

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.

Adjutant General's Department

Invitation for Bids

The Adjutant General's Department invites qualified bidders to submit SEALED BIDS for:

PROJECT:

Construction of a Concrete Secondary Containment Pad for Mobile Fuel Tankers Trucks at the Mobilization and Training Equipment Site, 3301 East Main Street, Gatesville, Texas.

PRE-BID CONFERENCE:

Conference at 10:00 A.M., July 16, 1999, at the Mobilization and Training Equipment Site (MATES), 3301 East Main Street, Gatesville, Texas. Questions or comments regarding specifications and scope of work may be directed to Mark Mendel, (512) 465-5001, ext. 6151.

BID PACKAGES:

Bid packages may be obtained by contacting Jerry Maroney, State Contracting Officer at (512) 465-5277, on or after June 27, 1999. Bidders may mail their completed bid proposal packages to the Adjutant General's Department, P.O. Box 5218, Attn: AGTX-RCC (Jerry Maroney), Austin, Texas 78763-5218, or deliver to: 2200 West 35th Street, Bldg. 10, Room 109, Austin, Texas 78731. **Deadline for submission of bids is 3:00 P.M., July 29, 1999.**

BID OPENING:

Accepting bids at 3:00 P.M., July 29, 1999. All bids must include a 5% bid bond, and must be properly marked on the outside of the envelope with "Bid Proposal" and project name, date, and time of bid opening. No penalty or other responsibility will be assigned to any Owner's representative for the premature opening of any bid proposal not properly addressed and identified. **Bidders may not withdraw their bid prior to 60 days after bid opening without forfeiture of bid bond.**

TRD-9904104
Jerry C. Maroney
State Contracting Officer
Adjutant General's Department
Filed: July 9, 1999

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Ark-Tex Council of Governments

Request for Proposals

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the procurement of computer equipment, networking peripherals and printers for the Child Care Delivery System.

The project is seeking; one Dual Intel Pentium III 450 Fileserver, 18 Intel Pentium III 500 MHz. Desktop workstations, two Intel Pentium II 333 MHz. Laptops, three Hewlett Packard LaserJet 2100se printers, one 3COM 3300 24 port Fast-Ethernet switch, and one Cisco 2501 Ethernet WAN router.

Potential respondents may obtain a copy of the request for proposal by contacting Bill Moss or Mona Swint, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas, 75505-5307, or call (903) 832-8636. The deadline for proposal submission is Friday, August 6, 1999, at 5:00 p.m.

TRD-9904251
James C. Fisher, Jr.
Executive Director
Ark-Tex Council of Governments
Filed: July 14, 1999

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Office of the Attorney General

Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air. Before the State may settle a judicial enforcement action under the Texas Clean Air Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County & State of Texas v. Simpson Pasadena Paper Mill, Cause Number 1999-34404, 281st District Court of Harris County, Texas.

Nature of Defendant's Operations: Defendant owned and operated a paper and pulp producing mill in Pasadena, Harris County, Texas. Defendant's operations were in violation of the Texas Clean Air Act and the Texas Water Code. This is a suit for civil penalties for those violations.

Proposed Agreed Judgment: The judgment requires Defendant to pay $35,000.00 in civil penalties, $2,000.00 in attorney fees, and all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas, 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9904091
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: July 8, 1999

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Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: In re: State of Texas v. Paul J. Roby, Cause Number 98-14385 in the 345th Judicial District Court of Travis County, Texas

Nature of Defendant's Operations: The defendant, the owner of Bob's Texaco, owned and operated two underground storage tanks (UST's) on or about October 15, 1997. The Texas Natural Resources Conservation Commission (TNRCC) issued a default order assessing administrative penalties against and requiring certain actions of the defendant to bring his UST's into compliance. As a result of failure to comply, this suit was brought to recover past due underground storage tank annual fees, unpaid administrative penalties, civil penalties for the defendant's violations of TNRCC orders and rules, attorneys fees and court costs.

Proposed Agreed Judgment: The Agreed Final Judgment will provide recovery to the State of Texas for $5,029.00 for administrative and civil penalties. Further, the State shall recover $800.00 for attorney's fees and $171.00 for costs of court. In total, the State of Texas shall have and recover $6,000.00. Nothing in this judgment in any way limits or lessens the defendant's responsibilities for future violations of Chapter 26 of the Texas Water Code, and the rules and regulations promulgated thereunder, or for violations of any other law.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Eugene Clayborn, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas, 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9904173
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: July 12, 1999

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State Auditor's Office

Request for Proposal - Investment Review

Notice of Invitation for Proposal. The State Auditor's Office (SAO) invites offers of services from independent firms for the purposes of obtaining and analyzing certain information relevant to the SAO's initial design and ongoing preparation or collection of the following:

1. An annual comparative investment report of four of the State's major investing entities: 1) the Employees Retirement System (ERS), 2) the Permanent School Fund (PSF), 3) the Teacher Retirement System (TRS), and 4) the University of Texas Investment Management Company (UTIMCO), including the Permanent University Fund (PUF) and the Long-Term Fund (LTF).

2. Required quarterly investment reports submitted by Texas institutions of higher education

Description of Project. This review is intended to obtain and analyze certain investment information relating to the State's major investing entities relevant to the design and preparation of an annual comparative investment report of four of the state's major investing entities. In addition, it is intended to provide the information and analysis necessary for the State Auditor's Office to develop a useful format and cost effective investment performance measurement for required quarterly investment reports submitted by Texas higher education institutions.

Comparative Investment Report

Specific information to be obtained and analyzed include the following:

1. A listing of the individual portfolios for each of the four major investing entities (ERS, PSF, TRS, and UTIMCO including PUF and LTF).

a. Identify comparable portfolios across each entity based on the described investment style and compare actual portfolio composition to described style to assess adherence to style.

b. Suggest one or more benchmarks that would be appropriate for each set of comparable portfolios and suggest appropriate benchmarks for noncomparable portfolios, e.g. UTIMCO's private equities program or emerging market equities, used by only one entity.

2. Identify appropriate peer groups against which to measure the funds and the appropriate composite benchmark for each fund and comment on the reasons for any differences.

3. Determine if investment performance should be measured at a calendar quarter cutoff date (e.g. 9/30/xx or 12/31/xx) or the State's fiscal year cutoff (8/31/xx).

4. Suggest appropriate investment performance reporting periods, e.g. recent quarter, 1-year, 3-year, 5-year, and 10-year.

5. Comment on whether risk-adjusted rate of return information would be useful and cost effective to obtain.

Required Quarterly Investment Reports of Texas Institutions of Higher Education

1. Assist in determining what investment information might be most useful to the legislature and to the Boards and management of the higher education institutions, for example the segregation of the investment balances and investment performance by fund type. Comment on the most appropriate measurement of performance for each fund type, e.g. total return or yield.

2. Determine if a simple approximation, e.g., Dietz method, could be used to measure total return for any or all of the funds (e.g., endowment funds only or other funds also).

3. Compare the costs for computing the approximation of quarterly and annual total return with an estimate of costs to more accurately calculate time weighted return.

4. Comment on the appropriateness of including cash required to be held in the State Treasury and/or cash voluntarily deposited in the State Treasury in the calculation of investment performance.

5. Comment on the appropriate presentation for quarterly performance (annualized or only report actual performance for periods less than one year, per AIMR?) and annual performance (geometrically link quarterly total returns computed by the Dietz estimate or otherwise?).

6. Comment on the benefits, if any, of continuing to require presentation based on both book value and market value and consider the reasonableness of presenting only "reported basis" (which would include fair value for longer term investments but might report certain shorter term, liquid investments at amortized cost, per GASB 31, Accounting and Financial Reporting for Certain Investments and for External Investment Pools.

Proposal Instructions. Detailed specifications concerning this project will be made available in proposal preparation instructions, which may be obtained on or after July 23, 1999, by submitting a written request to: Investment Review, State Auditor's Office, P.O. Box 12067, Austin, Texas, 78711-2067, attn: Carol Smith. In order to ensure that all offerors have the same information and instructions concerning the preparation of proposals, all communication prior to the closing date for receipt of proposals shall be in writing.

Closing Date for Receipt of Proposals. Written proposals offering to provide the requested services must be either hand-delivered to the State Auditor's Office at 206 E. 9th Street, 19th Floor, Austin, Texas, between the hours of 8 a.m. and 5 p.m., Monday - Friday, or sent by certified mail to the address specified above. Proposals must be received no later than 5 p.m. on August 9, 1999 except that proposals postmarked on or before August 9, 1999, and received subsequent to the closing date will also be considered.

Selection Process. An advisory group designated by the State Auditor will review proposals submitted by offerors. In evaluating proposals, the advisory group will consider: 1) the demonstrated competence, knowledge, and qualifications of the firm as a whole and of the professional staff who will work on the review; 2) the firm's technical expertise in analyzing the investment portfolios; 3) the extent to which the firm's proposed services accomplish the purposes and specifications of this Consultant Proposal Request and the instructions; 4) the reasonableness of costs for the services proposed; 5) the extent of firm's prior and current business relationships with the State's major investing entities and institutions of higher education; and 6) when other considerations are equal, a firm whose principal place of business is within the State of Texas, or who will manage the engagement wholly from one of its offices within the State of Texas, will be given preference. Historically Underutilized Businesses are encouraged to submit or participate in the submission of proposals.

Project Timing and Cost. Contingent upon the negotiation of a contract with the offeror selected, the period of performance for the review is anticipated to be August 23, 1999, through September 30, 1999. The firm selected to conduct the review will also be required to submit periodic progress reports as requested by the State Auditor's Office.

General Terms and Conditions. The State Auditor's Office reserves the right to accept or reject any (or all) proposals submitted. The information contained in this Consultant Proposal Request is intended to serve only as a general description of the services desired. Additional terms and conditions relating to this Consultant Proposal Request will be provided in the proposal preparation instructions.

The responses hereto will be used as a basis for further negotiation of specific project details with offerors. Issuance of this Consultant Proposal Request creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal.

TRD-9904254
Leticia Flores
Staff Attorney
State Auditor's Office
Filed: July 14, 1999

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Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of July 2, 1999, through July 9, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Weiner Development Corporation; Location: The project is located immediately southwest of the intersection of the Interstate Highway 45 south frontage road and El Dorado Boulevard, north of the Baybrook Mall, near Friendswood, Harris County, Texas; CCC Project Number: 99-0249-F1; Description of Proposed Action: The applicant proposes to fill 4.03 acres of isolated depressional wetlands on a 76.62 acre site for the construction of a shopping center. As mitigation for the project impacts, the applicant is proposing to place a 46-acre tract, including 16 acres of jurisdictional wetlands, into a conservation easement, Type of Application: U.S.A.C.E. permit application number 21714 under §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-9904236
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: July 14, 1999

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Notice of Public Meetings

The Texas General Land Office (GLO) will hold public meetings to gather input on the Coastal Erosion Planning and Response Act, which provides $15 million over the next two years for coastal erosion projects. It authorizes the GLO to implement a comprehensive coastal erosion response program that can include designing, funding, building, and maintaining erosion projects alone or in partnership with other governmental and non-governmental entities.

The agenda for each meeting being held consists of the following topics:

I. Summary of Texas Coastal Erosion Legislation

II. Presentation of Coastal Erosion Rates and Status

III. Presentation on Coastal Infrastructure Threatened by Erosion

IV. Explanation of Project Funding - Local, State, and Federal

V. Process for Project Selection -Proposed Criteria, Prioritization, and Identification of Projects

VI. Questions and Answers

VII. Closing Remarks

The locations and times for the public hearings are as follows:

Monday, July 26, 1999:

Brownsville, 4-6 p.m., Cameron County Courthouse; Administration Building, 4th Floor; 964 E. Harrison St.

South Padre Island, 7-9 p.m., SPI Convention Centre; 7355 Padre Boulevard; 2700 Bay Area Boulevard.

For more information, please contact Dorothy Browne at the Texas General Land Office, (512) 475-1468.

TRD-9904214
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: July 13, 1999

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Comptroller of Public Accounts

Certification of Crude Oil Prices

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined that the price of West Texas Intermediate crude oil as recorded on the New York Mercantile Exchange (NYMEX) is not below $15.00 per barrel for the three-month period beginning on April 1, 1999 and ending June 30, 1999. Therefore, pursuant to the Tax Code, §202.060, crude oil produced during the month of July 1999 from a qualifying lease, as determined by the Railroad Commission of Texas, is not exempt from the crude oil tax imposed by the Tax Code, Chapter 202.

Inquires should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-9904216
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Filed: July 13, 1999

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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 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/19/99 - 07/25/99 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 07/19/99 - 07/25/99 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9904218
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 13, 1999

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Texas Department of Criminal Justice

Notice To Bidders

The Texas Youth Commission invites bids to renovate and repair the facilities at the Crockett State School in Crockett, Texas. The work, in general, is to repair foundations and general repairs to buildings indicated, replace damaged materials and patch existing materials where indicated, and replace roofing systems. The work includes mechanical, electrical, plumbing, structural, concrete and steel, as further shown on the Contract Documents prepared by Prozign Architects, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner.

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

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 the 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 $115 (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: Prozign Architects, Inc., Attention: Darrell Whatley, 5701 Woodway, Suite 200, Houston, Texas 77057; Phone: (713) 977-6060; Fax: (713) 977-6086.

A Pre-Bid conference will be held at 10:30 am on August 10, 1999, at the site. Attendance is mandatory. Bids will be publicly opened and read at 2pm on August 24, 1999, in the Blue Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (formally Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUBs) in at least 57.2% 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-9904260
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 14, 1999

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Texas Commission for the Deaf and Hard of Hearing

Request for Proposals

The Texas Commission for the Deaf and Hard of Hearing announces the issuance of a Request for Proposals (RFP) to expand or otherwise improve the provision of services to individuals who are hard of hearing or late-deafened, including projects that demonstrate assistive equipment or other alternative approaches for supporting and maintaining targeted individuals in everyday life. The following types of projects may be funded under this program: (i) Hearing screening projects for early detection of hearing loss which can also include the provision of hearing aid ear mold impressions; (ii) Hearing evaluations projects which can also include hearing aid ear mold impressions and fitting services; (iii) Coping skills counseling projects to provide information and strategies for living with hearing loss, and helpful modifications which will facilitate development of communication capabilities; and (iv) Assistive equipment demonstration projects to educate the target population about the availability and benefits of assistive devices and to provide training on the use of the various devices available.

Contact: Parties interested in submitting a proposal should contact the Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711, 512-407-3250 (Voice) or 512-407-3251 (TTY), to obtain a complete copy of the RFP. The RFP is also available for pick-up at 4800 North Lamar, Suite 310, Austin, Texas 78756 on Friday, June 18, 1999, during normal business hours. The RFP is not available through fax.

Closing Date: Proposals must be received in the Texas Commission for the Deaf and Hard of Hearing Office, 4800 North Lamar, Suite 310, Austin, Texas 78756 no later than 5 p.m. (CDT), on Friday, July 16, 1999. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Executive Director who will then make a recommendation to the Commission. The Commission will make the final decision. An applicant may be asked to clarify their proposal, which may include an oral presentation prior to final selection. The Commission reserves the right to accept or reject any or all proposals submitted. The Texas Commission for the Deaf and Hard of Hearing is under no legal or other obligation to execute a grant on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits the Commission to pay for any costs incurred prior to the execution of a grant. The anticipated schedule of events is as follows: Issuance of RFP - July 23, 1999; Proposals Due - August 16, 1999, 5 p.m. (CDT); and Grant Execution - September 1, 1999.

TRD-9904146
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: July 9, 1999

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Texas Department of Economic Development

Notice of Request for Proposal for Outside Legal Services related to Industrial Revenue Bonds

The Texas Department of Economic Development (department) requests proposals from law firms and attorneys interested in advising the department in legal matters concerning industrial revenue bond programs administered by the department, economic development sales tax, and related issues.

Description: The department is the lead economic development agency for the state. As such, the department administers several community and business assistance programs that include review and approval of industrial revenue bonds and related activities. The department seeks qualified legal counsel to provide expert advice and assistance to department financial and legal staff on matters relating to bond issuances and related activities and programs on an as-needed basis for the time period beginning September 1, 1999, through August 31, 2000. The department currently estimates the demand for services will not exceed 60 hours for the contract period.

Scope of services: Services primarily involve advising the department concerning legal issues and interpretations related to programs administered by the department pursuant to the Development Corporation Act of 1979 (Vernon's Texas Civil Statutes, Article 5190.6) and economic development corporations established under the Act. Services may include advising the department regarding the Texas Leverage Fund Program; various private activity tax exempt bond issues, to include industrial development bond issuances, exempt facility bond issuances, sales tax bond issues, empowerment zone bond issues, and refundings of the various issues; federal issues related to industrial development bonds, including tax issues; issues concerning a direct pay letter of credit, which supports the Texas Leverage Fund; and other bond related legal services. The department may require advice to be provided orally or in writing.

Responses; qualifications: Responses to this request for proposals should include at least the following information in the order requested: (1) a description of the firm's or attorney's qualifications

for performing the legal services requested, including the firm's prior experience in bond issuance matters, (2) the names, experience, and qualifications for performing the legal services requested of the individual attorneys who would be assigned to perform services under the contract, (3) hourly billing rates for attorneys and other staff who would be assigned to perform services under the contract, flat fees, or other fee arrangements directly related to the achievement of the department's specific goals, and billable expenses, (4) efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services and proposed use of women and minorities in regard to the services required under this contract, if any, (5) disclosures of conflicts of interest, identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas, or any of its boards, agencies, commissions, universities or elected or appointed officials, (6) confirmation of willingness to comply with policies, directives and guidelines of the Department and the Attorney General of the State of Texas, and (7) contact information for the proposer, including address, telephone and fax number, and the name of the individual who will be the department's primary contact on the contract.

The department previously contracted with the law firm of McCall, Parkhurst & Horton, LLP for these services and intends to award the contract to McCall, Parkhurst & Horton, LLP again unless a better offer is received.

A law firm or attorney will be selected based on demonstrated knowledge and experiences, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of the department and the state, and reasonableness of proposed fees. The successful firm or attorney will be required to sign the Texas Attorney General's Outside Counsel Agreement, and execution of a contract with the department is subject to approval by the Texas Attorney General. The department reserves the right to accept or reject any or all proposals submitted. The department is not responsible for and will not reimburse any costs incurred in developing and submitting a proposal.

Delivery of response; deadline for submission: Two copies of the response should be mailed to Robin Abbott, General Counsel, Texas Department of Economic Development, P.O. Box 12728, Austin, TX 78711-2728, or hand delivered to 1700 North Congress, Suite 130, Austin, Texas 78701. Facsimiles will not be accepted. Responses must be received at the Department by 5:00 p.m., Monday, August 23, 1999. Questions regarding this request for proposals may be directed to Ms. Abbott at (512) 936-0181.

TRD-9904087
Robin Abbott
General Counsel
Texas Department of Economic Development
Filed: July 8, 1999

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Notice of Request for Proposal for Outside Legal Services related to Intellectual Property Matters

The Texas Department of Economic Development (department) requests proposals from law firms and attorneys interested in advising the department in legal matters concerning all aspects of intellectual property related to programs administered by the department.

Description: The department is the lead economic development agency for the state. As such, the department is responsible for promoting Texas tourism and marketing a variety of business development programs. The department seeks qualified legal counsel to provide expert advice and assistance to department legal staff on matters concerning intellectual property, including copyright, trademark, licensing, and related issues, on an as-needed basis for the time period beginning September 1, 1999, through August 31, 2000.

Scope of Services: Services involve all aspects of providing legal advice and assistance to the Department concerning intellectual property, such as advising the department on intellectual property issues, both orally and in writing, preparing and maintaining trademark and copyright applications and registrations, advising the department on and drafting licensing and co-marketing agreements, and providing any and all intellectual property legal services needed to secure protection of department properties both in the United States and internationally. Legal services are provided primarily in conjunction with the Texas tourism advertising campaigns and promotions. Expert legal advice and assistance is also needed with regard to marketing of agency business services. Services may include assisting and advising the department in its transactions with advertising and marketing contractors as well as with vendors that develop, produce, or market a variety of goods and services in conjunction with agency programs.

Responses; qualifications: Responses to this request for proposals should include at least the following information in the order requested: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in intellectual property matters, (2) the names, experience, and qualifications for performing the legal services requested of the individual attorneys who would be assigned to perform services under the contract, (3) hourly billing rates for attorneys and other staff who would be assigned to perform services under the contract, flat fees, or other fee arrangements directly related to the achievement of the department's specific goals, and billable expenses, (4) efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services and proposed use of women and minorities in regard to the services required under this contract, if any, (5) disclosures of conflicts of interest, identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas, or any of its boards, agencies, commissions, universities or elected or appointed officials, (6) confirmation of willingness to comply with policies, directives and guidelines of the Department and the Attorney General of the State of Texas, and (7) contact information for the proposer, including address, telephone and fax number, and the name of the individual who will be the department's primary contact on the contract.

The department previously contracted with the law firm of Locke Liddell & Sapp LLP for these services and intends to award the contract to Locke Liddell & Sapp LLP again unless a better offer is received.

A law firm or attorney will be selected based on demonstrated knowledge and experiences, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of the department and the state, and reasonableness of proposed fees. The successful firm or attorney will be required to sign the Texas Attorney General's Outside Counsel Agreement, and execution of a contract with the department is subject to approval by the Texas Attorney General. The department reserves the right to accept or reject any or all proposals submitted. The department is not responsible for and will not reimburse any costs incurred in developing and submitting a proposal.

Delivery of response; deadline for submission: Two copies of the response should be mailed to Robin Abbott, General Counsel, Texas Department of Economic Development, P.O. Box 12728, Austin, TX 78711-2728, or hand delivered to 1700 North Congress, Suite 130, Austin, Texas 78701. Facsimiles will not be accepted. Responses must be received at the Department by 5:00 p.m., Monday, August 23, 1999. Questions regarding this request for proposals may be directed to Ms. Abbott at (512) 936-0181.

TRD-9904088
Robin Abbott
General Counsel
Texas Department of Economic Development
Filed: July 8, 1999

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Notice of Request for Proposal for Outside Legal Services related to State Agency Operations in Mexico

The Texas Department of Economic Development (department) requests proposals from law firms and attorneys interested in advising the department in legal matters concerning the department's office in Mexico City.

Description: The department is the lead economic development agency for the state. As such, the department maintains an office in Mexico City for the purposes of promoting investment that generates jobs in Texas, exporting of Texas products, tourism, and international relations. The office currently has seven employees who are contract employees of the department and also contracts with a certified public accountant in Mexico City who handles payroll, accounts payable, and provides general accounting services to the office.

The department seeks qualified legal counsel to provide expert advice and assistance to department legal staff on matters relating to contracting, employment law, and other legal issues that arise in the Mexico Office as needed for the time period beginning September 1, 1999 through August 31, 2000. The department currently estimates the demand for services will not exceed 60 hours for the contract period.

Scope of Services: Services primarily involve expert advise and assistance concerning Mexican employment law and contract law. Services may include reviewing or drafting employment contracts or other contracts, advising the department on Mexican employment law issues, tax issues, criminal law issues, and contract law, and may require travel to Mexico City. The department may require advice to be provided orally or in writing.

Responses; qualifications: Responses to this request for proposals should include at least the following information in the order requested: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's experience in Mexican law matters, and whether the firm or attorney maintains an office in Mexico, (2) the names, experience, and qualifications for performing the legal services requested of the individual attorneys who would be assigned to perform services under the contract, and whether the attorneys are licensed to practice law in Mexico, (3) hourly billing rates for attorneys and other staff who would be assigned to perform services under the contract, flat fees, or other fee arrangements directly related to the achievement of the department's specific goals, and billable expenses, (4) efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services and proposed use of women and minorities in regard to the services required under this contract, if any, (5) disclosures of conflicts of interest, identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas, or any of its boards, agencies, commissions, universities or elected or appointed officials, (6) confirmation of willingness to comply with policies, directives and guidelines of the Department and the Attorney General of the State of Texas, and (7) contact information for the proposer, including address, telephone and fax number, and the name of the individual who will be the department's primary contact on the contract.

The department previously contracted with the law firm of T.D. Warner & Associates P.C. and Visoso & Pikoff, S.C., a joint partnership, for these services and intends to award the contract to T.D. Warner & Associates P.C. and Visoso & Pikoff, S.C. again unless a better offer is received.

A law firm or attorney will be selected based on demonstrated knowledge and experiences, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of the department and the state, and reasonableness of proposed fees. The successful firm or attorney will be required to sign the Texas Attorney General's Outside Counsel Agreement, and execution of a contract with the department is subject to approval by the Texas Attorney General. The department reserves the right to accept or reject any or all proposals submitted. The department is not responsible for and will not reimburse any costs incurred in developing and submitting a proposal.

Delivery of response; deadline for submission: Two copies of the response should be mailed to Robin Abbott, General Counsel, Texas Department of Economic Development, P.O. Box 12728, Austin, TX 78711-2728, or hand delivered to 1700 North Congress, Suite 130, Austin, Texas 78701. Facsimiles will not be accepted. Responses must be received at the Department by 5:00 p.m., Monday, August 23, 1999. Questions regarding this request for proposals may be directed to Ms. Abbott at (512) 936-0181.

TRD-9904086
Robin Abbott
General Counsel
Texas Department of Economic Development
Filed: July 8, 1999

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Texas Education Agency

Notice of Intent to Extend Contract for Collecting and Reporting Information to the Texas Education Agency on Monitoring Publicly Funded Special Education Programs

Description. The Texas Education Agency (TEA) solicited a contractor through Request for Proposals (RFP) #701-97-010 for identifying and managing approximately 35 qualified persons to collect and report information to TEA for its monitoring of local educational agencies and other entities providing special education services. The purpose of this monitoring is to determine compliance with state and federal special education requirements. Approximately 225 school districts are scheduled for on-site monitoring during the 1999-2000 school year. The activities to be conducted by the contractors are detailed in the RFP. The RFP notice appeared in the April 11, 1997, issue of the *Texas Register* (22 TexReg 3483).

The contractor, Oak Hill Technology, Inc., successfully completed the 1998-1999 contract year, meeting personnel identification and employment needs, and providing the logistical support necessary to achieve project goals. The TEA, in accordance with RFP #701-97-010, initiated negotiations to extend Oak Hill Technology's contract.

The TEA, under the provisions of RFP #701-97-010, intends to award the contract to the previous contractor, Oak Hill Technology, Inc., of Austin, Texas, in accordance with negotiated contract modifications.

Dates of Project. All services and activities related to this contract will be conducted within specified dates. The selected contractor should plan for a starting date of no earlier than July 1, 1999, and an ending date of no later than June 30, 2000.

Project Amount. The contractor may receive funding not to exceed $2,231,348 during the contract period. This project is funded 100% from IDEA, Part B, federal funds.

Further Information. For clarifying information, contact Dr. Forrest A. Novy, Division of Accountability Development and Support, Texas Education Agency, (512) 463-9515 or by e-mail at fnovy@tmail.tea.state.tx.us.

TRD-9904241
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: July 14, 1999

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Request for Proposals Concerning Investment Consultant Services

Eligible Proposers. The State Board of Education (SBOE) is requesting proposals under Request for Proposals (RFP) #701-99-024 from qualified investment consultant firms to provide advice and counsel to the SBOE in fulfilling its management responsibility to the Texas Permanent School Fund.

Description. The purpose of this RFP is to solicit information that will aid the SBOE in the selection of a provider or providers of investment consultant services.

Dates of Project. All services related to this RFP will be conducted between January 3, 2000, and December 31, 2002. Selection of a proposal or proposals may be expedited by the SBOE to an earlier date if deemed necessary.

Project Amount. One or more contractors will be selected. The total amount of a contract is subject to a negotiated bid.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. The SBOE will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The SBOE reserves the right to select from the highest-ranking proposals those that address all requirements in the RFP. The SBOE reserves the right to award separate contracts for long-term investment and for strategic planning, continuing education programs, performance evaluation, external investment manager searches, and other services related to the management and administration of the Permanent School Fund that may be required from time to time.

The SBOE 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 the SBOE to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate the SBOE to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-99-024 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 the RFP, contact Paul Ballard, Deputy Executive Administrator, Texas Permanent School Fund, (512) 463-9169.

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), Monday, August 23, 1999.

TRD-9904240
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: July 14, 1999

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Request for Proposals Concerning Production of Braille Masters for Texas Public Schools

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-99-020 from nonprofit organizations, private companies, and regional education service centers to produce Braille textbook masters from textbooks that are to be adopted by the State Board of Education in November 1999 along with the ancillaries accompanying these state-adopted textbooks. Contractors will be responsible for brailling additional instructional materials on demand. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of this RFP is to ensure that Texas students receive quality Braille textbooks, delivered on time, at an economical price.

The adopted textbooks and ancillaries to be brailled have been arranged into four packages of various sizes. These are designated Master Packages A, B, C, and D. Braille producers may submit a proposal for all four packages or any combination of them. However, the TEA reserves the right to select the number of packages contracted to each applicant. For example, all four packages could be awarded to one applicant or four applicants could be awarded one package each or any combination thereof.

Proposers selected for contracts will be responsible for producing Braille masters of instructional materials designated in this RFP. Contractors will be responsible for brailling additional instructional materials upon request, including teacher editions.

Dates of Project. All services and activities related to this RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 3, 2000, and an ending date of no later than August 31, 2006.

Project Amount. The project's overall estimated cost, consisting of all four production packages, will not exceed $2 million for the first year and not exceed $3 million for the entire period of adoption, normally six years.

Selection Criteria. Proposals will be selected 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. The TEA reserves the right to select from the highest-ranking proposals those that address all requirements in this RFP considering the outcomes desired.

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 #701-99-020 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. 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, please contact Charles E. Mayo, Division of Textbook Administration, Texas Education Agency, Room 3-118, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494, (512) 463-9601 or by e-mail at cmayo@tmail.tea.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Friday, September 3, 1999, to be considered.

TRD-9904238
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: July 14, 1999

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Request for Proposals Concerning Production of Braille Textbook Copies for Texas Public Schools

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-99-021 from nonprofit organizations, private companies, and regional education service centers to copy (i.e., emboss), bind, and deliver Braille textbook copies from textbooks that are to be adopted by the State Board of Education in November 1999 along with the ancillaries accompanying these state-adopted textbooks. Additionally, contractors will be responsible for copying and delivering Braille teacher editions of instructional materials upon demand. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of this RFP is to ensure that Texas students receive quality Braille textbooks, delivered on time, at an economical price.

The adopted textbooks and ancillaries to be copied (i.e., embossed), bound, and distributed have been arranged into four production packages of various sizes. These are designated Copy Packages A, B, C, and D. Braille producers may submit a proposal for all four packages or any combination of them. However, the TEA reserves the right to select the number of packages contracted to each applicant. For example, all four packages could be awarded to one applicant or four applicants could be awarded one package each or any combination thereof.

Dates of Project. All services and activities related to this RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 3, 2000, and an ending date of no later than August 31, 2006.

Project Amount. The project, consisting of all four production packages, will receive funding at a level not to exceed $1 million for the first year and not to exceed $1.5 million for the entire period of adoption, normally six years.

Selection Criteria. Proposals will be selected 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. The TEA reserves the right to select from the highest-ranking proposals those that address all requirements in this RFP considering the outcomes desired.

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 #701-99-021 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. 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, please contact Charles E. Mayo, Division of Textbook Administration, Texas Education Agency, Room 3-118, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494, (512) 463-9601, or by e-mail at cmayo@tmail.tea.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Friday, September 3, 1999, to be considered.

TRD-9904239
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: July 14, 1999

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Request for Proposals Concerning Production of Large Type Textbooks for Texas Public Schools

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-99-022 from nonprofit organizations, private companies, and regional education service centers to produce large type textbooks that are to be adopted by the State Board of Education in November 1999. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of this RFP is to ensure that Texas students receive quality large type textbooks, delivered on time, at an economical price.

Proposers selected for contracts will be responsible for producing large type versions of instructional materials designated in this RFP. The adopted textbooks to be enlarged have been arranged into a single production package.

Dates of Project. All services and activities related to this RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 3, 2000, and an ending date of no later than August 31, 2006.

Project Amount. One contractor will be selected to receive a maximum of $1 million during the contract period.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. Proposers will be asked to submit a sample of their work. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The TEA reserves the right to select from the highest-ranking proposals those that address all requirements in this RFP.

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 #701-99-022 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. 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, please contact Charles E. Mayo, Division of Textbook Administration, Texas Education Agency, Room 3-118, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494, (512) 463-9601 or by e-mail at cmayo@tmail.tea.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Friday, September 10, 1999, to be considered.

TRD-9904237
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: July 14, 1999

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Golden Crescent Workforce Development Board

Request for Bids

Request for Bids: The Golden Crescent Workforce Development Board, the entity who oversees workforce development programs in the Golden Crescent Workforce Development Area, is soliciting program operators for the Golden Crescent Workforce Centers located in Port Lavaca, Cuero, Goliad, Gonzales, Edna, Yoakum, and Victoria, Texas.

Interested parties may request an RFP package from July 5-15, 1999, by calling Sandy Heiermann at (361) 576-5872.

DEADLINE: Deadline for responses is 5 p.m. on July 29, 1999. An informative bidders' conference will be held on July 8, 1999, for all interested parties.

TRD-9904082
Laura G. Sanders
Executive Director
Golden Crescent Workforce Development Board
Filed: July 7, 1999

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Texas Department of Health

Notice of Request for Proposals for Coyote/Gray Fox Oral Rabies Vaccine Delivery

Purpose. The Texas Department of Health (department), Zoonosis Control Division (ZCD), is requesting proposals for the aerial delivery of approximately 1.8 million doses of a wildlife rabies vaccine in individual bait units in an attempt to control and eventually eliminate canine and gray fox rabies from the state.

Description. The department is seeking a contractor to distribute the vaccine/bait units in specified areas of south and central Texas for the control of rabies. The bait delivery area will cover approximately 23,000 square miles and can last no longer than eight weeks. The department will use the competitive procurement process to select a contractor to deliver these vaccine/bait units. The contract will last for a two year period.

Eligible Applicants. Eligible participants include any applicant capable of meeting the performance requirements.

Limitations. Funding for the selected proposal will depend upon available state appropriations. The department reserves the right to reject any and all offers received in response to the Request for Proposals (RFP) and cancel the RFP if it is deemed in the best interest of the department.

Effective Date. The tentative effective date for the contract is January 4, 2000.

Deadlines. All proposals to be considered for funding through this RFP must be received by 5:00 P.M., Central Daylight Saving Time, August 15, 1999, at the Texas Department of Health, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756 (Attention: M.G. Fearneyhough, D.V.M.). Proposals received after this deadline will not be accepted.

Evaluation and Selection. An internal evaluation selection panel designated by ZCD will rank and score the proposals. The evaluation of the RFP will be based upon the following criteria: ability to meet performance requirements; ability to meet specified time lines; cost per flight hour; and evidence that the applicant has the capacity and resources to accomplish the project.

To Request a Copy of the RFP. The RFP will be available on the date of this publication. To request a copy of the RFP, and other information, contact M.G. Fearneyhough, D.V.M., Zoonosis Control Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7255, or E-mail address fearneyhough@tdh.state.tx.us.

TRD-9904215
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 13, 1999

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Texas Higher Education Coordinating Board

Request for Proposal

Under the provisions of Texas Government Code 2254, Subchapter B, the Texas Higher Education Coordinating Board (THECB) invites proposals from qualified consultants to conduct a regional and statewide study of higher education priorities and efficiencies. The assessment would serve as a foundation for a higher education plan that would be aimed at the achievement of a small number of critical goals for the state. For the purposes of the study, regions are defined as the 10 Comptroller's regions of the state.

General Information. THECB directed the staff to conduct a priority and efficiency analysis of higher education regionally and statewide with particular emphasis to areas of projected high growth and health-related programs. Consultants will conduct a study through a variety of efforts including, but not limited to, analysis of data, personal interview and focus groups.

Proposal Instructions. Detailed specifications concerning this project will be made available in the proposal request, which may be obtained by contacting Dr. David W. Gardner, Deputy Assistant Commissioner, Office of Planning, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or by phone at (512) 483- 6146. In general the proposal should include

an executive summary, proposed approach to the project, schedule indicating the tasks envisioned, budget and budget justification, provide an overview of the proposing organization and its consulting activities, and provide a brief description of the personnel to be used on the project including resumes of principal staff members.

Deadline. Proposals must be received by 4:30 p.m. on Monday, August 16, 1999, to be considered. Sixteen copies of the final proposal are required and may be mailed to Dr. David W. Gardner, Deputy Assistant Commissioner, Office of Planning, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or hand delivered to Office of Planning, Texas Higher Education Coordinating Board, 7745 Chevy Chase Drive, Austin, Texas 78752.

Selection Process. Proposals will be reviewed, ranked, and selected on the ability of each proposer to carry out all requirements contained in the RFP. The THECB will base selection on, among other things, demonstrated competence to complete a project of this type; cost-effectiveness; qualifications of key personnel; and perceived effectiveness of the proposed plan for conducting the project. Finalists will be required to make a presentation to the Coordinating Board Planning Committee. The THECB reserves the right to negotiate modifications to improve the quality or cost effectiveness of any proposal. Historically underutilized businesses are encouraged to participate in the submission of proposals.

Project Timing and Cost. Contingent upon negotiation of a contract, the period of the contract is anticipated to be September 10, 1999 through April 30, 2000. The consultants selected to conduct the engagement will also be required to submit periodic progress reports and a final report as requested by staff of the THECB Planning. Funding of the study will not exceed $250,000. The anticipated award date of the contract is by September 10, 1999.

General Award and Conditions. The THECB reserves the right to accept or reject any or all proposals submitted. The information contained in this Request for Proposals is intended to serve only as a general description of the services desired. Additional terms and conditions relating to this RFP will be provided in the proposal preparation instructions. The THECB is not obligated to execute a resulting contract, provide funds, or endorse any proposal that is submitted in response to this RFP. This RFP does not commit the THECB to award a contract or pay any cost incurred in the preparation of a response.

TRD-9904219
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: July 13, 1999

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Texas Department of Human Services

Announcement of Public Meetings on Development Plans for Selective Contracting Project

The Texas Department of Human Services will conduct three public meetings to provide information and receive input on plans to develop selective contracting for Home and Community Support Service (HCSS) providers. The public meetings will be held in Austin, Tyler, and Mt. Pleasant, Texas. Each public meeting will cover the same material. The Austin public meeting will be held on August 4, 1999, at 9:00 a.m. at 701 West 51st Street, Public Hearing Room (Winters Complex), Austin, Texas. The Tyler public meeting will be held on August 9, 1999, at 10:00 a.m. at 302 East Rieck Road, Room 117 A&B (Greenwood Square), Tyler, Texas. The Mt. Pleasant public meeting will be held on August 9, 1999, at 3:00 p.m. at 1800 North Jefferson (Titus County Civic Center), Mt. Pleasant, Texas.

The Department is developing plans for selective contracting of community care services. The initial focus of the selective contracting project will Home and Community Support Service (HCSS) providers. The following programs will be included: Primary Home Care, Family Care, Frail Elderly, Client Managed Attendant Services, and Community Based Alternatives-HCSS. To facilitate planning, the Department has selected Region 4 (Tyler area) as the initial area for consideration. The public meeting will be an opportunity for the public to meet with Department representatives, be informed of the development stages and additional opportunities for input, and share initial comments.

Contact Person: Please contact Pamela Lawrie, MC W-516, at P.O. Box 149030, Austin, Texas 71714-9030, (512) 438-2856.

Persons with disabilities planning to attend the Austin hearing who may need auxiliary aids or services are asked to contract Shirley Wren, (512) 438-2080, by July 29, 1999, so that appropriate arrangements can be made. Persons with disabilities planning to attend the Tyler or Mt. Pleasant hearing who may need auxiliary aids or services are asked to contract Sylvia Riddle, (903) 509-5135, by August 3, 1999, so that appropriate arrangements can be made.

TRD-9904246
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: July 14, 1999

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Texas Department of Insurance

Insurer Services

The following application has been filed with the Texas Department of Insurance and is under consideration:

Application for admission to the State of Texas by RELIANT INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Troy, Michigan.

Any objections must be 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-9904253
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 14, 1999

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Notices

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American International Insurance Company proposing to use rates that are outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing various rates ranging from +2% above the benchmark to +76% above the benchmark for personal automobile insurance by class, territory, and coverage. Also included in the filing is a request to pay a discount by BI limits.

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 Art. 5.101, §3(h), is made with the Chief Actuary, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9904096
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 9, 1999

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The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by the Insurance Company of the State of Pennsylvania proposing to use rates that are outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing various rates ranging from -17% below the benchmark to +43% above the benchmark for personal automobile insurance by class, territory, and coverage. Also included in the filing is a request to pay a discount by BI limits.

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 Art. 5.101, §3(h), is made with the Chief Actuary, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9904097
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 9, 1999

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The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by AIU Insurance Company proposing to use rates that are outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing various rates ranging from -36% below the benchmark to Benchmark for personal automobile insurance by class, territory, and coverage. Also included in the filing is a request to pay a discount by BI limits.

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 Art. 5.101, §3(h), is made with the Chief Actuary, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9904098
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 9, 1999

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The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Minnesota Insurance Company proposing to use rates that are outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing various rates ranging from -46% below the benchmark to Benchmark for personal automobile insurance by class, territory, and coverage. Also included in the filing is a request to pay a discount by BI limits.

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 Art. 5.101, §3(h), is made with the Chief Actuary, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9904099
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 9, 1999

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Notice of Hearing

The Commissioner of Insurance will hold a public hearing under Docket 2413 on Wednesday, August 25, 1999, at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

The purpose of this hearing is to receive comments regarding the appropriate rate reductions for certain lines and sublines of liability coverages to reflect the savings resulting from tort reform measures adopted by the 73rd and 74th sessions of the Texas Legislature. Article 5.131 requires that the rate reductions be adopted by rule. Therefore, the Commissioner will hear comments from interested parties regarding proposed amendments to 28 Tex. Admin. Code, Subchapter R, Temporary Rate Reduction for Certain Lines of Insurance. A formal notice of the proposed amendments will be published in the Texas Register at a later date. Individuals who wish to present comments at the hearing will be asked to register immediately prior to the hearing.

Written comments may be submitted to the Chief Clerk's Office, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104. An additional copy of each comment should be submitted to Ann Bright, Agency Counsel Section, Legal and Compliance, Mail Code 110-1A, Texas Department of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104.

Information compiled by Department staff for presentation at the hearing, consisting of data from insurance company closed claim reports, will be available on the TDI Web page at www.tdi.state.tx.us or upon request from the Department prior to the hearing. Please contact Angela Arizpe at (512) 463-6326.

TRD-9904085
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 8, 1999

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Notice of Public Hearing for Private Passenger and Commercial Automobile Insurance Rates Concerning the Texas Automobile Insurance Plan Association

Docket Number 454-99-1332.G

Notice is hereby given that a hearing under Docket Number 454-99-1332.G will be held before an administrative law judge (ALJ) of the State Office of Administrative Hearings (SOAH) at 10:00 a.m. on October 5, 1999 and continuing thereafter at dates, times and places designated by the ALJ until conclusion. The purpose of the hearing is consideration of adoption of the manual rates for private passenger and commercial classes of risks provided through the Texas Automobile Insurance Plan Association (TAIPA). The hearing will be held at SOAH, Suite 1100 of the Stephen F. Austin State Office Building at 1700 N. Congress Avenue, Austin, Texas 78701.

Authority, Jurisdiction and Statutes and Rules Involved

The Commissioner of Insurance has jurisdiction and legal authority over the subject matter of this hearing pursuant to the Texas Insurance Code, Article 21.81 §5. Pursuant to the Texas Insurance Code, Article 1.33B, SOAH shall conduct the hearing. Statutes involved include Articles 21.81 and 5.131 and subchapter A of Chapter 5 of the Texas Insurance Code.

The procedure of the hearing will be governed by Texas Insurance Code, Article 1.33B, the Rules of Practice and Procedure For Industry-Wide Rate Cases before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A), the Memorandum of Understanding between the Department and SOAH (Texas Administrative Code, Title 28, Chapter 1, §1.90), the Administrative Procedure Act (Texas Gov't Code, Ch. 2001), and SOAH's Rules of Practice and Procedure (Texas Administrative Code, Title 1, Chapters 155 through 163).

Matters to be Considered

The commissioner will consider testimony presented and information filed by the TAIPA, the Office of Public Insurance Counsel and other interested parties relating to the determination of rates for private passenger and commercial automobile insurance provided through the TAIPA, including the spreading of the rates among relevant classifications and territories. The commissioner has the statutory authority and duty pursuant to the Texas Insurance Code, Article 21.81 §5 to promulgate the rates to be charged for insurance provided through the TAIPA, including private passenger and commercial automobile insurance, after notice and hearing. Relevant data to be used in the rate case will be available from the department.

The commissioner has the statutory authority and duty pursuant to the Texas Insurance Code, Article 21.81 to determine and prescribe rates that are just, reasonable, adequate, not excessive, not confiscatory and not unfairly discriminatory for the risks to which they apply; and to set rates in an amount sufficient to carry all claims to maturity and to meet the expenses incurred in the writing and servicing of the business.

The commissioner requests evidence on the following additional matters to be determined at the hearing:

1. The effect of tort reform legislation in determining rates.

2. Impact of changes in the size of the TAIPA plan population on rate level calculations, such as premium on, level factors, trend factors, trending dates (e.g., the average date of loss of the experience years) and other ratemaking elements.

3. Provide evidence regarding rates that promote access to full insurance coverage and that are fair and reasonable for underserved areas, as provided in Texas Insurance Code Article 1.09-5(c).

4. The relative number of drivers who are removed from TAIPA by the mandatory and voluntary take out programs, and the effect on rate needs.

5. The loss ratios at current benchmark rate levels of commercial risks written through TAIPA.

6. The setting of PIP and medical payment rates on a class and territorial basis, as opposed to the size of the bodily injury liability rate.

7. Potential rate impact and the effect on individual classes of TAIPA drivers in the event Rule 42 of the Texas Automobile Rules and Rating Manual were amended to apply surcharge percentages for accidents and convictions based on the Class 1A driver rate in a manner similar to Rule 75(I)(7), (8), and (9). In other words, in the event that both the base rate for calculation and the surcharge percentage may be adjusted, depending upon the evidence address the adjustments necessary to keep TAIPA rates revenue neutral. Also address the surcharge percentages to be applied in the event of accidents and convictions.

8. Issues relevant to TAIPA which are raised in the NOH for the Benchmark Auto.

9. Review of the actual historical rate of return of the property/casualty insurance industry on both a statutory accounting principles (SAP) and generally accepted accounting principles (GAAP) basis in comparison to prevailing short, medium and long-term interest rates, actual return on investments earned by investors in property/casualty insurance stock companies, actual GAAP return on equity earned by other industries, and actual GAAP return on equity by all industries combined. Provide the available data with any associated calculations and analyses.

10. The relative risk of the property/casualty insurance industry in comparison to other industries and all industries combined as viewed by an investor, defined as either a purchaser of stock or some other contributor of capital to the insurance enterprise.

11. The impact of the property/casualty insurance industry's debt to equity ratio and liabilities to equity ratio currently and over time on the recommendation for a target rate of return. If cost of capital considerations include reliance upon a sample group of companies, such reliance should be supported with information regarding:

(a) the extent to which the sample companies have incorporated debt into their capital structures, and

(b) the relative leverage of the property/casualty operating companies owned by the sample companies when compared with the property/casualty industry as a whole, with leverage measured by the ratio of premiums plus reserves (loss, loss adjustment, and unearned premium reserves) to consolidated policyholder surplus.

12. Review of the actual historical net investment income earned, including interest and dividends earned, and realized and unrealized capital gains, by the property/casualty insurance industry in comparison to prevailing short, medium and long-term interest rates. Provide the available data with any associated calculations and analyses.

13. Review of the historical premium to surplus and reserves to surplus ratios of the property/casualty insurance industry.

14. Comparison of the recommended leverage ratios with those that would result from an allocation of total property/casualty industry

surplus by line of insurance based upon the combination of net premiums earned plus mean net reserves, plus the ratios which result from any additional adjustments necessary for Texas-specific variations in countrywide relationships and/or to reflect the effects of converting SAP surplus to GAAP net worth.

15. Review of historical underwriting profit results for Texas and countrywide in the coverages for which underwriting profit provisions are recommended.

Motions for Admission as a Party

Anyone who wishes to participate in the hearing as a party must file a motion for Admission as a party by 5:00 p.m. August 6, 1999.

Prehearing Conference

An initial prehearing conference will be held before the ALJ at 10:00 a.m. on August 10, 1999, at the State Office of Administrative Hearings, Suite 1100 of the Stephen F. Austin State Office Building at 1700 N. Congress Avenue, Austin, Texas 78701. The prehearing conference will be held for the following purposes:

(1) ruling on all motions for admission of parties;

(2) setting the procedural deadlines for discovery, motions, and prefiled testimony; and

(3) such other matters as will promote the orderly and prompt conduct of the hearing.

Additional prehearing conferences will be scheduled as the ALJ deems necessary to rule on other matters as may aid in the simplification of the proceedings.

Commissioner's Policies

Pursuant to Tex. Gov't Code §2001.058 (c), the commissioner is required to provide the ALJ with a written statement of applicable rules and policies. The applicable procedural rules are set out above. The commissioner's policies regarding the setting of rates for insurance provided through the TAIPA are set out below. Evidence regarding alternatives to the commissioner's policies as set out herein shall be permitted. The purpose of this policy statement is to put the ALJ and parties on notice regarding the commissioner's policies to provide advance notice of the type of evidence parties should present in the hearing. This policy statement, however, is not intended to limit the type of evidence a party may offer at the hearing. The pertinent commissioner's policies are as follows:

1.It is the commissioner's policy to consider all relevant evidence and issues in making a determination of rates. To ensure a complete record, the commissioner requests the ALJ to:

(a) take judicial notice of 28 Texas Administrative Code §§5.14000-5.14011 (frequently referred to as the "Rate Reduction Rules") as adopted by the commissioner; Commissioner's Order No. 96-0591 entitled "In the Matter of Rates for Private Passenger and Commercial Automobile Insurance Provided Through the Texas Automobile Insurance Plan Association" and dated May 29, 1996; Commissioner's Order No. 97-1272 entitled, "Private Passenger and Commercial Automobile Insurance Provided Through the Texas Automobile Insurance Plan Association" and dated December 18, 1997; and Commissioner's Order No. 98-1494, entitled "Private Passenger and Commercial Automobile Insurance Provided through the Texas Automobile Insurance Plan Association" and dated December 22, 1998.

(b) ensure that exhibits accompanying testimony from the parties' witnesses, including their underlying work papers, are submitted and are made available in both paper and electronic format. The format should be 3.5 inch high density diskette in a DOS or Windows spreadsheet or other format readable by a machine running DOS or Windows. Parameters, assumptions and references to underlying data should be identifiable in the electronic exhibits.

2. It is the commissioner's policy that so-called "Fast Track" data reports not be used directly in the rate development analysis. Trend analysis should rely upon trend data reported to the department and provided by the department to the parties. Fast Track data are not intended for ratemaking and represent only a portion of industry experience.

3.It is the commissioner's policy that if underwriting profit provisions are calculated to reflect a target return on equity measured under GAAP, estimates of future expense ratios, to the extent these estimates are based upon historical expense experience, shall be based upon historical ratios of expenses to written premiums. Alternatively, if estimates of future expenses are based upon historical ratios of expenses to earned premium, then the underwriting profit provision shall be adjusted in consideration of expected increases in prepaid expenses which are recognized as an asset under GAAP.

Conduct of the Hearing

Each page of any exhibit offered in evidence at a hearing before the Commissioner of Insurance, including prefiled testimony, must be numbered consecutively at the center of the bottom margin, be on 8 1/2" by 11" paper, and must be three-hole-punched along the left margin. The front page of each exhibit should indicate that the exhibit would be part of the record of a public hearing before the Commissioner of Insurance and should identify the subject of the hearing, the docket number, the date of the hearing, and the party offering the exhibit. On the front page, the party offering the exhibit should also describe the exhibit and leave a space for numbering the exhibit. For example:

Public Hearing before the Commissioner of Insurance

Subject of Hearing: Texas Automobile Insurance Plan Association Rate Hearing

Docket No. _____

Date: _____

Exhibit # _____

Description of Exhibit _____

Parties offering exhibits into evidence at the hearing should be prepared with sufficient copies of each proposed exhibit to furnish the following:

1. the original exhibit, which will be tendered to the ALJ for marking and retention for the official record, after which the attorneys shall use an exact photocopy of such marked exhibit in the examination of the witness;

2. one copy each for every other party admitted to the hearing.

All deadlines in this notice are subject to change at the ALJ's discretion to the extent permitted by statute and rule.

In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

TRD-9904144
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 9, 1999

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Third Party Administrator Applications

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

Application for admission to Texas of Consolidated Health Plans, Inc., a foreign third party administrator. The home office is Metairie, Louisiana.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9904252
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 14, 1999

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Texas Lottery Commission

Public Hearing

Notice is hereby given that a public hearing will be held on July 22, 1999 at 10:00 a.m. in the first floor auditorium of the Texas Lottery Commission, 611 E. 6th Street, Austin, Texas 78701, to receive comments regarding a proposed new section to 16 TAC 401.312, relating to converting specific lottery prize installment payments.

TRD-9904090
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 8, 1999

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding LATTIMORE MATERIALS COMPANY, L.P., Docket Number 1998-0313-MWD-E; TNRCC ID Number 0000127; Enforcement ID Number 12316 on July 6, 1999 assessing $10,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Harrison, Staff Attorney at (512) 239-1736 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FFP OPERATING PARTNERS, L.P., Docket Number 1997-1084- MWD-E; Permit Number WQ 0013661-001; Enforcement ID Number 8115 on July 6, 1999 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE CITY OF KERENS, Docket Number 1998-0460-MWD-E; Permit Number 10745-001; Enforcement ID Number 8228-2 on July 6, 1999 assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MICHAEL STROZDAS, Docket Number 1997-0430-LII-E; TNRCC Irrigator License Number LI0003437; Enforcement ID Number 12623 on July 6, 1999 assessing $1,810 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548 or Merrilee Gerberding, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEDHI PAYESTEH DOING BUSINESS AS QUALITY LUBE, Docket Number 1998-1147-AIR-E; Account Number DB-4953-W; Enforcement ID Number 12984 on July 6, 1999 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Michael DeLaCruz, Enforcement Coordinator at (817)469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FFP OPERATING PARTNERS, LP, Docket Number 1999-0257- AIR-E; Account Number EE-1115-S on July 6, 1999 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 DARREL DANNEN DBA DOUBLE D MOTORS, Docket Number 1999-0097-AIR-E; Account Number DB-3447-D; Enforcement ID Number 13415 on July 6, 1999 assessing $625 in administrative penalties.

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 LOVES COUNTRY STORE, INCORPORATED, Docket Number 1998-1526-AIR-E; Account Number EE-1053-P; Enforcement ID Number 13217 on July 6, 1999 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol Dye, Enforcement Coordinator at (512) 239-1504, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PIONEER CONCRETE OF TEXAS, INCORPORATED, Docket Number 1999-0063-AIR-E; Account Nos. DB-0856-D and CP-0084-V; Enforcement ID Nos. 13308 and 13309 on July 6, 1999 assessing $7,500 in administrative penalties.

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 VALERO REFINING COMPANY, Docket Number 1998-1162- AIR-E; Account Number NE-0112-G; Enforcement ID Number 11051 on July 6, 1999 assessing $111,000 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.

A default order was entered regarding DAVID E. HALL DBA DAVID E. HALL COMPANY, Docket Number 1998-0683-AIR-E; TNRCC ID Number DB-4429-V; Enforcement ID Number 12305 on July 6, 1999 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677 or Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding AFZAL SHEKHANI DBA ALDINE FOOD & GAS MART, Docket Number 1998-0803-PST-E; TNRCC ID Number 0038239; Enforcement ID Number 12419 on July 6, 1999 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677 or Julia McMasters, Enforcement Coordinator at (512) 239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PHILLIPS 66 COMPANY DBA TURNPIKE 66 AND PHILLIPS 66 COMPANY DBA SEMINARY 66, Docket Number 1998-1493-PST-E; PST Facility ID Nos. 0010891 and 0064981; Enforcement ID Nos. 13010 and 13011 on July 6, 1999 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mohammed Issa, Enforcement Coordinator at (512) 239-1445, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CINDI MILLS DBA C & J TRADING POST, Docket Number 1998-1278-PST-E; PST ID Number 0070876; Enforcement ID Number 13026 on July 6, 1999 assessing $2,500 in administrative penalties with $2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. KARIM MOMIN DBA GAS N STUFF FOOD MART, Docket Number 1998-1258-PST-E; Facility ID Number 0028584; Enforcement ID Number 13032 on July 6, 1999 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI-CON, INC. DBA EXXPRESS MART #4, Docket Number 1998-0014-PST-E; PST Facility ID Number 0039980; Enforcement ID Number 13266 on July 6, 1999 assessing $3,125 in administrative penalties.

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

An agreed order was entered regarding FEDERAL EXPRESS CORPORATION, Docket Number 1998- 0998-PST-E; PST Facility ID Number 0035712; Enforcement ID Number 12894 on July 6, 1999 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AGM TEXACO, INCORPORATED, Docket Number 1998-0719- PST-E; PST Facility ID Number 0026715; Enforcement ID Number 12685 on July 6, 1999 assessing $6,375 in administrative penalties with $5,775 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AHMAD ENTERPRISES, Docket Number 1998-1257-PST-E; PST Facility ID Number 0047170 on July 6, 1999 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JACK MORTON, Docket Number 1998-0482-PST-E; TNRCC ID Number 0006823; Enforcement ID Number 12474 on July 6, 1999 assessing $21,500 in administrative penalties with $20,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Otten, Staff Attorney at (512) 239-1738 or Paula Spears, Enforcement Coordinator at (515)239-5100, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KASHMIR, INC. DBA GREENBRIAR GROCERY, Docket Number 1998-0716-PST-E; TNRCC ID Number 43001; Enforcement ID Number 12384 on July 6, 1999 assessing $10,625 in administrative penalties with $10,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512) 239-2029 or Timothy 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 LORNE THORNBRUE, Docket Number 1997-1195-PST-E; PST Facility ID Number 69290; Enforcement ID Number 12104 on July 6, 1999 assessing $3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512) 239-2029 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 VULCAN MATERIALS COMPANY, Docket Number 1998-0976- IWD-E; WQ Permit Number 03329; Enforcement ID Number 2-4 on July 6, 1999 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or 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 SHAWN FULLER DBA FULLER MOBILE HOME PARK, Docket Number 1998-1016-PWS-E; PWS ID Number 1520232; Enforcement ID Number 12816 on July 6, 1999 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting 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 THE CITY OF BLANCO, Docket Number 1998-1222-PWS-E; PWS 0160002 on July 6, 1999 assessing $375 in administrative penalties.

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 ZION LUTHERAN CHURCH OF HELOTES, Docket Number 1998-1045-PWS-E; PWS Number 0150513 on July 6, 1999 assessing $688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jayme Brown, Enforcement Coordinator at (512) 239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C.L. THOMAS INC. DBA SPEEDY STOP #46, Docket Number 1999-0102-PWS-E; PWS Number 2350044 on July 6, 1999 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jayme Brown, Enforcement Coordinator at (512) 239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAWRENCE WATER SUPPLY CORPORATION, Docket Number 1999-0101-PWS-E; PWS Number 1290018 on July 6, 1999 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jayme Brown, Enforcement Coordinator at (512) 239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TIMOTHY M. BRADBERRY AND SALLIE M. BRADBERRY DBA BRADBERRY WATER SUPPLY, Docket Number 1998-1076-PWS-E; CCN Number 11950 on July 6, 1999 assessing $8,169 in administrative penalties.

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 GROENDYKE TRANSPORT, INC., Docket Number 1998-1321- IHW-E; ISW Reg. 31059; Enforcement ID Number 12920 on July 6, 1999 assessing $18,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Randy Norwood, Enforcement Coordinator at (512) 239-1879, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHAMPION TECHNOLOGIES INCORPORATED, Docket Number 1998-1181-IHW-E; SWR Number 31502; Enforcement ID Number 12922 on July 6, 1999 assessing $26,100 in administrative penalties with $5,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NOLTEX L.L.C., Docket Number 1998-1467-IHW-E; SWR Facility ID Number 84348; Enforcement ID Number 13189 on July 6, 1999 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MERICHEM-SASOL USA LLC, Docket Number 1998-1314-IHW- E; SWR Number 30595; Enforcement ID Number 1160 on July 6, 1999 assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting 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 TECHNICAL COATINGS, INC., Docket Number 1998-0738- IHW-E; SWR Number 33276; Enforcement ID Number 1423 on July 6, 1999 assessing $29,375 in administrative penalties with $19,375 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512) 239-2029 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 RAYTHEON E-SYSTEMS, INC., Docket Number 1998-1243- IHW-E; SWR 30449; Enforcement ID Number 12722 on July 6, 1999 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Johnson, Enforcement Coordinator at (512) 239-2555, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF BRADY, Docket Number 1998-1315-MSW-E; MSW Permit Number 1732; Enforcement ID Number 6847 on July 6, 1999 assessing $5,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting 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 RONNIE SMITH DBA SMITH'S DIAMOND C RANCH, Docket Number 1998-0061-MLM-E on July 6, 1999 assessing $750 in administrative penalties with $150 deferred.

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 CITY OF GEORGETOWN, Docket Number 1998-0600-EAQ-E; Enforcement ID Number 12557 on July 6, 1999 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WAYNE MOERMAN DBA TRIPLE X DAIRY, Docket Number 1998-0931-AGR-E; Permit Number 03669; Enforcement ID Number 12790 on July 6, 1999 assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9904230
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 13, 1999

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Environmental Council of States (ECOS) Innovative Agreement Between TNRCC and EPA

The following information concerns the Environmental Council of States (ECOS) Innovative Agreement Between the Texas Natural Resource Conservation Commission (TNRCC) and the Environmental Protection Agency (EPA)

Date: June 17, 1999

Agreed Solution for TNRCC proposal submitted on October 23, 1998:

The TNRCC will reassess, through existing flexibility, the number of inspectors which must be recertified as visible emissions evaluators under Method 9 in order to satisfy conditions of their air program. EPA believes that this proposal creates the opportunity for TNRCC to test innovative resource management approaches by shifting limited inspector resources to higher risk enforcement and compliance areas identified by the State.

The TNRCC and EPA agree to use existing air program delegation mechanisms to monitor the effect of reducing the number of State inspectors recertified for Method 9 on an annual basis. The review will be conducted at the same time as the regular annual air enforcement program evaluation.

Contact Trace Finley at (512) 239-5886.

TRD-9904250
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 14, 1999

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Extension of Comment Period

In the July 16, 1999, issue of the *Texas Register*, the Texas Natural Resource Conservation Commission (commission) published proposed amendments to 30 TAC Chapter 115, concerning the implementation of reasonably available control technology for major volatile organic compound sources in the Beaumont/Port Arthur ozone nonattainment area. Also in the July 16, 1999 issue, the commission published proposed amendments to 30 TAC Chapter 117, concerning the setting of emission limits, a compliance schedule, and requirements for operating, testing, recordkeeping, and reporting for stationary gas-fired, lean-burn engines in the Beaumont/Port Arthur ozone nonattainment area. The preambles to the proposals stated that public hearings regarding the proposal would be held August 9, 1999, and that the commission must receive all written comments by 5:00 p.m., August 16 1999. The commission has extended the deadline for receipt of written comments to 5:00 p.m., August 23, 1999.

Written comments should be mailed to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments should reference Rule Log Numbers 99018-SIP-AI, 99019-115-AI, and 99020-117-AI. For further information on the proposed revisions, please contact one of the following Strategic Assessment Section staff members: Mike Magee (BPA Attainment SIP), (512) 239-1511; Eddie Mack (Chapter 115 revisions), (512) 239-1488; or Randy Hamilton (Chapter 117 revisions), (512) 239-1512. Copies of the proposed rules can be obtained from the commission's Web Site at www.tnrcc.state.tx.us/oprd/rules/propadop.html, or by calling Ms. Martin at (512) 239-1966.

TRD-9904233
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 14, 1999

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Notice of Application for Industrial Hazardous Waste Permits/Compliance Plans and Underground Injection Control Permits for the Period of June 29, 1999 to July 12, 1999

EQUISTAR CHEMICALS, L.P., P.O. Box 10940, Corpus Christi, Texas, 78460, has filed an application with the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to Underground Injection Control (UIC) Permit Number WDW-152 which authorizes continued use of the well for on-site disposal of hazardous waste into a rock formation below all underground sources of drinking water. The proposed amendment to the well permit includes implementation of Hazardous and Solid Waste Amendments corrective action requirements. Equistar Chemicals, LP is located at 1501 McKinzie Road in Corpus Christi, Nueces County, Texas. The waste disposal well is located approximately 890 feet from the north line and approximately 525 feet from the west line of §412, Charles Land Survey, A-854, (North Latitude 27ø48'42", West Longitude 97ø35'42"). Equistar Chemicals, LP currently operates a chemical manufacturing facility which uses liquified petroleum gases and other raw materials to produce ethylene plus principal co-products of propylene, benzine, butadiene, and C4 raffinate. The injected wastes stream is spent caustic and process waste water generated during the manufacture of organic chemicals. In addition, other associated wastes such as ground water and rainfall contaminated by authorized wastes, spills of authorized wastes, and wash waters and solutions used in cleaning, servicing, and closing the waste disposal well system equipment, which are compatible with the permitted waste streams, reservoir, and well materials, may be injected. WDW-152 has been permitted since 1979.

VISION METALS, INC located at 2010 Spur 529 and Scott Road near U.S. High 59 on approximately 82.322 acres in Rosenberg, fort Bend County, operates a steel tubing production facility, has applied for a renewal of a Hazardous waste permit (Permit Number HW-50129) and renewal of compliance plan (Compliance Plan Number CP-50129). The permit would authorize continued post-closure care for five surface impoundments. The compliance plan renewal will require the permittee to continue to monitor the concentration of hazardous constituents in groundwater and remediate ground-water to specific standards.

If you wish to request a public hearing, you must submit your request in writing. You must state: (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. 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-9904228
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 13, 1999

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Notice of District Application on the Application for Standby and/or Impact Fees

LAKE CONROE HILLS MUNICIPAL UTILITY DISTRICT OF MONTGOMERY COUNTY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for authority to adopt and impose an annual operation and maintenance standby fee of $90 per lot and $228 per acre for calendar years 1999 through 2001 on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TNRCC.

The TNRCC may grant a contested case hearing on these applications if a written hearing request is filed within 30 days after the newspaper publication of this notice. The Executive Director may approve the applications unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice.

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 contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning hearing process, contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9904227
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 13, 1999

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 23, 1999.** The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 23, 1999.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing.**

(1) COMPANY: Amistad Water Supply Corporation and Carrie Suniga, Individually; DOCKET NUMBER: 1998-1067-PWS-E; TNRCC IDENTIFICATION (ID) NUMBER: 0130060; LOCATION: 200 Salazar Drive, Beeville, Bee County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(a) and Texas Health and Safety Code (THSC), §341.033(d) by failing to collect routine bacteriological samples; 30 TAC §290.103(5) by failing to provide public notification of its failure to collect bacteriological water samples and to provide a copy of the notice to the commission; and 30 TAC §290.51 and THSC, §341.041 by failing to pay public health safety fees for 1998; PENALTY: $4,250; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175,

(512) 239-2548; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Raymond Carrillo; DOCKET NUMBER: 1999-0118-PST-E; TNRCC ID NUMBER: 04709; LOCATION: 301 North Cleveland, Rotan, Fisher County, Texas; TYPE OF FACILITY: retail gasoline dispensing; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.22 and the Code, §26.358(b) by failing to pay annual facility fees for underground storage tanks; PENALTY: $5,000; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: Price Construction, Incorporated dba Gonzales Concrete Batch Plant; DOCKET NUMBER: 1998-1275-AIR-E; TNRCC ID NUMBER: 93-5283-O; LOCATION: U.S. Highway 90 East, Del Rio, Val Verde County, Texas; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a) by failing to qualify for exemption and by failing to obtain a permit prior to operation; PENALTY: $2,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

TRD-9904235
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: July 14, 1999

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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 **August 22, 1999**. 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 August 22, 1999**. 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: BASF Corporation; DOCKET NUMBER: 1998-1466-AIR-E; IDENTIFIER: Air Account Number BL-0021-O; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.116(a) and the Act, §382.085(b), by failing to control vent E-16 Hotwell in the Cyclohexanone 1 Unit and the E-169 vent from D-185 in the Cyclohexanone 2 Unit by not routing them to the catalytic incinerator as represented in the permit application of Permit Number 1733A; PENALTY: $17,250; ENFORCEMENT COORDINATOR: Gita Arasteh, (713) 767-3706; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Calpine Corporation; DOCKET NUMBER: 1999-0049-AIR-E; IDENTIFIER: Air Account Number HG-9954-A; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: cogeneration plant; RULE VIOLATED: 30 TAC §122.121, §122.130(c)(1), and the THSC, §382.085(b) and §382.054, by failing to obtain a Title V operating permit or submit an initial abbreviated application; and 30 TAC §122.121, §122.412(1)(B), and the THSC, §382.085(b) and §382.054, by failing to obtain a Title IV acid rain permit or submit an application; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Anjili Sabharwal, (713) 767-3757; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Chevron Products Company; DOCKET NUMBERS: 1998-0555-IWD-E and 1998-0556-IWD-E; IDENTIFIERS: Enforcement Identification Numbers 12498 and 12499; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: petroleum storage tank groundwater remediation; RULE VIOLATED: 30 TAC §321.133(c)(2)(A) and the Code, §26.121, by exceeding the required limitations of 50 parts per billion (ppb) for benzene and 500 ppb for total benzene, toluene, ethylbenzene, and xylene; PENALTY: $1,950; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: El Paso Independent School District; DOCKET NUMBER: 1998-1498-AIR-E; IDENTIFIER: Air Account Number EE-1240-O; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: maintenance shop; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by dispensing gasoline that did not contain at least 2.7% oxygen by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(5) COMPANY: FFP Marketing Company, Incorporated; DOCKET NUMBER: 1998-1496-AIR- E; IDENTIFIER: Air Account Number EE-1993-E; LOCATION: San Elizario, El Paso County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), for dispensing gasoline which did not contain at least 2.7% oxygen by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(6) COMPANY: The City of Frisco and North Texas Municipal Water District; DOCKET NUMBER: 1998-0872-MWD-E; IDENTIFIER: Permit Number 10172-003; LOCATION: near Frisco, Denton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10172-003 and the Code, §26.121, by allowing unauthorized discharges, failing to report any noncompliance, and failing to at all times properly operate and maintain all

facilities and systems of treatment and control; 30 TAC §317.3(e)(5) and §317.4(a)(5), by failing to provide auxiliary power with automatic switch over capabilities; and 30 TAC §305.126, by failing to obtain the necessary authorization from the commission to commence construction of the necessary additional treatment and/or collection facilities when the daily average flow reached 90% of the permitted average daily flow for three consecutive months; PENALTY: $43,875; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(7) COMPANY: Georgetown Independent School District and Georgetown Healthcare System, Inc.; DOCKET NUMBER: 1998-0599-EAQ-E; IDENTIFIER: Enforcement Identification Numbers 13123 and 12553; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: school district; RULE VIOLATED: 30 TAC §213.4(a), by failing to submit an Edwards Aquifer protection plan to the appropriate regional office for review and approval prior to the commencement of construction; PENALTY: $880; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(8) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 1998-0529-AIR- E; IDENTIFIER: Air Account Number HG-0288-M; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c) and the Act, §382.085(b), by failing to operate the plant boiler within the maximum annual firing rate for organic heavies; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Matthew Kolodney, (713) 767-3752 ; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Gulf Electroquip, Ltd.; DOCKET NUMBER: 1999-0003-AIR-E; IDENTIFIER: Air Account Number HG-2932-N; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: electric motor, generator, and transformer rebuilding and manufacturing plant; RULE VIOLATED: 30 TAC §115.421(a)(9)(A)(iii) and the Act, §382.085(b), by exceeding the volatile organic compound emission content limit of 3.5 pounds per gallon coating; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Harris County Municipal Utility District No. 1; DOCKET NUMBER: 1999- 0080-MWD-E; IDENTIFIER: Permit Number 11630-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11630-001 and the Code, §26.121, by exceeding the daily average ammonia nitrogen permit limit of three milligrams per liter and individual grab sample permit limit of 5.7 pounds per day; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Health Jet Incorporated dba Chung's Gourmet Foods; DOCKET NUMBER: 1998-1509-AIR-E; IDENTIFIER: Air Account Number HG-7805-J; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: food preparation operation; RULE VIOLATED: 30 TAC §101.4 and the THSC, §382.085(a) and (b), by failing to control off-property offensive smoke, odor, and grease emissions; PENALTY: $5,040; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Norman Sadik dba Hill Country Kitchen; DOCKET NUMBER: 1998-1134- PWS-E; IDENTIFIER: Public Water Supply Number 2270272; LOCATION: Spicewood, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(d)(2)(A)(ii), by failing to have the required minimum pressure tank capacity of 220 gallons; 30 TAC §290.41(c)(1)(F) and (3)(N), by failing to acquire a sanitary easement on all property within 150 feet of the well and by failing to install a flow meter on the well pump discharge line; 30 TAC §290.106(a) and the Code, §341.033(d), by failing the take the required routine bacteriological sample; and 30 TAC §290.51 and the Code, §341.041, by failing to pay the public health service fees; PENALTY: $813; ENFORCEMENT COORDINATOR: Audra Baumgartner, (512) 239-1406; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: Lobo Pipeline Company, A Wholly Owned Subsidiary of Conoco Incorporated; DOCKET NUMBER: 1999-0314-AIR-E; IDENTIFIER: Air Account Number ZA-0009-O; LOCATION: Zapata, Zapata County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §116.115(c) and the THSC, §382.085(b), by failing to conduct fugitive emissions monitoring as required by Permit Number 21939, exceeding air permit emissions limits for nitrogen oxides and carbon monoxide, and failing to conduct quarterly monitoring as required by permit; and 30 TAC §§320.21, 335.323, 334.21, 305.503, the Code, §26.0135(h) and (d), and §26.358(d), and the THSC, §361.134, by failing to pay the water quality assessment fee, hazardous waste generator fee, underground storage tank fee, and wastewater treatment fee; PENALTY: $28,125; ENFORCEMENT COORDINATOR: Carol Dye, (512) 239-1504; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(14) COMPANY: Edgar McNeal; DOCKET NUMBER: 1998-1381-OSI-E; IDENTIFIER: Enforcement Identification Number 12214; LOCATION: Gilmer, Upshur County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.58(a)(3) and the THSC, §366.051(c), by failing to obtain proof of a permit and approved plan from the authorized agent before beginning construction; and the THSC, §366.054, by failing to notify the authorized agent of the date on which he planned to begin work on the facilities; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: The City of Nome; DOCKET NUMBER: 1998-0933-MWD-E; IDENTIFIER: Enforcement Identification Number 8629; LOCATION: Nome, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: The Code, §26.121, by failing to comply with the terms and conditions of the agreed order; and Permit Number 11564-001, by failing to comply with the five-day biochemcial oxygen demand daily average concentration and daily average loading permit limits and the total suspended solids daily average loading and daily average flow permit limits; PENALTY: $12,250; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Parker Trailer Sales, Incorporated; DOCKET NUMBER: 1999-0047-AIR-E; IDENTIFIER: Air Account Number TF-0060-P; LOCATION: Mount Pleasant, Titus County, Texas; TYPE OF FACILITY: utility trailer manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and the THSC, §382.085(b), by exceeding its permitted volatile organic compound emission rate and permitted operating schedule of five days per week and 1,880 hours per year; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: Porter Manufacturing Corporation; DOCKET NUMBER: 1999-0344-IHW-E; IDENTIFIER: Solid Waste Registration Number 83771; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: metal machining, fabrication, and painting contractor; RULE VIOLATED: 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to perform a hazardous waste determination on grit trap waste generated from the sump; 30 TAC §335.6, by failing to notify the TNRCC of the distillation unit, the container storage area located next to the paint booth, the grit trap waste generated from the sump, and its hazardous waste recycling activities; 30 TAC §335.9, by failing to maintain records of all hazardous waste and industrial solid waste activities; 30 TAC §335.69 and 40 CFR §262.34, by failing to properly mark containers located at the satellite accumulation area as "hazardous waste" or properly identify their contents, keep the container closed except during emptying and filling, maintain spill control and decontamination equipment, attempt to reach agreements with emergency response contractors and equipment suppliers, post the emergency coordinator, locations of emergency equipment, and the fire department phone number next to the facility's telephones, and train its employees with proper waste handling and emergency procedures; and 30 TAC §335.474, by failing to prepare a source reduction and waste minimization plan and by failing to submit the executive summary; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(18) COMPANY: Primestore, Inc.; DOCKET NUMBER: 1998-1516-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Plan Number 98072001; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: pest control; RULE VIOLATED: 30 TAC §213.4(a), by alleging to have initiated construction prior to receiving approval of an Edwards Aquifer protection plan; PENALTY: $800; ENFORCEMENT COORDINATOR: Patrick Hudson, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(19) COMPANY: Producers Cooperative Elevator; DOCKET NUMBER: 1999-0008-AIR-E; IDENTIFIER: Air Account Number FE-0058-S; LOCATION: Floydada, Floyd County, Texas; TYPE OF FACILITY: grain elevator; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b), by emitting into the atmosphere anhydrous ammonia in such concentration and duration as to create a nuisance odor; and 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b), by failing to obtain a permit to construct prior to the modification of the existing facility; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(20) COMPANY: Reliant Energy Entex; DOCKET NUMBER: 1999-0056-MSW-E; IDENTIFIER: Enforcement Identification Number 13234; LOCATION: Rosenberg, Fort Bend County, Texas; TYPE OF FACILITY: municipal solid waste; RULE VIOLATED: 30 TAC §330.4(b) and §335.2(b), by failing to transport waste to a permitted facility; PENALTY: $1,440; ENFORCEMENT COORDINATOR: J. Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Mr. Sid Jones dba Sid's Food Store; DOCKET NUMBER: 1999-0006-PST-E; IDENTIFIER: Petroleum Storage Tank Identification Number 0015149; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.242(3) and the THSC, §382.085(b), by failing to maintain all required components and configuration of the Stage II system consistent with the California Air Resources Board Executive Order; and 30 TAC §115.245(1) and (2), and the THSC, §382.085(b), by failing to perform and maintain a record of the initial compliance test and the annual pressure decay test; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Frank Muser, (512) 239-6951; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(22) COMPANY: St. Andrews Episcopal School; DOCKET NUMBER: 1999-0261-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Plan Number 97102801; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: high school; RULE VIOLATED: 30 TAC §213.5(f)(2), by failing to immediately notify the Austin regional office of a sensitive feature encountered during construction and by proceeding with cave closure prior to receiving written approval of the closure plan; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Patricia Reeh, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(23) COMPANY: United Parcel Service, Incorporated; DOCKET NUMBER: 1998-1499-AIR-E; IDENTIFIER: Air Account Number EE-1201-B; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: parcel delivery service; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by dispensing gasoline that did not have an oxygen content of at least 2.7% by weight; PENALTY: $720; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(24) COMPANY: Steve Elliston dba University Park Mobile Home Park; DOCKET NUMBER: 1998-1448-PWS-E; IDENTIFIER: Public Water Supply Number 1840104; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1), (b), and (e), and the Code, §341.033(d), by failing to take routine bacteriological samples, take repeat bacteriological samples, and perform public notice; and 30 TAC §290.105, by exceeding the maximum contaminant level for total coliform; PENALTY: $1,563; ENFORCEMENT COORDINATOR: Audra Baumgartner, (512) 239-1406; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(25) COMPANY: Village Farms of Delaware, L.L.C dba Village Farms of Texas; DOCKET NUMBER: 1998-1372-PWS-E; IDENTIFIER: Public Water Supply Number 1220012; LOCATION: Fort Davis, Jeff Davis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e), (f)(2)(B), and (t), by failing to employ a certified water works operator, conduct the required monitoring and testing for chlorine residual in the distribution system, and repair a leaking water valve located near the service pumps; 30 TAC §290.106(a)(1) and the Code, §34.033(d), by failing to collect the required bacteriological samples; 30 TAC §290.41(c)(1)(F) and (3)(M), by failing to obtain a sanitary easement and by failing to provide a suitable sampling tap on the well discharge to facilitate the collection of samples for chemical and bacteriological analysis; and 30 TAC §290.43(c), by failing to provide the ground storage tank with a properly designed overflow pipe; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Clint Pruett, (512) 239-2042; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(26) COMPANY: City of Waco; DOCKET NUMBER: 1998-1494-IHW-E; IDENTIFIER: Public Water Supply Number 1550008; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §327.3(b), by fail-

ing to notify within 24 hours after discovery of a spill of greater than 100 pounds of a hazardous substance; and 30 TAC §337.5(a) and the Code, §26.121, by failing to immediately abate and contain a spill of a hazardous substance; PENALTY: $3,500; ENFORCEMENT COORDINATOR: J. Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: Weatherford Holding U.S., Inc.; DOCKET NUMBER: 1998-0970-MWD-E; IDENTIFIER: Permit Number 12522-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 12522-001 and the Code, §26.121, by failing to submit a permit renewal application; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9904213
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: July 13, 1999

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Notice of Public Hearing (Beaumont/Port Arthur SIP)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapters 115 and 117, and to the SIP concerning the Beaumont/Port Arthur (BPA) Attainment Demonstration SIP and accompanying rules.

As a moderate ozone attainment area, BPA was required to attain the one-hour ozone standard by November 15, 1996. The BPA area did not attain the standard by that date, and also will not attain the standard by November 15, 1999, the attainment date for serious areas. EPA is charged under the Federal Clean Air Act Amendments of 1990 to take appropriate action, including reclassification of the area to the next higher nonattainment classification ("bump-up") in such cases. However, under EPA's transport guidance, the attainment date may be extended without bumping up the area. If EPA approved such a determination for BPA, the area would have until no later than November 15, 2007, the attainment date for Houston/Galveston (HGA), to attain the one-hour ozone standard. This SIP revision, and accompanying rules, is aimed at satisfying EPA's requirements for extension of the BPA attainment date.

The proposed amendments to Chapter 115 would ensure the implementation of reasonably available control technology for major volatile organic compound sources in the BPA ozone nonattainment area. The revisions also reorganize and modify portions of the existing Chapter 115 industrial wastewater rules which apply in the Dallas/Fort Worth (DFW), El Paso, and HGA ozone nonattainment areas.

The proposed amendments to Chapter 117 would set emission limits, a compliance schedule, and requirements for operating, testing, recordkeeping, and reporting for stationary gas-fired, lean-burn engines in the BPA ozone nonattainment area. The proposed changes would also eliminate the requirement to operate wood-fired boilers with flue gas sensor-based trim; add an option to monitor exhaust flow instead of fuel flow; and clarify several requirements and rule references applicable to major existing sources of nitrogen oxides (NOx) in the BPA, DFW, and HGA ozone nonattainment areas.

The proposed revisions to the SIP concerning the BPA ozone nonattainment area would provide the results of photochemical modeling for attaining the one-hour ozone standard in BPA. The proposed SIP would contain the following elements: photochemical modeling showing transport of ozone from the HGA area to the BPA area, as well as ozone produced locally from sources in the BPA area; documentation of 24% Rate-of-Progress reductions of volatile organic compounds and NOx in the BPA area, for the period 1999-2007, and a commitment by the state to adopt more stringent NOx rules by March 2000 to attain the one-hour ozone standard in the BPA area.

A public hearing on the proposed BPA SIP and accompanying rule revisions will be held in Beaumont on August 9, 1999, at 5:30 p.m. at the John Gray Institute, located at 855 Florida Avenue. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

Written comments should be mailed to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., August 16, 1999, and should reference Rule Log Numbers 99018-SIP-AI, 99019-115-AI, and 99020-117-AI. For further information on the proposed revisions, please contact one of the following Strategic Assessment Section staff members: Mike Magee (BPA Attainment SIP), (512) 239-1511; Eddie Mack (Chapter 115 revisions), (512) 239-1488; or Randy Hamilton (Chapter 117 revisions), (512) 239-1512. Copies of the proposed rules and SIP revisions can be obtained from the commission's Web Site at www.tnrcc.state.tx.us/oprd/rules/propadop.html, or by calling Ms. Martin at (512) 239-1966.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9904234
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 14, 1999

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Notice of Water Quality Applications

The following notices were issued during the period of June 7, 1999 through July 12, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ACME BRICK COMPANY has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03837. The draft permit authorizes the discharge of mine pit water and storm water runoff

for Outfall 001 and 002. The plant site is located approximately one half (1/2) mile west of Farm-to-Market Road 2181 on Hickory Creek Road in the city of Denton, Denton County, Texas.

ACME BRICK COMPANY has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03838. The draft permit authorizes the discharge of mine pit water and storm water runoff on an intermittent and flow variable basis via Outfall 001 and 002. The plant site is located at 220 Daniels Street, adjacent to the east side of U.S. Highway 377, approximately one (1) mile south of the intersection of U.S. Highway 377 and Interstate Highway 35E in the City of Denton in Denton County, Texas.

ACME BRICK COMPANY has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03840. The draft permit authorizes the discharge of mine pit water and storm water runoff on an intermittent and flow variable basis via Outfall 001. The plant site is located adjacent to the north side of Farm-to-Market Road (FM) 2181 and approximately 1.7 miles west of the intersection of FM 2181 and Interstate Highway 35E near the City of Corinth in Denton County, Texas.

AIR PRODUCTS INCORPORATED has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 02382, which authorizes the discharge of utility wastewater and storm water on an intermittent and flow variable basis via Outfall 001, and utility wastewater and storm water on an intermittent and flow variable basis via Outfall 002. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0084581 issued on August 15, 1986 and TNRCC Permit Number 02382. The applicant operates a plant which manufactures organic and inorganic chemicals. The plant site is located at 1423 State Highway 225, on the northeast corner of Red Bluff Road and State Highway 225 in the City of Pasadena, Harris County, Texas.

CITY OF ALAMO has applied for a renewal of TNRCC Permit Number 13633-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 14,000 feet south along South Tower Road from the intersection of Tower Road and U.S. 83 Business Highway or approximately 17,000 feet south from the intersection of South Tower Road with U.S. 83 Expressway in Hidalgo County, Texas.

CITY OF ANGUS has applied for a renewal of TNRCC Permit Number 11864-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The plant site is located adjacent to Interstate Highway 45 approximately 2,000 feet north of its intersection with Farm-to-Market Road 739 in the north central portion of the City of Angus in Navarro County, Texas.

CITY OF ANNONA has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10863-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 58,000 gallons per day. The plant site is located south of the City of Annona, approximately 1,500 feet east and 4,400 feet south of the intersection of U.S. Highway 82 and Farm-to- Market Road 44 in Red River County, Texas.

CITY OF BALLINGER has applied for a major amendment to Permit Number 10325-003, to authorize a change in the manner of treated effluent disposal from discharge to a receiving stream to land disposal by irrigation. The proposed amendment requests to dispose treated domestic wastewater at a daily average flow not to exceed 375,000 gallons per day via irrigation of 160 acres of land. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located 3,000 feet southeast of the crossing of U.S. Highway 67 and Elm Creek and 4,000 feet east of the intersection of U.S. Highways 67 and 83 near the Courthouse in the City of Ballinger in Runnels County, Texas.

CITY OF BARTLETT has applied for a renewal of TNRCC Permit Number 10880-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 325,000 gallons per day. The plant site is located approximately 0.5 mile northeast of the intersection of State Highway 95 and Farm- to-Market Road 487 in the City of Bartlett in Bell County, Texas.

BASTROP COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT Number 3 has applied for a renewal of TNRCC Permit Number 12963-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 85,000 gallons per day. The plant site is located approximately 400 feet north of Pearce Lane, 6 miles north of the intersection of Pearce Lane and State Highway 21 and 18 miles west of the City of Bastrop in Bastrop County, Texas.

CITY OF BEEVILLE has applied for a renewal of TNRCC Permit Number 10124-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The plant site is located adjacent to Poesta Creek; east of the U.S. Highway 181 Bypass, north of State Highway 202, south-southeast of the City of Beeville in Bee County, Texas.

BRIARWOOD LUTHERAN MINISTRIES has applied for a renewal of TNRCC Permit Number 12605- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The plant site is located on Copper Canyon Road approximately one mile north of the intersection of Farm-to-Market Road 407 and Copper Canyon Road in Denton County, Texas.

CHAPEL HILL INDEPENDENT SCHOOL DISTRICT has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13821-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The plant site is located approximately 1,300 feet east of the intersection of Farm-to-Market Road 1735 and County Road SE-18 in Titus County, Texas.

COASTAL CHEMICAL CO., L.L.C. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03483. The draft permit authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The plant site is located on the north side of Pasadena Boulevard, approximately 11,500 feet south-

southwest of the intersection of State Highway 225 and East Belt Drive in Harris County, Texas.

CONROE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 12205-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The plant site is located approximately 2,000 feet northwest of the intersection of Farm-to-Market Road 1314 and Bennette Estates Road in Montgomery County, Texas.

CORPUS CHRISTI PEOPLES BAPTIST CHURCH, INC. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11134-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located approximately one mile west of the intersection of Farm-to-Market Road 665 and Farm-to-Market Road 763 and south of Farm-to-Market Road 665 in Nueces County, Texas.

COVE INVESTMENTS, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0085961 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11109-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located approximately 0.8 of a mile northeast of the intersection of Farm-to-Market Road 3180 and Farm-to-Market Road 565, and 1.6 miles south-southeast of the intersection of Farm-to-Market Road 3180 and Interstate Highway 10 in Chambers County, Texas.

CITY OF DALLAS has applied for a renewal of TNRCC Permit Number 10060-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000,000 gallons per day. The plant site is located approximately 300 yards east of Lawson Road and approximately 200 yards south of Scyene Road at the Kaufman/Dallas County line in Kaufman County, Texas.

CWS DESSAU ASSOCIATES has applied for a renewal of TNRCC Permit Number 12733-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The applicant is requesting to decrease the discharge of treated domestic wastewater from a daily average flow not to exceed 450,000 gallons per day to a daily average flow not to exceed 150,000 gallons per day. The plant site is located on the north side of and adjacent to Dessau Lane, at a point approximately 1.3 miles east of Interstate Highway 35 in Travis County, Texas.

CITY OF DETROIT, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0055581 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10724-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 108,000 gallons per day. The plant site is located approximately 1200 feet south of U.S. Highway 82, approximately one mile southeast of the intersection of U.S. Highway 82 and Farm-to-Market Road 2573 in Red River County, Texas.

EXXON PIPELINE COMPANY has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02058. The draft permit authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The applicant operates a petroleum products storage and transportation facility. The plant site is located at 3403 Pasadena Freeway in the City of Pasadena in Harris County, Texas.

CITY OF FATE has applied for a renewal of TNRCC Permit Number 11077-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 74,000 gallons per day. The plant site is located immediately southeast of the intersection of State Highway 66 and Ivywood Lane in the City of Fate in Rockwell County, Texas

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT Number 23 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11999-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located north of Rabb Road approximately 1.4 miles west of the intersection with Farm-to-Market Road 521, north of Arcola in Fort Bend County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT Number 37 has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12370-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per day. The plant site is located approximately 1,600 feet southwest of Green-Busch Road and approximately 2,700 feet southeast of Crossover Road in Fort Bend County, Texas.

GARFIELD PARTNERS, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14036-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The plant site is located approximately 0.75 south of State Highway 71 and approximately 0.8 mile east of the intersection of State Highway 71 and State Highway 183 in Travis County, Texas.

GENERAL AMERICAN TRANSPORTATION CORPORATION, 500 West Monroe, Chicago, Illinois 60661, has applied for a major amendment of Permit Number 03494 to authorize the disposal of treated groundwater via irrigation of 6.5 acres of land at a flow not to exceed 65,000 gallons for any 24-hour period. The current permit authorizes the discharge or treated groundwater at a daily average flow not to exceed 220,000 gallons per day via Outfall 001. The applicant operates a railroad tank car maintenance and repair facility. This permit will not authorize a discharge of pollutants into waters in the State. The plant site is located on the eastern side of U.S. Highway 79, approximately 1.25 miles south west of the intersection of U.S. Highways 79 and 190 in the city of Hearne, Robertson County, Texas.

AMBROSE GERNER, JR., has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14067-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located approximately 1,500 feet southeast of the intersection of Crabb River Road and Highway 59 in Fort Bend County, Texas.

GRAND LAKES MUNICIPAL UTILITY DISTRICT Number 4 has applied for a renewal of TNRCC Permit Number 13245-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The

plant site is located approximately 1,100 feet west-northwest of the intersection of Farm-to-Market Road 1093 and Mason Road in Fort Bend County, Texas.

CITY OF GROVETON has applied for a renewal of TNRCC Permit Number 10556-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The plant site is located southeast of the City of Groveton on Coleto Road adjacent to Kickapoo Creek in Trinity County, Texas.

HARRIS COUNTY has applied for a renewal of TNRCC Permit Number 10932-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The plant site is located within Bear Creek Park, approximately 3 miles northeast of the intersection of Interstate Highway 10 and State Highway 6 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT Number 36 has applied for a renewal of TNRCC Permit Number 12239-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The plant site is located adjacent to Lateral H of Turkey Creek; approximately 2.2 miles south and 1.2 miles east of the intersection of Farm-to-Market Road 1960 and Interstate Highway 45 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT Number 130 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12574-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 0.5 mile south of U.S. Highway 290 and approximately one mile east of Jack Rabbit Road in Harris County, Texas.

CITY OF HOLLIDAY, P.O. Box 508, Holliday, Texas 76366, has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13768-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately one mile northeast of the center of the City of Holliday on the north extension of College Street, approximately 1/4 mile north of U.S. Highways 82 and 277 in Archer County, Texas.

HUDSON PRODUCTS CORPORATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03985. The draft permit authorizes the discharge of domestic wastewater, process wastewater, utility wastewater, and storm water runoff at a daily average flow not to exceed 36,000 gallons per day via Outfall 001, and treated domestic wastewater via Outfall 101. The plant site is located approximately 0.2 mile north of U.S. Highway 59 and approximately 1.3 miles west of State Highway 360, near the City of Beasley in Fort Bend County, Texas.

LUCE BAYOU PUBLIC UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11167-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 161,000 gallons per day. The plant site is located 3.5 miles north of the intersection of Farm-to- Market Road 1960 and Farm-to-Market Road 2100 at a point 2 miles north of Huffman in Harris County, Texas.

MAGNOLIA INDEPENDENT SCHOOL DISTRICT has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12703-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. The plant site is located on the east side of Farm-to-Market Road 2978 at a point approximately 1.1 miles south of the intersection of Farm-to-Market Roads 1488 and 2978 in Montgomery County, Texas.

ALBERT M. MILLER has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0069710 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11750-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 38,000 gallons per day. The plant site is located approximately 0.75 miles southwest of the intersection of State Spur Number 158 and Interstate Highway 30, just south of Winfield in Titus County, Texas.

CITY OF MULLIN has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13758-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The plant site is located approximately 3100 feet south of the intersection of State Highway 183 and Farm-to-Market Road 573 and approximately 1900 feet east of the Farm-to-Market Road 573 in the City of Mullin in Mills County, Texas.

CITY OF NEW LONDON has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12376-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located one mile southeast of the intersection of State Highway 42 and Farm-to-Market Road 918 in Rusk County, Texas.

CITY OF NEWTON has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10233-003. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 960,000 gallons per day. The plant site is located north of Caney Creek, approximately 7,000 feet southeast of the intersection of McMahon Street and Davidson Road in the City of Newton in Newton County, Texas.

NORTH ALAMO WATER SUPPLY CORPORATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13747-004. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located on an 80-acre tract, approximately 1.5 miles northwest of the intersection of Farm-to-Market Roads 88 and 2812 in Monte Alto in Hidalgo County, Texas

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11783-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located in the City of Murphy adjacent to the Skyline Subdivision approximately 4,000 feet east and 6,000 feet south of the intersection of Farm-to-Market Road 544 and Farm-to-Market Road 2551 (Murphy Road) in Collin County, Texas

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT Number 5 and Teb-Co Service, Inc. has applied for a major amendment to TNRCC Permit Number 11824-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 400,000 gallons per day to a daily average flow not to exceed 800,000 gallons per day. The plant site is located at 14950 Cypress Green Drive, approximately 0.5 mile east of the intersection of Spring Cypress Road and Telge Road in Harris County, Texas

TOWN OF OAK RIDGE has applied for a renewal of TNRCC Permit Number 13514-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 78,000 gallons per day. The plant site is located approximately 1700 feet south of U.S. Highway 82 and approximately 9800 feet west of Farm-to-Market Road 678 in Cooke County, Texas.

PINE TREE MOBILE HOME PARK LANDOWNERS ASSOCIATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13036-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The plant site is located approximately one mile west of the City of Keller and approximately one mile southwest of the intersection of Keller-Hicks Road and U.S. Highway 377 in Tarrant County, Texas.

CITY OF PITTSBURG has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10250-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 1.3 miles southeast of the intersection of Arch Davis Road and Lafayette Street in the southeast section of the City of Pittsburg in Camp County, Texas.

CITY OF PORT ARTHUR has applied for a renewal of TNRCC Permit Number 10364-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,200,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,200,000 gallons per day. The plant site is located at 6300 Proctor Street, approximately 0.2 mile east of the intersection of Proctor Street and Main Avenue, 3.3 miles northeast of the intersection of U.S. Highways 287/96/69 and State Highway 87 in Jefferson County, Texas.

PRAIRIE VIEW A&M UNIVERSITY has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11275-002. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located on the northwest section of Prairie View A&M University Campus, approximately 500 feet east of Farm-to- Market Road 1098 and 1.0 mile north of U.S. Highway 290 in Waller County, Texas.

REAGENT CHEMICAL & RESEARCH, INC., has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 02831, which authorizes the discharge of rinsewater, transfer pump seal water, and storm water. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0100315 issued on and TNRCC Permit Number 02831. The applicant operates a hydrochloric acid bulk terminal.

RICHARD CLARK ENTERPRISES, L.L.C. has applied for a renewal of TNRCC Permit Number 12851- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located northwest of the City of Tomball, approximately 2.3 miles southeast of the intersection of State Highway (SH) 249 and Farm-to-Market Road 1774, and approximately 600 feet west of the Decker Branch crossing of SH 249 in Montgomery County, Texas.

RICHFIELD INVESTMENT CORPORATION has applied for a renewal of TNRCC Permit Number 13614-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 610,000 gallons per day. The plant site is located approximately 1 mile northeast of State Highway 249, approximately 7,000 feet northwest of the Chicago Rock Island and Pacific and Missouri Pacific Railroad crossing, and approximately 4.5 miles northwest of the City of Tom Ball in Montgomery County, Texas.

RICHFIELD INVESTMENT CORPORATION has applied for a renewal of TNRCC Permit Number 13636-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 405,000 gallons per day. The plant site is located approximately 4500 feet southeast of the intersection of Wright Road and State Highway 249, within an area bounded by Wright Road on the west and by State Highway 249 on the east in Montgomery County, Texas.

RIO GRANDE VALLEY SUGAR GROWERS, INC. , has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0032905 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01752. The draft permit authorizes the discharge of process wastewater, domestic wastewater, and stormwater at a daily average flow not to exceed 0.289 gallons per day via Outfall 001 and the disposal of partially treated wastewater via irrigation of 2000 acres. The applicant operates a raw sugar and molasses production facility. The plant site is located three miles west of the community of Santa Rosa on State Highway 107 in Hidalgo County, Texas.

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT Number 2 has applied for a renewal of TNRCC Permit Number 13854-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 100 feet due south of the intersection of Missouri Pacific Railroad and Atchison Topeka and Santa Fe Railroad, and 2,000 feet due north of the confluence of Cow Bayou and Oyster Creek, adjacent on the west bank of Cow Bayou in Fort Bend County, Texas.

CITY OF SILSBEE has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10282-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 1700 feet north and 300 feet west of the intersection of Farm-to-Market Road 418 and Roosevelt Drive extension in Hardin County, Texas.

TEMPLE-INLAND FOREST PRODUCTS CORPORATION, P.O. Drawer N, Diboll, Texas 75941 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03492. The draft permit authorizes the discharge of commingled storm water and log wet deck water via Outfall 001 on an intermittent, flow variable basis. The plant site is located on County Road 23A, just south of the intersection with

Highway 103, approximately 7 miles west northwest of the City of Lufkin in Angelina County, Texas.

THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION has applied for a renewal of TNRCC Permit Number 10717-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The plant site is located approximately one mile west of the intersection of State Highway 171 and Farm-to-Market Road 2838, three miles northwest of the City of Mexia in Limestone County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION, P.O. Box 6868, Fort Worth, Texas 76115-0868, has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12951-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located on the northbound right-of-way of Interstate Highway 35W, approximately 0.8 miles north of the intersection of Interstate Highway 35W and Farm-to-Market Road 917 in Johnson County, Texas.

TRINITY PINES CONFERENCE CENTER, INC. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12371-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located approximately 1,500 feet west of Lake Livingston, and approximately 1,400 feet north of Farm-to-Market Road 356 in Trinity County, Texas.

CITY OF TROY has applied for a renewal of TNRCC Permit Number 11263-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 309,000 gallons per day. The plant site is located approximately 5500 feet north of the center of the City of Troy and lying between Interstate Highway 35 and the Missouri, Kansas and Texas Railroad in Bell County, Texas.

U. S. ARMY CORPS OF ENGINEERS has applied for a renewal of TNRCC Permit Number 12093-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000 gallons per day. The plant site is located in the powerhouse within the Dam structure at Sam Rayburn Lake, approximately 5 miles northeast of the intersection of State Highway 63 and Farm-to-Market Road 255 in Jasper County, Texas.

WARREN INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 11308-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located approximately 0.7 mile southwest of the intersection of U.S. Highway 69 and Farm-to-Market Road 1943 in Tyler County, Texas.

WILDWOOD PROPERTY OWNERS ASSOCIATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11184-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The plant site is located at the corner of Balsawood and Chestnut Streets in the community of Wildwood, approximately 0.25 mile south of Lake Kimble and approximately 2.5 miles west of the intersection of U.S. Highways 69 and 287 and Farm-to-Market Road 3063 in Hardin County, Texas.

WILKE LANE UTILITY COMPANY has applied for a renewal of TNRCC Permit Number 13019-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,100,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,100,000 gallons per day. The plant site is located approximately 0.5 mile northeast of the intersection of Pflugerville Loop and Wilke Lane, approximately 2 miles north of the Pflugerville central business district in Travis County, Texas

CITY OF ZAVALLA has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13871-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The plant site is located approximately 0.5 mile west and 1.0 mile south of the intersection of State Highways 69 and 63, and southwest of the City of Zavalla in Angelina County, Texas.

TRD-9904229
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 13, 1999

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Notice of Water Rights Application

MICHAEL PAWELEK, 16400 Henderson Pass #913, San Antonio, TX 78232, applicant, seeks a permit to appropriate public water pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Applicant is the owner of Certificate of Adjudication Number 19-1168 which includes authorization to divert and use not to exceed 30 acre-feet of water from 3 points on Cibolo Creek, tributary of the San Antonio River, in Karnes County, Texas. Applicant seeks authorization for a new appropriation of water to divert and use 350 acre-feet per year from Cibolo Creek, for irrigation on 191 acres of land within a 250 acre tract of land. The maximum diversion rate will be 1.11 cfs (500 gpm). Location of the diversion point is the same as one of the diversion points authorized under Certificate Number 19-1168, approximately 8 miles north from Karnes City, at Latitude 29ø North, Longitude 97.55ø West, bearing 12ø South and 1065 feet distance from the Northwest corner of the Lopez Survey, Abstract 181, Karnes County. Diversion will be directly from Cibolo Creek to the irrigated land, or from Cibolo Creek to an off-channel reservoir for temporary storage prior to irrigation. The off channel reservoir has a surface area of approximately 1 acre feet, and normally impounds approximately 5 acre feet. The off channel reservoir is located on the applicant's land approximately 1000 feet (distance) bearing East- Southeast of the diversion point. Evidence of ownership of the land to be irrigated has been provided by a copy of the deed describing the land tract in Volume 277, page 215 of the official records of Karnes County, Texas.

The CITY OF DENTON, 901-A Texas Street, Denton, Texas 76201, applicant, seeks a permit pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. Permit Number 5463 authorizes the applicant to construct and maintain the following reservoirs on Fletcher Branch, tributary of Hickory Creek, tributary of the Elm Fork Trinity River, tributary Trinity River, Trinity River Basin, Denton County, Texas for in-place recreational use: 1. Lake 1 (the downstream lake) with an impoundment of not to exceed 20 acre-feet per annum. 2. Lake 2 (the

middle lake) with an impoundment of not to exceed 100 acre-feet per annum. 3. Lake 3 (the upstream lake) with an impoundment of not to exceed 70 acre-feet per annum. Permit 5463 authorizes an amount not to exceed 51 acre-feet of water per annum to offset the average annual evaporation created by the reservoirs. The authorization to construct and maintain Lake 1 and Lake 3 expired because the applicant did not commence construction within the mandated time period. Lake 2 was constructed and impounds an amount not to exceed 28 acre-feet of water per annum. The applicant seeks authorization to expand Lake Number 2 (the middle lake), on Fletcher Branch, tributary of Hickory Creek, tributary of the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, Denton County, Texas, for in-place recreational use. The expanded reservoir will have a normal capacity of 54.5 acre-feet and a surface area of 7.9 acre-feet. The reservoir is located approximately 2 miles southeast of Denton, Texas and Station 0+00 on the center line of the dam is S 6.48ø W, 3850 feet from the northeast corner of C. Poullalier Original Survey, Abstract Number 1007, Denton County, Texas also being 33.171ø N Latitude and 97.122øW Longitude. The applicant also seeks authorization to construct and maintain Lake 3 (the upstream lake), on Fletcher Branch, tributary of Hickory Creek, tributary of the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, Denton County, Texas, for in-place recreational use. The reservoir will have a normal capacity of 31.4 acre-feet and a surface area of 4.4 acre-feet. The reservoir is located approximately 2 miles southeast of Denton, Texas and Station 0+00 on the center line of the dam is S 14.56ø W, 1760 feet from the northeast corner of the C. Poullalier Original Survey, Abstract Number 1007, Denton County, Texas also being 33.184ø N Latitude and 97.634ø W Longitude. Permit Number 5463 authorizes use of an amount not to exceed 51 acre-feet of water per annum to offset the average annual evaporation created by the reservoirs. The total capacity of the proposed reservoirs will be less than that authorized under Permit Number 5463, therefore, the proposed amendment will not result in use in excess of the previously permitted amount.

LA PALOMA, L.P., P.O. Box 9595, Amarillo, TX 79105, applicant, seeks a permit to appropriate public water pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. The applicant seeks authorization to construct and maintain a reservoir for in-place recreational use on an unnamed tributary of West Amarillo Creek, a tributary of the Canadian River, in Potter County. The reservoir will have a surface area of 2.91 acreas at normal maximum operating level. It will normally impound 13.54 acre feet of water which will be maintained with pumped ground water. No water will be diverted from the reservoir. Surface water drainage shall pass through the culverts at the dam. Ground water pumped in to the reservoir will be metered to control and account for the amount of ground water used. The dam will be located approximately 4.7 miles northwest of Potter County Courhouse in Amarillo. Station 8+20 on the centerline of the dam is Latitude 35.325ø North, Longitude 102.003ø West, and 57.397ø from North (bearing) East, and 2803 feet from the Southwest corner of the B.S. & F. Survey Abstract Number 135, Potter County, Texas. The proposed project is located on land owned by the applicant. Ownership of the land is evidenced by a Cash Warranty Deed dated November 20, 1997 and recorded in Vol 210, page 268 in the deeds records of Potter County, Texas.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9904231
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 13, 1999

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Proposal for Decision

The State Office Administrative Hearing has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on July 6, 1999 on Executive Director of the Texas Natural Resource Conservation Commission, Petitioner, vs. Jim Wyland, Respondent; SOAH Docket Number 582-98- 2173; TNRCC Docket Number 98-0206-OSI-E; In the matter to be considered by the Texas natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-9904226
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: July 13, 1999

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Public Notices

The Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the proposed non-residential future land use for the Permian Chemical Company Proposed State Superfund Site, located at 325 Pronto Road, Odessa, Ector County, Texas. The TNRCC is proposing a non-residential (industrial) future land use for consideration in implementing the human health risk assessment, the ecological risk assessment and the feasibility study for this site.

Determination of future land use will impact the remedial action proposed for the site. Consequently, the TNRCC will hold a public meeting to obtain comments on the proposed future land use before completing the remedial investigation and evaluating remedial actions for the site. The public meeting will be held at the Ector County Courthouse, Commissioner Court Room, Ector County Administration Building, 1010 East Eight Street, Odessa, Texas on August 30, 1999, beginning at 7:00 p.m. This public meeting will not be a contested hearing under the Administrative Procedure Act (Texas Government Code, Chapter 2001). Once the subject meeting is held and future land use has been determined, a human health risk evaluation, ecological risk assessment, and a feasibility study, or similar study, will be performed to evaluate various remedial action proposals. The TNRCC will then propose a selected remedy and hold another public meeting pursuant to the Texas Health and Safety Code, Chapter 381.187.

The Permian Chemical site was proposed for listing on the state Superfund registry in the July 16, 1993, issue of the *Texas Register* (18 TexReg 4709). The Site is located southeast of Odessa, approximately 0.9 miles East of Loop 338, between Texas Highway 80 and Interstate Highway 20 East. Operations on the site consisted of the manufacture hydrochloric acid and potassium sulfate fertilizer by reacting sulfuric acid and potassium chloride. A TNRCC Phase I Remedial Investigation indicated elevated levels of hazardous substances (metals) in soils, and elevated levels of hazardous substances (organic compounds) in ground water at the site. The TNRCC has proposed a non-residential (industrial) future land use determination for consideration in implementing future actions at the site.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting should be sent in writing to Carol Boucher, TNRCC Project Manager, Superfund Cleanup Section, MC-143, P.O. Box 13087, Austin, Texas 78711-3087. A portion of the public records for this site are available for public review during regular business hours at the Ector County Public Library, 321 W. Fifth Street, Odessa, Texas 79761, (915) 333-9633, or at the TNRCC, 12100 Park 35 Circle, Building D, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to the payment of a fee. For further information, please call (800) 633- 9363 (within Texas only) or (512) 239-3844.

TRD-9904256
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 14, 1999

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The Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the determination of the proposed non-residential future land use for the Phipps Plating State Superfund Site, located at 301-305 E. Grayson Street, in San Antonio, Bexar County, Texas.

Determination of future land use will impact the remedial action proposed for the site. Consequently, the TNRCC will hold a public meeting to obtain comments on the proposed future land use, before selecting any remedial action for the site. The public meeting will be held at Hawthorne Elementary school 115 W. Josephine Street in San Antonio, Texas, on Tuesday, August 24, 1999, at 7:00 p.m.. This public meeting will not be a contested case hearing under the Administrative Procedure Act, Texas Government Code, Chapter 2001).

The Phipps Plating site was placed on the State Superfund list on July 22, 1997, as announced in the *Texas Register* (22 TexReg 6898). The site is located at 301-305 Grayson Street, in San Antonio, Bexar County, Texas. The company had operated since 1968 electroplating metal parts and fixtures. The site is approximately .5 acre in size and, prior to a removal action conducted in 1998 and 1999, consisted of one two-story building. The first floor of the building had two plating rooms which contained plating baths for brass, copper, nickel, chromium, and gold . Some of the plating process involved cyanide compounds. On August 2, 1993, TNRCC removed sludge and liquid wastes from the sumps in the building and secured the building. In December 1998, a second removal action was conducted at the site to demolish the building and remove all contaminated debris and soil from the site. In May 1999, TNRCC initiated an investigation of groundwater and offsite soils to determine if contamination has migrated to these media. Because the properties immediately adjacent to the site are being used for non-residential purposes, TNRCC is proposing a non-residential land use for the Phipps Plating site.

All persons desiring to make comments regarding the proposed land use may do so prior to or at the public meeting. All comments submitted prior to the public meeting should be sent in writing to Glenda Champagne, TNRCC Project Manager, Remediation Division, MC-143, P.O. Box 13087, Austin, Texas 78711-3087. A portion of the records for this site are available for public review during regular business hours at the San Antonio Central Library, 600 Soledad Street, San Antonio, Texas 78205, 210-207-2500, or at the TNRCC, 12100 Park 35 Circle, Building D, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to payment of a copying fees. For further information, please call (800) 633-9363 (within Texas calls only).

TRD-9904255
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 14, 1999

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Public Notice-Notice of Proposed Selection of Remedy

The Executive Director of the Texas Natural Resource Conservation Commission (TNRCC or Commission) is issuing this public notice of a proposed selection of remedy for the Tricon state Superfund site. In accordance with 30 Texas Administrative Code (TAC) §335.349(a) concerning requirements for the remedial action, and the Texas Health and Safety Code, Chapter 361.187 of the Solid Waste Disposal Act concerning the proposed remedial action, a public meeting regarding the TNRCC's selection of a proposed remedy for the Tricon America, Inc. state Superfund site shall be held. The statute requires that the Commission shall publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice was also published in the *Crowley Star Review* on Thursday, July 22, 1999.

The public meeting is scheduled at the Crowley City Hall, 120 North Hampton, Crowley, Texas, on Thursday, August 26, 1999, 7:00 p.m.. The public meeting will be legislative in nature and is not a contested case hearing under the Texas Government Code, 2001.

The site for which a remedy is being proposed, the Tricon America, Inc. state Superfund site, was proposed for listing on the state registry of Superfund sites in the July 26, 1991, edition of the *Texas Register* (16 TexReg 4102-4103).

The Tricon site occupies approximately five acres at 101 East Hampton Road within the city limits of Crowley, Tarrant County, Texas. The property has been used as an aluminum and zinc smelting and casting operation, for the production of concrete buildings, and as a facility to assemble fiberglass buildings. An ash pile from the smelting and casting operation is the area of concern. Cadmium, chromium and lead are the major contaminants of concerns on the site.

In April 1990, the U. S. Environmental Protection Agency (EPA) conduced an emergency action to consolidate the majority of ash on the edge of a cliff on the north end of the facility. The pile was stabilized by spraying with a tar-like sealant. In November 1990, the EPA acted to further limit exposure that the contaminants might pose by capping the ash pile with a 40 mil plastic liner and covering it with Triloc concrete blocks. The EPA also fenced the site to restrict unauthorized access, and warning signs were posted on the fence.

In March 1997, a Remedial Investigation was completed for the Tricon site to determine the nature and extent of the contamination. A Focused Feasibility Study conducted in September 1998, identified and evaluated remedial alternatives for the site. A geotechnical investigation was conducted from December 1998 to March 1999, to evaluate the slope stability of the Triloc cap area. The geotechnical investigation found the slope to be stable. Additional sampling was performed in December 1998 to define the extent of contamination in surface and shallow subsurface soils on the Tricon facility and Deer Creek flood plain. During this additional sampling, no contaminated soil was located in the Deer Creek flood plain and no further action for this area is planned.

A Supplemental Focused Feasibility Study, dated June 1999, identified and evaluated additional remedies for the Tricon site. Based on the TNRCC's *Presumptive Remedies Guidance for Soils at Texas State Superfund Sites* (publication number RG-227, April 1997) four alternatives were developed for soil contamination and five alternatives were developed for the Triloc cap area. Based on the calculated volume of the waste ash and contaminated soil at the Tricon America, Inc. state Superfund site, the recommended remedial alternative is on-site containment. This on-site containment will be achieved by the following:

(1) **Excavation of approximately 130 cubic yards of soil containing metal concentrations exceeding the Preliminary Remediation Goals (PRG) on the Tricon facility, and moving the excavated soils to the upper (southern) end of the Triloc cap area.** This excavated material will be contained on-site during the final remediation of the Triloc cap area. This removal action was completed in July 1999, and a fence was installed separating the clean Tricon facility from the Triloc cap area.

(2) **Cap repair and installation of a french drain at the Triloc cap area.** The existing areas of material expansion under the Triloc cap will be repaired by removing the Triloc blocks followed by cutting and pulling back the plastic liner. The excess material will be removed to establish a smooth slope. The liner will be placed back over the exposed soil, heat welded and the Triloc blocks replaced. The excess material will be placed over the southern end of the Triloc cap area along with the excavated soil from the Tricon facility. A french drain will be constructed along the southern edge of the Triloc cap area to intercept and collect surface water run-off and divert it away from the waste material under the cap. The uncapped area south of the Triloc cap area which will contain the excavated soil and the excess material will be graded to construct a reverse slope toward the french drain and will be covered with a geo-membrane liner. The plastic geo-membrane will be covered with top soil and a vegetative cover.

The on-site containment area will be fenced, signs will be posted, and a record will be placed in the deed for the property. The existing monitor wells will be sampled and analyzed at a regular intervals to monitor any impact of the capped waste on the ground water. The site will be maintained. This recommended remedial alternative is the most cost effective, reasonable and appropriate remedy for this site. The TNRCC has prepared the *Proposed Remedial Action Document* for the site. This document presents the proposed remedy and justification for how this remedy demonstrates compliance with the relevant cleanup standards.

Persons desiring to make comments on the proposed remedial action or the identification of potentially responsible parties may do so at the meeting or in writing prior to the public meeting. Written comments may be submitted to Subhash Pal, P. E., TNRCC Project Manager, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087. **All comments must be received by the close of the public meeting on August 26, 1999.**

The Executive Director of the TNRCC prepared a brief summary of the Commission's records regarding this site. This summary, and a portion of the records for this site, including documents pertinent to the proposed remedy, is available for review during regular business hours at the Crowley Public Library, 121 N. Hampton Road, Crowley, Texas (817) 297-6707. Copies of the complete public record file may be obtained during business hours at the TNRCC, Central Records Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone (512) 239-2920. Photocopying of file information is subject to payment of a fee. For further information regarding this meeting or the Tricon site, please call 1-(800) 633-9363 (within Texas calls only) or (512) 239-2463.

TRD-9904257
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 14, 1999

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Public Utility Commission of Texas

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

On July 12, 1999, State Discount Telephone 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 No. 60147. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of State Discount Telephone for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 21099.

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 July 28, 1999. 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 21099.

TRD-9904217
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 1999

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Notice of Application Pursuant to P.U.C. Substantive Rule §23.94

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 28, 1999, pursuant to P.U.C. Substantive Rule §23.94 for approval of a revised General Exchange Tariff.

Tariff Title and Number: Application of Ganado Telephone Company, Inc. for Approval of a Revised General Exchange Tariff Pursuant to P.U.C. Substantive Rule §23.94. Tariff Control Number 21037.

The Application: Ganado Telephone Company, Inc. (Ganado or the company) seeks approval to replace the General Exchange Tariff currently on file with the commission with a revised General Exchange Tariff. It is necessary to replace the current tariff because it is a patchwork of revisions, which makes it burdensome to use, and it contains numerous obsolete rules, regulation, definitions, descriptions, and references. The revised General Exchange Tariff will more completely describe and clarify the terms and conditions under which the company provides services to its customers. The revised General Exchange Tariff will not contain any changes in the rates or services currently offered by the company under its existing General Exchange Tariff. Ganado proposes an effective date of October 1, 1999, for all exchanges served by the company.

Subscribers of Ganado have a right to petition the commission for review of this application by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 145 affected local service customers, and must be received by the commission no later than August 30, 1999.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before August 30, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 21037. Tariff Control No. 19456 Page 2

TRD-9904092
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 8, 1999

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Notice of Application to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §26.212

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 8, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

Tariff Title and Number: Application of GTE-Southwest, Inc. to Revise Tariff to Provide Customers With Access to GTE's SS7 Network Within the State of Texas Pursuant to P.U.C. Substantive Rule §26.212. Tariff Control Number 21086.

The Application: GTE Southwest, Incorporated has notified the Public Utility Commission of Texas that it is providing customers with access to GTE's Signaling System 7 (SS7) Network within the State of Texas. This access can be used for message transport in support of services that require receiving and terminating signaling information using SS7 protocol. This service will allow a customer to interconnect at any GTE Signal Transport Point (STP) in the State of Texas and transport over GTE's internal SS7 Network to another GTE STP located in Texas.

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 July 30, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9904198
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 1999

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Public Notice of Amendment to Interconnection Agreement

On July 8, 1999, Southwestern Bell Telephone Company and Allegiance Telecom of Texas, 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 21087. 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 21087. 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 August 10, 1999, 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 21087.

TRD-9904222
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 1999

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Public Notices of Interconnection Agreements

On July 9, 1999, JCA, Inc. doing business as Phonesense and GTE Southwest, 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 21092. 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 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 21092. 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 August 10, 1999, 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, 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 21092.

TRD-9904223
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 1999

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On July 9, 1999, Poka Lambro Telephone Company and GTE Southwest, 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 21093. 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 require-

ments of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

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 21093. 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 August 10, 1999, 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, 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 21093.

TRD-9904224
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 1999

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On July 9, 1999, UsCom Telephone, Inc. and GTE Southwest, 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 21094. 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 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 21094. 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 August 10, 1999, 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, 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 21094.

TRD-9904225
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 1999

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Public Notice of Workshop on Equipment and Services Used by Persons with Disabilities to Access the Telephone Network and Request for Comments

The Public Utility Commission of Texas (commission) will hold a workshop regarding equipment and services used by persons with disabilities to access the telephone network, on Tuesday, August 17, 1999, at 9:00 a.m. in the Commissioner's Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 21090, *Implementation of Senate Bill 1441* has been established for this proceeding. Senate Bill 1441 as passed by the 76th Legislature, 1999, has expanded the current Specialized Telecommunications Device Assistance Program to include persons with disabilities other than those with disabilities of hearing or speech. Senate Bill 1441 offers financial assistance to enable qualified individuals to purchase telecommunications equipment or services that will provide telephone network access from a home or business that is functionally equivalent to that enjoyed by persons without disabilities. The commission and the Texas Commission for the Deaf and Hard-of-Hearing seek additional information regarding the types of equipment and/or services that specifically assist persons with variety of disabilities in accessing the telephone network. This information will assist the commission and the Texas Commission for the Deaf and Hard-of-Hearing in determining the equipment and services that will be eligible for vouchers under the Specialized Telecommunications Assistance Program.

Prior to the workshop, the commission requests interested persons with disabilities, manufacturers, service providers or vendors to file comments on the following questions:

1. What equipment or service(s) do you currently use, sell, or manufacture that specifically assists persons with disabilities in accessing the telephone network?

2. What specific disability(ies) is served by such equipment and or service?

3. What is the cost of the equipment and/or service? Are there any one-time charges associated with the equipment or service, such as installation or hook-up fees?

4. If you are a consumer, from whom do you purchase or lease the equipment or service?

5. If you are a manufacturer or vendor, how do you market your products and services?

6. If you need equipment or a service to help you access the telephone network, and it is not currently available, please describe your specific needs that are not being met.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326 within 14 days of the date of publication of this notice. All responses should reference Project Number 21090. This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Ten days prior to the workshop the commission shall make available in Central Records under Project Number 21090 an agenda for the format of the workshop.

The commission requests that persons planning to attend the workshop register by phone with Lisa Kriger, Relay Texas Assistant, Office of Customer Protection, (512) 936-7148 (Voice or TTY). Questions concerning the workshop or this notice should also be referred to Lisa Kriger.

TRD-9904221
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 1999

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Southwest Texas State University

Amendment to Consultant Contract

Consistent with Government Code, Section 2254-029, Subsection (a), Southwest Texas State University is amending the contract with KPMG to include new services in the amount of $17,000, as requested as part of a new objective based on information gathered by KPMG in the original contract.

Contact. The contact person is Dr. Cathy Fleuriet, President's Office, 601 University Drive, San Marcos, Texas 78666.

TRD-9904232
Williams A. Nance
Vice President for Finance and Support Services
Southwest Texas State University
Filed: July 14, 1999

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University of Houston System

Request for Proposal

The University of Houston System (UH System) requests proposals (RFP) from law firms interested in representing UH System and its component institutions in tax-exempt bond matters. This RFP is issued to establish (for the time frame beginning September 1, 1999 to August 31, 2000) a referral list from which UH System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific bond matters as the need arises. These include the usual and necessary services of a bond counsel in connection with the issuance, sale and delivery of bonds and notes on which the interest is excludable from gross income under existing federal tax law.

Description. The UH System comprises four universities-the University of Houston, University of Houston-Clear Lake, University of Houston-Downtown, and University of Houston-Victoria-each with a different mission, that together serve the diverse educational needs of the Houston metropolitan area and the upper Gulf Coast region. The UH System seeks qualified firms to provide usual and necessary legal services in connection with the issuance, sale and delivery of certain tax-exempt bonds and/or notes. Federal tax related matters regarding bonds issued by the UH System, including strategies and management practices in the conduct of an exempt debt program requires a close working relationship with bond counsel. Contact is frequent, particularly in regard to the Revenue Financing System program. UH System invites responses to this RFP from qualified firms for the provision of such legal services under the direction and supervision of UH System's Office of the General Counsel.

Responses. Responses to this RFP should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in bond issuance matters; (2) a description of

the firm's or attorney's past experience as Bond Counsel for other state agencies and for tax-exempt bonds or notes issued by other institutions of higher education for the period from January 1, 1990 to the present, including the identity of the Issuer, the amount and type of bonds or notes, and the purpose for the issuance in your description; (3) the names, experience, and technical expertise of each attorney who may be assigned to the work on such matters, and the availability of the lead attorney and others assigned to the project; (4) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to UH System's bond matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost control(s) and billable expenses; (5) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UH System or to the State of Texas, or any of its board, agencies, commissions, universities, or elected or appointed official(s); and (6) confirmation of willingness to comply with policies, directives, and guidelines of the UH System and the Attorney General of Texas.

Law firms responding to this proposal must have an office in Texas. The firm should have a place of business in Houston, Texas, or be willing to either waive, or substantially limit, the expenses attributable to travel. All travel expenses are to be borne by the law firm.

Format and Person to Contact. An original and two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Proposals–Bond Counsel Services," and addressed to Dennis P. Duffy, General Counsel, Office of the General Counsel, University of Houston System, 4800 Calhoun Street, Suite 212, Houston, Texas, 77204-2162 (telephone (713) 743-0949 for questions).

Deadline for Submission of Responses. All responses must be received by the Office of General Counsel of the UH System at the address set forth above no later than Noon on Friday, August 20, 1999.

TRD-9904147
Peggy Cervanka
Executive Administrator, Board of Regents
University of Houston System
Filed: July 12, 1999

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Willacy County

Notice of Intent

Requests for Comments and Proposals from Interested in Providing Additional Medicaid Certified Nursing Facility Beds.

House Bill 606, 75th Legislature, the State of Texas, permits a County Commissioners' Court of a rural county (defined as a county with a population of 100,000 or less) to request that the Texas Department of Human Services (TDHS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate in available beds in the county.

Willacy County Commissioners Court is considering desirability of requesting that TDHS contract for more Medicaid nursing facility beds in Willacy County. The Commissioners Court is soliciting comments from all interested parties on the appropriateness of such a request. Additionally, the Commissioners Court seeks to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid certified nursing facility beds. Comments and/or proposals should be submitted to Terry Flores, County Clerk of the Willacy County Commissioners Court, 540 West Hidalgo/First Floor, Courthouse Building, Raymondville, Texas 78580, telephone (956) 689–2710, no later than 5:00 p.m. on September 1, 1999. Action will be taken by the Commissioners Court at a Special Meeting on September 6, 1999 at 10 a.m.

TRD-9904249
Judge Simon Salinas
Willacy County Judge
Willacy County
Filed: July 14, 1999

♦ ♦ ♦

Texas Workforce Commission

Notice of Intent to Review Catalogue

The Texas Workforce Commission (TWC) is soliciting offers to identify and define the options available for the future technical architecture of The Workforce Information System of Texas (TWIST). This acquisition will be made through the State of Texas Catalogue Purchasing process.

Respondents must respond with an offer for services to commence immediately upon award. Additionally, any respondent must be a Qualified Information Services Vendor (QISV), approved by the General Services Commission (GSC) on the date an offer is submitted. Interested vendors are responsible for ensuring that they meet GSC criteria as a QISV. Closing date: 3:00 p.m. August 3, 1999.

Vendors capable of meeting the above requirements who are interested in obtaining a copy of the Request for Offers may contact: Jane B. Haney, Procurement Services Manager, Room 316T, Texas Workforce Commission, 101 East 15th Street, Austin, Texas, 78778-0001, Telephone (512) 463-2482, Facsimile: (512) 463-2442; or email: JHaney@twc.state.tx.us, or obtain the RFO from the Electronic State Business Daily at the Texas Marketplace ebusiness site.

TWIST is a Client/Server system that supports the Job Training Partnership Act (JTPA), Choices and Food Stamps Employment and Training (FSE&T) programs for the Texas Workforce Commission. Existing TWIST functionality includes: automated intake, eligibility, assessment, service planning and tracking, case management, outreach and scheduling, direct interface to legacy systems, reporting and performance measurement. This application is a two-tiered client/server system.

The client side was developed using PowerBuilder and runs on client PCs that are networked to local area networks. These local networks are connected to a central, statewide Sybase database through a statewide frame rely wide area network. The central Sybase database resides on a Hewlett Packard "V" class server with a UNIX operating system. Application processing is performed both on the Client PCs and on the central Hewlett Packard server located in Austin, Texas.

The scope of this project is the entire TWIST application, along with its associated data, all existing and necessary data and application interfaces and other related applications that are physically integrated with the TWIST application.

The object of the project will be to:

Analyze the current state of the TWIST application. Evaluate all components of TWIST, including associated data, hardware, software, system services, databases and interfaces.

Review the overall Information Technology architecture of TWC that govern technology and integration choices as they relate to the TWIST application.

Identify and define alternative solutions for the TWIST application, including but not limited to: conversion of TWIST architecture to the IBM mainframe OS/390 platform with IBM; DB2 or Oracle MVS database; retention of TWIST existing platform; and changes to existing client-server hardware/software.

Evaluate these alternative solutions with respect to the current architecture/platform of the TWIST application.

Conduct discussion with TWC stakeholders to review and confirm the options, evaluations, and recommended solution.

Provide a final report that compares the data collected, analyzes the advantages and disadvantages of each option, and selects a recommendation(s) for management consideration.

Expected deliverables include: documentation of different options considered; evaluation report, including analysis of current architecture; and final recommendation of solution for the TWIST application.

TRD-9904174
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: July 12, 1999

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Requests for Proposals

CHILD CARE FOR NORTH EAST TEXAS SERVICE DELIVERY AREA

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (TWC) is soliciting proposals to purchase Direct Child Care Delivery System services in the North East Texas Local Workforce Development Area. This includes the counties of Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River and Titus. It is the intent of the TWC to contract with a child care service provider who is focused on improving the quality, availability and affordability of child care in this service delivery area. The child care service goals are to:

enable low-income parents with the financial rescues to find and afford quality child care for their children;

enhance the quality and increase the supply of child care for all families;

provide parents with a broad range of options in addressing their child care needs;

strengthen the role of the family;

improve the quality of and coordination among child care programs and early childhood development programs; and

increase the availability of early childhood development and before and after-school care services.

B. AUTHORIZATION TO AWARD CONTRACT

TWC is authorized to award contracts for child care services under the Human Resources Code, the Labor Code, and as the Lead Agency for the Child Care and Development Fund (CCDF).

C. AVAILABLE FUNDING

The total amount of available funding through this contract for State Fiscal Year 2000, for planning purposes, is approximately $476,832 for DCCDS operations and $2,986,404 for direct child care delivery services. These approximate amounts are based on the Fiscal Year 1999 allocations. The actual allocation amounts will be made available within the next three weeks.

D. ELIGIBLE APPLICANTS

Applicants submitting proposals to provide direct child care delivery services must complete an RFP Package, meet the following criteria and provide required documentation as requested in the application in order to be considered eligible. The DCCDS contractor must be able to perform a variety of tasks, including but not limited to the following:

Client services and case management;

Provider enrollment and management;

Funds and financial management;

Automated system maintenance and support; and

Coordination and collaboration with the Quality Improvement Activities Coordinator.

E. PROJECT SCHEDULE

Application submission deadline is August 24, 1999. The contract is set to begin on October 1, 1999. The contract is scheduled to end August 31, 2000.

F. SCORING CRITERIA

The evaluation criteria for this RFP and their relative weights for scoring are: Demonstrated Effectiveness of the bidder, 25 points; Quality of Proposal, 30 points; Cost Reasonableness, 20 points; Collaboration and Coordination, 15 points, and Financial Integrity/ Cash Flow , 10 points, for a maximum of 100 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

The Commission will use competitive negotiation for the procurement. Proposals will be evaluated by TWC and possible outside entities. TWC anticipates completing the selection process and notifying applicants of the application status the week of August 30, 1999. TWC will score proposals received and determine those within the competitive range. If one proposal is clearly superior, then the award will be made to that offeror. If two or more proposals are rated similarly, TWC may use negotiation to obtain amended proposals upon which to base a final award.

H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels and subject to budget limitations.

I. TWC'S CONTACT PERSON

For further information and to order an Application Packet, contact the primary TWC contact person. The primary contact person for this RFP is Elwood Engebretson, Program Specialist, Texas Workforce Commission, Room 342T, 101 East 15th Street, Austin, Texas, 78778-0001, (512) 936-4874, fax (512) 936-3420, e-mail address elwood.engebretson@twc.state.tx.us

TRD-9904242
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: July 14, 1999

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JTPA TITLE III DISLOCATED WORKER SERVICES

RFP SI99-05

JULY 1999

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (TWC) is soliciting proposals to provide JTPA Title III services for workers dislocated from trade-related layoffs and unemployed farm workers in the Hidalgo/Willacy Local Workforce Development Area (LWDA), as originally published in the June 25, 1999 issue of the Texas Register. This program will have two separate components, through which contractors will provide (1) Project Management and Administrative Services and (2) Vocational and Basic Skills Training Services for these targeted populations.

(1) Project Management and Administrative Services shall entail at the minimum:

Outreach and Orientation Sessions

Eligibility Determination

Vocational Assessment

Job Search Assistance

Intensive Case Management/Vocational Counseling Services

Job Development/Job Placement services

Referral to Training

Management of Participant Supportive Services

Relocation and Out of Area Job Search Assistance

Development of Individual Job Training Plans

(2) Vocational and Basic Skills Training Services

Vocational Retraining services shall entail at the minimum:

Basic and Remedial Education

Computer Literacy

Intensive work-based English instruction

Pre-GED/GED Instruction in either English or Spanish

Vocational Skills Training Integrated with Workplace English Training

Any resulting contract will be awarded through a competitive request for proposals (RFP) process where more than one offeror may be considered to provide services in Hidalgo and Willacy counties. This program is designed to provide project management and administrative services as well as basic skills and integrated vocational training program to serve a large population of unemployed farm workers and workers who have lost their jobs due to trade-related layoffs.

Offerors may submit proposals for one or both components of the program listed in this RFP. Further, relative to the Basic Skills and Vocational Training Services component, offerors may submit proposals for one or all of the training services listed.

B. AUTHORIZATION OF FUNDING

The funds are authorized under Section 302, Job Training Partnership Act, and are subject to the federal regulations at 20 CFR, Part 631, Subparts D and E, and all applicable provisions of the TWC Financial Manual for Grants and Contracts.

C. AVAILABLE FUNDING

The total amount of available funds shall be discussed at the offerors' conference. The estimated maximum number of participants to be served through this contract is 776.

D. ELIGIBLE APPLICANTS

Applicants submitting proposals to provide Title III services must complete an Application Packet, meet the following criteria and provide required documentation as requested in the application to be considered eligible: (1) the offer must have been submitted by the due date for proposals; (2) the offer must be complete with required signatures; (3) the offer is for the requested services described in the instructions; and (4) the offeror must have a thorough knowledge of the elements required for an adult learner to be successful in completing vocational training. TWC will exclude from further consideration for contract award any non-responsive offer or portion of an offer and will notify the offeror by certified mail of the decision.

E. PROJECT SCHEDULE

Application submission deadline is August 23, 1999. The project is set to begin on September 15, 1999, and end June 30, 2000.

F. SCORING CRITERIA

The evaluation criteria for this RFP are individualized for Basic Skills and Vocational Training Services and Project Management and Administrative Services.

Weights for scoring Project Management and Administrative Services are: Appropriateness of vocational and basic skill assessment instrument for target population, 15; Integration of assessment results with vocational counseling, 10; Past Experience relative to assessment of groups of workers with similar characteristics to target group, 5; Comprehensiveness of case management component, 5; Employer-driven job search/job development component, 15; Integration of job search/job development component with case management component, 10; Demonstrated Performance relative to job placement of groups of workers with similar characteristics to target group, 20; Experience of principal staff in managing programs of similar nature, 10; and Overall design of Project Management and Administrative services component, 10.

Weights for Vocational and Basic Skills Training services are: Integration of vocational skills training with English that relates to an occupation, 15; Type of occupational skills training targeted, 15; Measurement of participant progress in classroom training, 10; Demonstrated success in placement of participants with characteristics similar to those of the target groups in unsubsidized employment, 25; Evidence that vocational training is employer-driven and in a demand occupation, 15; Design of basic skills training based on a workplace English or bilingual approach, 10; and Demonstrated experience of key staff, 10.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

Proposals will be graded by the Texas Workforce Commission. Grading criteria will be included in the application packet. Negotiations will take place immediately after selection. A person designated and authorized by the selected applicant organization to make budget and/or programmatic decisions must be readily available to respond to requested revisions between August 31 and September 9, 1999.

Negotiations will be conducted by TWC as scheduled. A representative of a selected offeror must be available to attend contract

negotiations as scheduled by TWC. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas.

H. PAYMENT

Payment for Project Management and Administrative Services performed shall be billed on a cost reimbursement basis. Payment for Vocational and Basic Skills Training Services performed may be billed on a cost reimbursement basis or on a tuition-based, individual referral basis.

I. TWC'S OBLIGATIONS

TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of Funds from the US Department of Labor. If adequate funds are not available to make payment under the terms of this contract, TWC shall terminate this RFP or resulting contract and will have no liability for payments for any expenditures related to this RFP or a resulting contract. Information on the date and time of the Offerors' Conference will be available by contacting the contact person identified herein, and in the Application Packet. For further information and to order an Application Packet, contact the TWC primary contact person for this RFP: Allison Thomas, Program Specialist, Texas Workforce Commission, Room 342-T, 101 East 15th Street, Austin, Texas, 78778-0001, telephone: (512) 936-3555, fax: (512) 936-3420, email: allison.thomas@twc.state.tx.us.

TRD-9904243

J. Ferris Duhon

Assistant General Counsel

Texas Workforce Commission

Filed: July 14, 1999

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LINKING SCHOOL-TO-CAREERS WITH ORGANIZATIONS THAT SUPPORT STUDENTS WITH DISABILITIES

The Texas Workforce Commission invites proposals on the topic: Linking School-to-Careers with Organizations that Support Students with Disabilities.

A. AUTHORIZATION OF FUNDING

Public Law 103-239 School-to-Work Opportunities Act of 1994 authorizes funds for this project. TWC is the lead agency in Texas for School-to-Careers/School-to-Work.

B. PROJECT OBJECTIVES

The primary purpose of the project is to set forth a variety of methods for distributing information about the educational and employment abilities of students with disabilities to School-to-Careers partnerships and linking these partnerships with disability organizations to enable partnerships to better serve students with disabilities.

C. PROJECT DESCRIPTION

1. Develop disability resource materials for use by School-to-Careers partnerships that include:

a) Statewide and partnership area resource/contact guides.

b) Examples of current best practices for delivering School-to-Careers services to interested students with disabilities.

c) Requirements of the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and other federal/state disability laws.

d) Information on the transition to higher education for students with disabilities.

e) Partnership area listings of employers recognized as excelling at the employment of persons with disabilities.

2. Conduct at least four training workshops on disability issues for School-to-Careers partnership members, staff, and partnership-designated entities. As follow-up to the workshops, conduct on-site technical assistance visits to at least 10 School-to-Careers partnerships. Incorporate the materials developed under work statement #1 into the workshops and on-site visits.

3. Distribute information on Texas' School-to-Careers initiative to disability organizations throughout the state, facilitate participation of such entities in the initiative, and determine the extent of such participation or the commitment to participate.

D. ELIGIBLE APPLICANTS

Eligible applicants include public, private, and/or non-profit or for-profit entities or consortia of entities with offices located in Texas. Attendance at the August 3, 1999 bidders' conference is mandatory for all applicants.

E. AVAILABLE FUNDING

Eligible applicants may apply for up to $175,000.

F. FUNDING RESTRICTIONS

The applicant(s) selected must provide assurances that they will use allotted funds in accordance with PL 103-239 and use necessary fiscal control and fund accounting controls for the proper disbursal of and accounting for these funds.

G. LENGTH OF CONTRACT

The project period is twelve months.

H. REQUESTING THE APPLICATION

Interested entities may obtain a copy of the complete RFP by contacting Ruth Burrell, Program Administrator, in the School-to-Careers office of the Texas Workforce Commission, Room 326-T, 101 East 15th Street, Austin Texas, 78778-0001, (512) 463-2212; faxing a written request to (512) 463-6689; or emailing a request to ruth.burrell@twc.state.tx.us.

I. BIDDERS CONFERENCE AND ASSISTANCE FOR APPLICANTS

A bidders' conference will be conducted from 1:00-3:00 p.m. on Tuesday, August 3, 1999, in Room 304T of the Texas Workforce Commission's Trinity Building, located at 1117 Trinity Street in Austin, Texas.

Attendance at the bidders' conference is mandatory for all applicants. This bidders' conference will be the applicants' sole opportunity to ask questions and receive answers concerning any aspect of the five proposal topics. Questions will not be answered before or after this conference.

Those attending the bidders' conference will be required to register on site and provide information regarding the organization being represented. No advance registration is required.

J. SELECTION CRITERIA

Applicants must meet eligibility requirements to be considered for funding.

All eligible proposals will be reviewed and ranked by members of a review team comprised of state agency personnel with related

knowledge and experience. They will follow the point allocation procedure given below.

–50 points: Ability to perform the work described in the work statements and deliverables.

–25 points: Capacity of the organization and assigned staff to complete project successfully.

–25 points: Degree to which the applicant can present a reasonable budget with accompanying narrative and related budget attachments explaining the proposed use of funds in relation to the work statements and deliverables.

–5 points: Additional consideration shall be used in making the final selection, in the form of five additional evaluation points to certified Historically Underutilized Businesses (HUBs) or organizations that subcontract with certified HUBs. HUBs currently certified by the General Services Commission of the State of Texas must attach a copy of such certification with the proposal when requesting additional consideration in the evaluation of such proposal.

K. SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

Successful applicants will be notified of their awards approximately three weeks after submission. Applicants who are not funded will be notified by mail of the funding decision.

Negotiations will be conducted by TWC as deemed necessary. TWC reserves the right to vary any provisions of this RFP prior to the execution of any contracts and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas. In addition, TWC reserves the right to refuse to fund any proposals submitted if such action is deemed in the best interest of the State of Texas.

L. DUE DATE AND AGENCY CONTACT

No proposals will be accepted later than 5:00 p.m. on Wednesday, August 25, 1999. Proposals must be received in the School-to-Careers Office by that time; postmark dates will not be considered. Failure of overnight delivery services or any other cause for late delivery is the responsibility of the applicant. Submit seven complete stapled or bound copies, including one copy with original signatures, to:

Ruth Burrell

Program Administrator

School-to-Careers

Texas Workforce Commission

Room 326T

101 East 15th Street

Austin, Texas 78778-0001

No facsimile proposals will be accepted.

M. TWC'S OBLIGATIONS

TWC obligations under this RFP are contingent upon the actual receipt by TWC of funds from the U.S. Department of Labor. If adequate funds are not available to make payments under this grant, TWC shall terminate its contractual obligations and will not be liable for failure to make payment under this RFP.

Contract Number 409903.

TRD-9904220

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: July 13, 1999

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QUALITY IMPROVEMENT ACTIVITIES NORTH EAST TEXAS SERVICE DELIVERY AREA

JULY 1999

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (Commission) is soliciting proposals to provide Quality Improvement Activities (QIA) in Northeast Texas. It is the intent of the TWC to contract with an eligible entity who is focused on improving the quality of child care services in North East Texas through Child Care Training (CCT) and Early Childhood Development Resources (ECDR).

Child Care Training: The purpose of the Child Care Training component is to provide high quality training to those people who work with young children in licensed child care facilities, licensed group day homes, registered family homes, and self-arranged child care providers. Objectives include:

Improving the quality of child care offered throughout the workforce development area (WDA) by providing high quality child care training opportunities that will increase the skill levels of child care professionals;

Identifying, collaborating, and coordinating with other community-based training resources to avoid duplication of training;

Offering training based on the needs of all eligible participants throughout the WDA;

Offering a variety of training options including different levels of training throughout the WDA;

Ensuring that all eligible child care staff are informed of training opportunities;

Ensuring that trainers understand and are experienced and effective in meeting training needs of adults, and

Evaluating the training offered to improve the effectiveness of training throughout the WDA.

Early Childhood Development Resources. The purpose of the Early Childhood Development Resources component is to provide an opportunity for child care providers to access developmentally appropriate materials and equipment and to provide technical assistance for the selection and use of these developmentally appropriate materials and equipment. Objectives include:

Ensuring that equipment purchased meets the need of the child;

Improving quality of care;

Coordinating resources in order to avoid duplication of the service; and

Ensuring that all child care providers have access to ECDR resources.

B. AUTHORIZATION TO AWARD CONTRACT

TWC is authorized to award contracts for child care training and early childhood development resource services under the Labor Code, Chapter 302, and shall be subject to the provisions of the Human Resources Code, Chapters 31 and 44, the federal regulations at 45 CFR Parts 98 and 99, and the state rules at 40 TAC Chapter 809, and the TWC Financial Manual for Grants and Contracts, specifically Module 2 relating to the Child Care and Development program.

C. AVAILABLE FUNDING

Total amount of funds available under this RFP is approximately $170,338. Contracts for services will be effective October 1, 1999 through August 31, 2000. Funding may be requested in any amount up to the maximum available. TWC contemplates making one or more awards under this RFP in order to utilize available funds to the greatest extent. Contracts may be renewed, 12 months at a time, for up to 36 months after that (September 1, 2000 through August 31, 2003), contingent upon satisfactory performance and Board approval.

D. ELIGIBLE APPLICANTS

To be considered eligible to provide Quality Improvement Activities services, applicants submitting proposals must complete an Application Packet, provide the required documentation as requested in the packet, and meet the following criteria: (1) the offer must have been submitted by the due date for proposals; (2) the offer must be complete with the required signatures; (3) the offer must be for the requested services described in the instructions; (4) the funding requested is not more than the maximum amount; (5) the offeror must agree to provide the services in collaboration with the communities and the community professionals and/or agencies within the WDA to ensure child care training needs are met and to ensure non-duplication of services. TWC will exclude from further consideration for contract award any non-responsive offer or portion of an offer. TWC will notify the offeror by certified mail of the decision.

E. PROJECT SCHEDULE

Application submission deadline is August 25, 1999,

Notification of Award begins August 30, 1999,

Contract start date is October 1, 1999, and

Project end date is August 31, 2000.

F. SCORING CRITERIA

The evaluation criteria and relative weight for this RFP are: Quality of Program Design, 25 points; Demonstrated Effectiveness, 25 points; Cost, 25 points; Collaboration and Coordination, 15points; Financial Integrity/Cash Flow, 10 points, for a maximum of 100 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

The Commission will use competitive negotiation for the procurement. Proposals will be evaluated by TWC and possible outside entities. Evaluation criteria will be described in the RFP packet. TWC anticipates completing the selection process and notifying applicants of the application status the week of August 30, 1999. TWC will score proposals received and determine those within the competitive range. If one proposal is clearly superior, then the award will be made to that offeror. If two or more proposals are rated similarly, TWC may use negotiation to obtain amended proposals upon which to base a final award.

H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels and subject to budget limitations.

I. TWC'S CONTACT PERSON

For further information and to order an Application Packet, contact the primary TWC contact person. The primary contact person for this RFP is Pam Brown, Program Specialist, Texas Workforce Commission, Room 342T, 101 East 15th Street, Austin, Texas, 78778-0001, (512) 936-2615, fax (512) 936-3420, e-mail address pamela.brown@twc.state.tx.us

TRD-9904245
J. Ferris Duhon
Assistant General Counsel
Texas Workforce Commission
Filed: July 14, 1999

Texas Register
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