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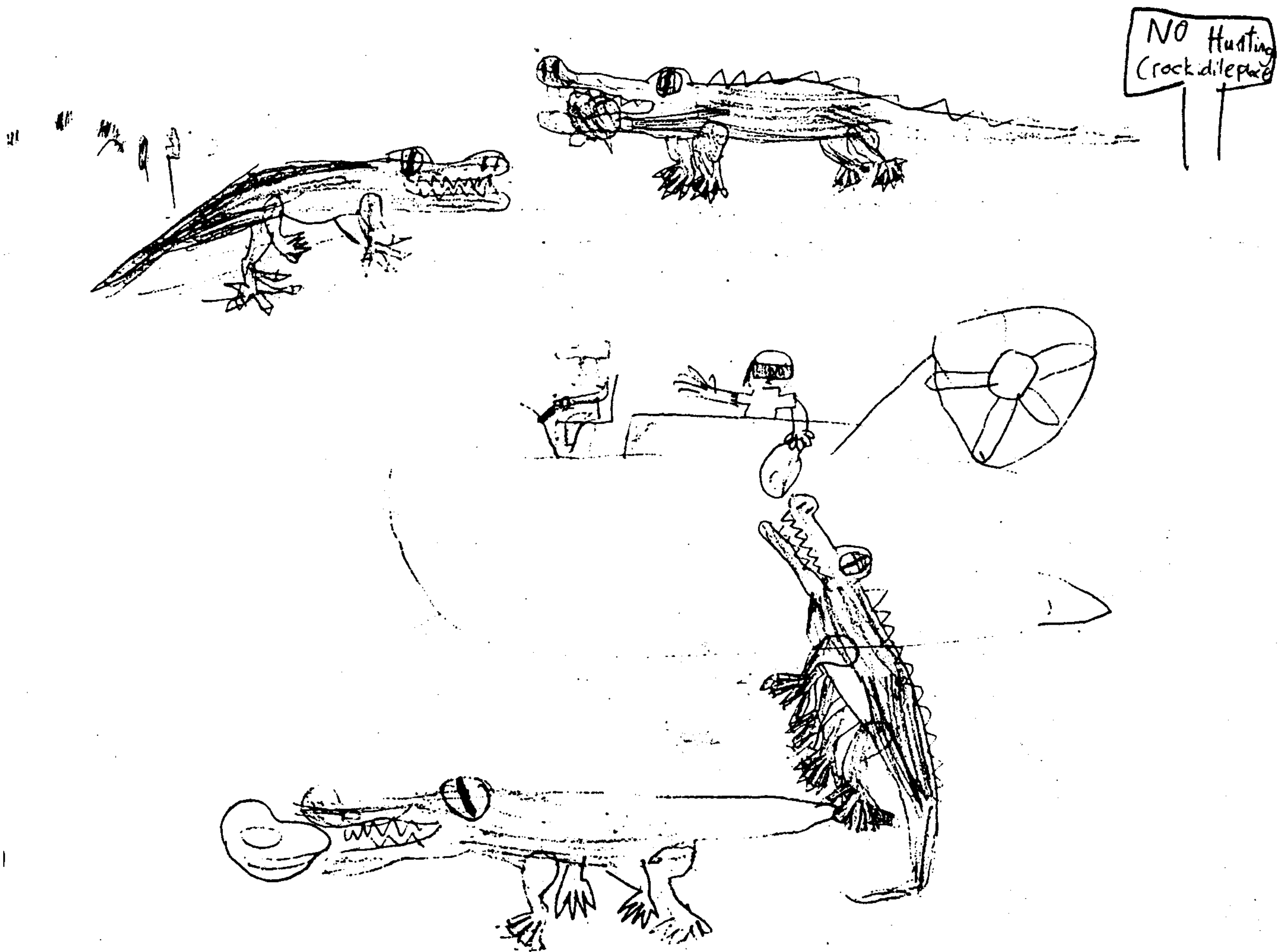

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THE GOVERNOR

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 November 29, 1999

Appointed to the Motor Vehicle Board of the Texas Department of Transportation for a term to expire January 31, 2001, James R. Leonard of Abilene (filling the unexpired term of Scott Jones of Dallas who resigned).

Appointments made November 30, 1999

Appointed to the Texas Council on Workforce and Economic Competitiveness for terms to expire September 1, 2005: Edward Adams of Austin (replacing Martha Hinojosa-Nadler of Dallas whose term expired); James Neilson Brooks of Amarillo (reappointment); Robert Hawkins of Bellmead (reappointment); Mario H. Salinas of Edinburg (replacing Ruby Armstrong of Garland whose term expired); and David A. Sampson of Arlington (replacing Claire Johnson of Abilene whose term expired).

Designatined as Chair of the Texas Council on Workforce and Economic Competitiveness, for a term at the pleasure of the Governor, David A. Sampson of Arlington (replacing Claire Johnson of Abilene who no longer serves on the council).

Appointed to the Interstate Oil and Gas Compact Commission for terms at the pleasure of the Governor:

Legal and Regulatory Affairs Committee: Charles R. Patton of Austin and James A. Tramuto of Houston.

Public Outreach Committee: Foster L. Wade of Houston.

Appointments made December 3, 1999

Appointed to the Lower Colorado River Authority Board of Directors for a term to expire February 1, 2005, Robert W. Lambert of Horseshoe Bay (replacing Richard G. Arellano of Llano whose term expired).

Appointed to the State Board of Trustees of the Texas Statewide Emergency Services Personnel Retirement Fund: Maxie L. Patterson of Spring for a term to expire September 1, 2001 (filling the unexpired term of Weir LaBatt of San Antonio who resigned); Allen J. Scopel of Rosenberg for a term to expire September 1, 2005 (reappointment); Francisco R. Torres of Raymondville for a term to expire September 1, 2005 (reappointment); and Robert Weiss of Brenham for a term to expire September 1, 2005 (replacing Robert Barrett of Seminole whose term expired).

Appointment made December 15, 1999

Appointed to the Board of Protective and Regulatory Services for a term to expire February 1, 2005 Cristina "Ommy" Strauch of San Antonio (filling the unexpired term of Dr. Edward L. Wagner of Harker Heights who resigned).

Appointments made December 17, 1999

Appointed as Judge of the 393rd Judicial District Court, Denton County, until the next General Election and until her successor shall be duly elected and qualified Vicki Issacks of Carrollton (effective January 1, 2000). Ms. Issacks is being appointed to a newly created court pursuant to House Bill 400, 76th Legislature, Regular Session.

Appointed as Judge of the 395th Judicial District Court, Williamson County, until the next General Election and until his successor shall be duly elected and qualified Michael Paul Jergins of Round Rock (effective January 1, 2000). Mr. Jergins is being appointed to a newly created court pursuant to House Bill 400, 76th Legislature, Regular Session.

Appointed as Judge of the 396th Judicial District Court, Tarrant County, until the next General Election and until his successor shall be duly elected and qualified, George W. Gallagher of Arlington (effective January 1, 2000). Mr. Gallagher is being appointed to a newly created court pursuant to House Bill 400, 76th Legislature, Regular Session.

Appointed as Judge of the 408th Judicial District Court, Bexar County, until the next General Election and until her successor shall be duly elected and qualified Phylis J. Speedlin of San Antonio (effective January 1, 2000). Ms. Speedlin is being appointed to a newly created court pursuant to House Bill 400, 76th Legislature, Regular Session.

Designated Marvin Bruce Thaler of Huntsville as the State Administrator for the Interstate Agreement on Detainers pursuant to Article 51.14 of the Texas Code of Criminal Procedures. Mr. Thaler will be serving at the pleasure of the Governor and will be replacing S. O. Woods, Jr. of Huntsville who resigned.

Appointments made December 21, 1999

Appointed to the Fire Ant Research and Management Account Advisory Committee for terms to expire February 1, 2000: Mark J. Forgason of Houston (replacing James McCan of Victoria who resigned); Donna Lee Hartman of Morgan's Point Resort (replacing Sharon Johnson of Gladewater whose term expired); and Peter B. Vamvakas of Farmersville (replacing Robert Werner of San Antonio whose term expired).

Appointed to the San Jacinto Historical Advisory Board for a term to expire September 1, 2005, Janet Ann DeVault of Houston (replacing Frank W. Calhoun of Houston whose term has expired).

Appointed to the Texas Growth Fund Board of Trustees for a term to expire February 1, 2003, Patsy Waller Nichols of Austin (filling the unexpired term of Timothy P. Roth of El Paso who resigned).

Appointed to the On-site Wastewater Treatment Research Council for terms to expire September 1, 2001: Therese M. Baer, P.E. of Austin (reappointment); Arthur G. Carpenter of Austin (replacing Tom Dreiss of San Antonio whose term expired); Franz K. Hiebert, Ph. D. of Austin (reappointment); Lois Jordan Koock of Mason (reappointment); Danny Ray Moss of Haslet (reappointment); and Brenton L. Wade of San Angelo (reappointment).

Appointment made on December 23, 1999

Appointed as Judge of the 164th Judicial District Court, Harris County, until the next General Election and until her successor shall be duly elected and qualified Martha Hill Jamison of Houston (replacing Judge M.K. "Katie" Kennedy of Houston who resigned).

Appointments made on December 30, 1999

Appointed to the Rehabilitation Council of Texas: Sue Pennington Ford of Bedford for a term to expire October 29, 2000 (replacing Boyce Baker of Kilgore whose term expired); Sharon R. Miller of Austin for a term to expire October 29, 2000 (replacing Elizabeth Newhouse of San Antonio whose term expired); Larry C. Gardner of Lubbock for a term to expire October 29, 2000 (replacing Judith Sokolow of Austin whose term expired); Donna Stahlhut of Houston for a term to expire October 29, 2000 (replacing Ricardo Barraza of El Paso whose term expired); Willie Harris of Missouri City for a term to expire October 29, 2000 (replacing Marylou Wright of Beaumont whose term expired); Susan K. Blue, M.D. of Fort Worth for a term to expire October 29, 2001 (reappointment); Anne W. Brown of Dallas for a term to expire October 29, 2001 (reappointment); Leo G. Ramos, Jr. of San Antonio for a term to expire October 29, 2001 (replacing Tom Tyree of Austin whose term expired); Kimball Dean White of Lamesa for a term to expire October 29, 2001 (replacing James Johnson whose term expired); Robert Hawkins of Bellmead for a term to expire October 29, 2002 (new position); and Susan E. Rose of Austin for a term to expire October 29, 2002 (new position).

Appointments for January 3, 2000

Appointed to the Emergency Medical Services Advisory Council created pursuant to House Bill 2085, 76th Legislature, Regular Session: Gary D. Cheek of Clyde for a term to expire January 1, 2002; Pattilou P. Dawkins of Canyon for a term to expire January 1, 2002, Jerry L. Gray of Sherman for a term to expire January 1, 2002; Judge Arlene N. Marshall of Port Lavaca for a term to expire January 1, 2002; Rebecca Campuzano-Salcido of El Paso for a term to expire January 1, 2004; Raymond P. Holloway of Kerrville for a term to expire January 1, 2004; Ferris E. (F.E.) Shaheen, III of Levelland for a term to expire January 1, 2004; Joan Elizabeth Shook, M.D. of Bellaire for a term to expire January 1, 2004; John L. Simms of Brenham for a term to expire January 1, 2004; Edward MacLeod Racht, M.D., Chair, of Austin for a term to expire January 1, 2006; Lance Douglas Gutierrez of Tyler for a term to expire January 1, 2006; Maxie Bishop, Jr. of Grand Prairie for a term to expire January 1, 2006; Mario Segura of Roma for a term to expire January 1, 2006; and Peter D. Wolf of Windthorst for a term to expire January 1, 2006.

Appointed to the Texas Cancer Council for a term to expire February 1, 2000, Patricia T. Castiglia, Ph.D. of El Paso. Dr. Castiglia is being appointed to a new position on the Council pursuant to House Bill 1033, 76th Legislature, Regular Session.

Appointments for January 8, 2000

Appointed to the Sabine River Compact Commission for a term to expire July 12, 2004, Thomas Wayne Reeh of Orange (replacing Danny Choate of Orange whose term expired).

Appointed to the Texas Juvenile Probation Commission for terms to expire August 31, 2005: Betsy Lake of Houston (reappointment); The Honorable Lyle T. Larson of San Antonio (replacing Robert Tejeda of San Antonio whose term expired); and Carlos Villa of El Paso (replacing Raul Garcia of San Angelo whose term expired).

Appointed to the Board of Directors of the Lavaca-Navidad River Authority: Mark Cayce of Edna for a term to expire May 1, 2001 (filling the unexpired term of Sandra Rae Green of La Ward who resigned); Sharla Vee Strauss of La Ward for a term to expire May 1, 2005 (replacing Callaway S. Vance of Edna whose term expired); and Willard E. Ulbricht of Edna for a term to expire May 1, 2005 (replacing Robert J. Whitworth of Edna whose term expired).

Designated Alfred M. "Mac" Stringfellow of San Antonio as chair of the Texas Board of Criminal Justice for a term at the pleasure of the Governor. Mr. Stringfellow will be replacing Allan B. Polunsky of San Antonio who resigned from the board.

Reappointed to the Public Safety Commission for a term to expire December 31, 2005, James B. Francis of Dallas.

Appointed to the Lower Neches Valley Authority Board of Directors for terms to expire July 28, 2005: Bill L. Clark of Beaumont (replacing Thomas A. Thomas of Beaumont whose term expired); Cheryl D. Olesen of Beaumont (replacing Gaylyn Cooper of Beaumont whose term expired); and Owen G. Vaghn, Jr. of Silsbee (replacing Arnold Pierce of Sour Lake whose term expired

George W. Bush, Governor of Texas

Office of the Attorney General

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

Opinions

Opinion No. JC-0165. The Honorable Jose R. Rodriguez, El Paso County Attorney, 500 East San Antonio, Room 203, El Paso, Texas 79901, Re: Constitutionality of "early exit" plan for school district employees, and related questions (RQ-0055-JC)

Summary. An independent school district's "early exit" plan for school district employees, whereby certain employees of the district receive payments from the district in return for leaving employment and other agreements, is not an unconstitutional gratuity if participating employees provide consideration to the district for payments under the plan. Such a plan may be authorized by sections 11.163 and 45.105 of the Education Code.

Opinion No. JC-0166. Ms. Patty J. Williams, Board Chair, Texas Automobile Theft Prevention Authority, 200 East Riverside Drive, Austin, Texas 78704, Re: Whether the Texas Automobile Theft Prevention Authority may by rule exempt single interest insurance policies from the fee imposed by article 4413(37), section 10(b) of the Texas Revised Civil Statutes (RQ-0087-JC)

Summary. The Texas Automobile Theft Prevention Authority may not by rule exempt single interest insurance policies from the assessment of a fee mandated by article 4413(37), section 10(b) of the Texas Revised Civil Statutes.

Opinion No. JC-0167. The Honorable Glen Wilson, Parker County Attorney, One Courthouse Square, Weatherford, Texas 76086, Re: Whether the Parker County Commissioners Court is authorized to appoint a purchasing agent or procurement officer pursuant to section 262.001 of the Local Government Code and related questions (RQ-0146-JC)

Summary. In Parker County a purchasing agent must be appointed by a board consisting of the district judge and the county judge. See Tex. Loc. Gov't Code Ann. 262.011(a) (Vernon Supp. 2000). The Parker County Commissioners Court lacks authority to appoint or employ a purchasing agent, agent of contracts, or procurement officer.

A closed session held by a commissioners court under section 551.074 of the Texas Open Meetings Act, Tex. Gov't Code Ann. ch. 551 (Vernon 1994 & Supp. 2000), to discuss the appointment of a county purchasing agent does not violate the Act as a matter of law merely because the commissioners court lacks ultimate authority with respect to the personnel matter.

TRD-200000368
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: January 19, 2000

Emergency Rules

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

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

Chapter 65. WILDLIFE

Subchapter N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §65.321

The Texas Parks and Wildlife Department adopts, on an emergency basis, an amendment to §65.321, concerning Special Management Provisions. The emergency action is necessary for the state to respond to federal regulations authorizing a conservation season for light geese, which have overpopulated their arctic and sub-arctic breeding grounds. The emergency action will implement special management provisions for the take of light geese.

The section is adopted on an emergency basis because the department has determined that the conservation season is necessary to properly manage light geese, and because federal action to authorize the season took place at such a late date that the timeline for the ordinary rulemaking process would substantially diminish the biological effectiveness of the season.

The amendment is adopted on an emergency basis under Parks and Wildlife Code, Chapter 64, Subchapter C, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds, including emergency regulations in cases where conditions affecting the supply or condition of migratory game birds exist.

§65.321. Special Management Provisions.

The provisions of paragraphs (1)-(3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

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

(4) Early closures.

(A) At sunset on January 23, 2000 [~~31, 1999~~], the open seasons for the following species of migratory birds are closed until further notice.

(i) [~~(A)~~] sandhill crane: in Zones B and C; and

(ii) [~~(B)~~] light geese and Canada geese: in the Eastern Zone.[~~;~~]

[~~(C) ducks, coots, and mergansers (extended falconry season): statewide; and~~]

[~~(D) woodcock (extended falconry season): statewide~~]

(B) At sunset on February 4, 2000, the open seasons for the following species of migratory birds are closed until further notice.

(i) sandhill crane: in Zone A; and

(ii) light geese and dark geese: in the Western Zone.

(5) Special Light Goose Conservation Period.

(A) From January 24, 2000 [~~February 1, 1999~~] through April 2, 2000 [~~25, 1999~~], the take of light geese is lawful in the Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 5, 2000 [~~15, 1999~~] through April 2, 2000 [~~25, 1999~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(C) Special Regulation: In Refugio, Calhoun, and Aransas counties it is unlawful to hunt light geese after March 10, 2000 on the seaward side of a line beginning at the Gulf of Mexico at Port O'Connor (including Pelican Island), thence northwest along State Highway 185, thence southwest along State Highway 35 to Aransas Pass, thence southeast along State Highway 361 to Port Aransas, thence east along the Corpus Christi Channel, thence southeast along the Aransas Channel to the Gulf of Mexico, except that it is lawful to hunt light geese from March 11, 2000 through April 2, 2000 on Guadalupe Delta Wildlife Management Area.

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

TRD-200000141
Gene McCarty
Chief of Staff
Texas Parks and Wildlife
Effective date: January 10, 2000
Expiration date: May 9, 2000
For further information, please call: (512) 389-4775

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 3. OFFICE OF THE ATTORNEY GENERAL

Chapter 55. CHILD SUPPORT ENFORCEMENT

Subchapter H. LICENSE SUSPENSION

1 TAC §§55.205, 55.207, 55.212

The Office of the Attorney General proposes amendments to 1 TAC §§55.205, 55.207, and 55.212 concerning license suspension for failure to pay child support. These sections establish the procedures and documents required to initiate a license suspension proceeding. Section 55.205(b) as amended includes relevant court orders and payment records among those items designated as attachments to the Notice of Filing Petition to Suspend License, and deletes reference to Telephone hearing forms which are no longer used. This amendment assures the inclusion of documentary evidence at the beginning of the license suspension process with the filing of the Petition to Suspend License. Section 55.207(a) as amended would require a party to file copies of documentary evidence to be offered at the hearing only if the evidence has not been previously filed with the coordinator. This amendment clarifies that the parties need not file evidence or documentation previously included in the Petition to Suspend License. Section 55.212 as amended would allow the administrative law judge, as the designee of the Title IV-D director, to render the final decision in a license suspension proceeding.

Howard G. Baldwin, Jr., IV-D Director, Child Support Division, has determined that for the first five year period there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Baldwin also has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment of these rules imposes no additional burden on anyone. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed amendments will also result in significant savings of postage and paper by eliminating the requirement of mailing massive numbers of duplicate documents by certified mail with return receipt, and often by express mail in each license suspension case.

Comments may be submitted to Samuel T. Jackson, Child Support Division, Office of the Administrative Law Judge, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Austin, Texas 78711-2017, mail code 039, (512) 460-6397

The amended section is proposed under the Family Code, Chapter 232, Suspension of License for Failure to Pay Child Support or Comply with Subpoena.

The Family Code, Chapter 232, is affected by the amended section.

§55.205. Initiating a Proceeding.

(a) (No change.)

(b) Petition to Suspend License Packet. The packet is the Notice of Filing Petition to Suspend License, with all attachments, including the Petition to Suspend License, Request for Hearing,[~~and Request for Telephone Hearing forms~~] all relevant court orders and payment records.

(c)-(g) (No change.)

§55.207. Pre-hearing Matters.

(a) Not later than 20 days prior to the hearing, each party shall file with the coordinator, and serve on the other parties, a list of witnesses the party will call at the hearing and copies of [~~all~~] any supplemental documentary evidence, not previously filed with the coordinator, to be offered into evidence at the hearing.

(b) (No change.)

(c) Not later than ten days prior to the hearing, the [~~The~~] coordinator will compile and transmit to the parties [~~ten days prior to the hearing~~] a petitioner's evidentiary packet and an obligor's evidentiary packet. The respective packets will contain the list of witnesses and any supplemental documentary evidence submitted pursuant to subsection (a) above to be offered by the respective party. [~~The coordinator will identify and consecutively paginate the respective packets.~~]

(d) (No change.)

§55.212. Decision.

Following the conclusion of the hearing, the administrative law judge, as the designee of the director of the Title IV-D agency, will issue a decision and final order. [~~The director of the Title IV-D agency will consider the proposal for decision, exceptions, and replies, and issue a decision and final order.~~]

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 January 14, 2000.

TRD-200000221
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 463-2110

1 TAC §55.210, §55.211

(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 Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Attorney General proposes to repeal 1 TAC §55.210 and §55.211 concerning license suspension for failure to pay child support. Section 55.210 requires the administrative law judge to issue a proposal for decision following a license suspension hearing. Section 55.211 gives the adversely affected party an opportunity to file exceptions to the proposal for decision for the Title IV-D Director's consideration prior to rendition of a final decision.

These sections are no longer necessary because the agency official (the administrative law judge) who conducts the hearing or reads the record will render the final decision in contested cases pursuant to amended §55.212. This eliminates the necessity of the proposal for decision required by Tex.Gov.Code §2001.062(a)(1) in cases in which the government official rendering the final decision does not hear the case or review the record. The requirement to provide the parties an opportunity to file exceptions and briefs in accordance with Tex.Gov.Code §2001.062(a)(2) is dispensed with as well. Any party desiring to challenge a final decision retains the right to file a Request for Rehearing which may be granted or denied by the administrative law judge as provided in Tex.Gov.Code §2001.145.

Howard G. Baldwin, Jr., IV-D Director, Child Support Division, has determined that for the first five year period this section, as proposed, is in effect, there will be no fiscal implications for state or local government because the repeal of these rules imposes no additional burden on anyone.

Mr. Baldwin has also determined that the proposed amendments will substantially expedite the processing of license suspension cases by eliminating the extensive holding periods for exceptions to the proposed decisions, while still permitting the respondent sufficient opportunity for redress through rehearings and appeals. Mr. Baldwin has determined that the proposed repeals will not have an adverse economic effect on small businesses because the repeal of these rules imposes no additional burden on anyone.

Comments may be submitted to Samuel T. Jackson, Child Support Division, Office of the Administrative Law Judge, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, Austin, Texas 78711-2017, mail code 039, (512)460-6397

The proposed repealed sections are under the Family Code, Chapter 232, Suspension of License for Failure to Pay Child Support or Comply with Subpoena, § 232.004(d), which provides that a proceeding in a case filed with the Title IV-D agency under this chapter is governed by the contested case provisions of Chapter 2001, Government Code.

The Family Code, Chapter 232, is affected by the repealed sections.

§55.210. Proposal for Decision.
§55.211. Exceptions and Replies to Exceptions to Proposal for 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.

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TRD-200000220
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
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For further information, please call: (512) 463-2110

TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 17. MARKETING AND DEVELOPMENT DIVISION

Subchapter B. LIVESTOCK EXPORT FACILITIES

4 TAC §17.31

The Texas Department of Agriculture (the Department) proposes amendments to Chapter 17, Subchapter B, §17.31, concerning Livestock Export Facilities. The amendments to §17.31(k) are proposed to increase administrative efficiency and expedite livestock processing at export facilities by eliminating delayed billing of export pen fees.

Mr. Bill Breese, Assistant Commissioner for Producer 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 enforcing or administering the sections.

Mr. Breese 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 will be the expedited processing and handling of livestock at the department's

export facilities. Users of the facilities will be better informed about the fee payment process and therefore, will be better prepared to efficiently complete transactions with personnel at the department's export facilities. There will not be an effect on micro-businesses or small businesses and to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mr. Bill Breese, Assistant Commissioner 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 amendments are proposed under the Texas Agriculture Code (the Code) §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §146.021, which provides the department with the authority to receive and hold for processing animals transported in international trade and to establish and collect reasonable fees for yardage, maintenance, feed, medical care, and other necessary expenses incurred in the course of processing those animals.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 146, Subchapter B.

§17.31. Operation of Livestock Export Facilities.

(a)-(j) (No change.)

(k) [~~Except as provided in this subsection,~~] Fees [~~fees~~] are due and payable at the conclusion of each permitted transaction. [~~time the services are rendered. When deemed necessary to operate more efficiently and to reduce administrative costs, the department may establish accounts with users of the facilities whereby such users may be billed on a delayed basis. Delayed billing shall be denied to any user who has previously defaulted in payment of fees to the department.~~] Payment by cash, certified check, or money order may be required of any user whose previous payment by check has been returned due to insufficient funds. Users who are in default of payment to the facilities may be denied use of the facilities until such time as all outstanding fees have been paid in full. For purposes of this section, a permitted transaction may include the exportation of one or more loads of livestock through the department's facilities by one or more consignors during a one-week period.

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-200000234
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 463-4075

TITLE 7. BANKING AND SECURITIES

Part 4. TEXAS SAVINGS AND LOAN DEPARTMENT

Chapter 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

Subchapter B. PROFESSIONAL CONDUCT

7 TAC §80.10

The Texas Savings and Loan Commissioner (the "Commissioner") proposes to amend §80.10 of the regulations (the "Regulations") that implement the Mortgage Broker License Act, *Finance Code*, Chapter 156 (the "Act"). The amendment would provide an additional prohibition on false, misleading, or deceptive practices related to knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a mortgage loan.

The Act, which became effective on September 1, 1999, requires all mortgage brokers and loan officers, except for those specifically exempt, to be licensed by January 1, 2000. The Act imposes certain standards of professional conduct and requirements on the activities of individuals licensed under the Act.

The Regulations were published in the *Texas Register* on October 15, 1999, in proposed form prior to their adoption. During the course of receiving comments on the Regulations, the Commissioner received a number of comments addressing that portion of the Regulations addressing false, misleading, or deceptive practices. The Commissioner initially proposed a provision in §80.10 that would prohibit a Mortgage Broker or Loan Officer from making or brokering a loan with term that clearly exceeded the applicant's documented ability to pay. Numerous concerns were expressed by commenters about this provision.

When the regulations were initially proposed and published for comment, there was a provision that it would be deemed a false, misleading or deceptive practice to make knowingly a loan which exceed the applicant's document capacity to pay. This proposed provision generated a significant number of concerns and negative comments, and it was omitted from the final regulation. However, an alternative to address this concern was formulated and gave rise to this proposed additional provision.

In discussions with mortgage brokers regarding the Commissioner's concern about loans that exceed a borrowers ability of pay, it became clear that with the review and underwriting by lenders that exists in the mortgage origination process, it would be difficult for a broker to get a loan approved that exceeded the borrower's ability to pay without some misrepresentation as to the borrower's financial status. Based on this information, the Commissioner elected to delete the proposed prohibition from the final regulations and offer a new proposed provision that focused on the submission of false or misleading information to investors in connection with loan files.

Such a practice might be done with or without the knowledge or participation of the loan applicant. Even in instances where the loan applicant knew that the practice was occurring, the loan applicant might not fully understand the ramifications of such actions. Among the possible ramifications of this practice to the mortgage loan applicant are the potential for criminal sanctions, the possibility of obtaining a mortgage loan that is in excess of the applicant's actual ability to repay, the possibility that discovery of such falsification will disrupt the processing of the loan application or jeopardize its approval, and the possibility that the mortgage broker will use the loan applicant's

participation in such activity to gain undue leverage over the applicant.

For these reasons, it was deemed appropriate to add a new paragraph to the list of activities that would constitute false, misleading, or deceptive practices. It is believed that including this paragraph will protect loan applicants, prevent obvious abuses, and protect the mortgage lending/investing industry, which looks to the mortgage brokerage industry to provide accurate and reliable information in connection with mortgage loan applications.

The proposed prohibition would apply only to "knowing" participation in the submission of false or misleading information and the proposed prohibition includes a materiality provision to make it clear that false or misleading information which is of a *de minimis* nature and does not affect the outcome of the loan approval process does not constitute a prohibited activity. For example, the omission of an inconsequential obligation or the submission of approximate rather than precise loan balance, under certain circumstances, would not constitute a violation of this proposed rule.

The proposed prohibition would include submission of false or misleading information of a material nature to "any person" in connection with the decision to make or approve a mortgage loan. This would include another broker, an investor or the ultimate lender.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the amendment as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this amendment.

Mr. Pledger estimates that, for the first five years the proposed amendment is in effect, the public will benefit from having this added to the proscribed practices of Mortgage Brokers and Loan Officers. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the amendment.

Comments on the proposed amendment may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD@tsld.state.tx.us.

The proposed amendment is to expand upon previously adopted 7 TAC §80.10 which implements §156.102(b) of the Act, authorizing the Commissioner to adopt rules to prohibit false, misleading, or deceptive practices by mortgage brokers and loan officers.

The proposed amendment implements Subtitle E of the *Finance Code*; §156.102(b) is affected by the amendment.

§80.10. Prohibition on false, misleading, or deceptive practices.

No Mortgage Broker or Loan Officer may:

(1) knowingly misrepresent his or her relationship to a Mortgage Applicant or any other party to an actual or proposed Mortgage Loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a Mortgage Applicant's applying for or obtaining a Mortgage Loan;

(3) disparage any source or potential source of Mortgage Loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a Mortgage Loan.

(5) [~~(4)~~] as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a Mortgage Loan in which the Mortgage Broker or Loan Officer retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) [~~(5)~~] recommend or encourage default or delinquency or continuation of an existing default or delinquency by a Mortgage Applicant on any existing indebtedness prior to closing a Mortgage Loan which refinances all or a portion of such existing indebtedness;

(7) [~~(6)~~] induce or attempt to induce a party to a contract to breach the contract so the person may make a Mortgage Loan or;

(8) [~~(7)~~] engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

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 January 13, 2000.

TRD-200000210
James L. Pledger
Commissioner
Texas Savings and Loan Department
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 475-1350

Subchapter H. SAVINGS CLAUSE

7 TAC §80.19

The Texas Savings and Loan Commissioner proposes to add a new subchapter to the regulations ("Regulations") which implement the Mortgage Broker License Act, *Finance Code*, §156 (the "Act") through the adoption of Subchapter H, containing a new section, §80.19, Savings Clause.

This new section, added at the informal suggestion of the Office of the Attorney General, would make it clear that if for any reason any section of the Regulations is found to be illegal or invalid, such illegality or invalidity will not affect the remaining provisions of the Regulations.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the new section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this subsection.

Mr. Pledger estimates that, for the first five years the proposed section is in effect, the public will benefit from having this added to the proscribed practices of Mortgage Brokers and Loan Officers. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the new section.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD@tsld.state.tx.us.

The new section is proposed under §156.102 of the *Finance Code*, which authorizes the commissioner to adopt rules necessary to ensure compliance with the intent of the Act.

There are no other articles, codes or statutes that are affected by this section. .

§80.19. Savings Clause.

If any portion or provision of this Chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder hereof, all of which shall remain in full force and effect.

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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James L. Pledger
Commissioner
Texas Savings and Loan Department
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For further information, please call: (512) 475-1350

TITLE 19. EDUCATION

Part 7. STATE BOARD FOR EDUCATOR CERTIFICATION

Chapter 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) proposes amendments to Subchapter S, §§230.551 - 230.555, 230.559, 230.560 and the repeal of §§230.556-230.558, concerning Educational Aide Certificate. The title of Subchapter S is amended from "Paraprofessional Certification" to " Educational Aide Certificate". The SBEC also proposes an amendment to Subchapter U, §230.601, concerning Assignment of Public School Personnel. The SBEC also proposes amendments to Subchapter Y, §230.801, concerning Definitions.

The proposed amendments and repeals are necessary to accomplish the following:

Remove the Educational Secretary Certificate from the inventory of available certificates.

Delete the requirements for assignment to the position of educational secretary.

Remove the educational secretary from the list of positions defining an educator.

Make applicants for the educational aide certificate subject to the same general requirements for issuance of a certificate as all other educators.

The effect of the proposed amendments will be to eliminate certification for educational secretaries.

The Texas Education Code authorizes the Board to certify public school educators. Since educational secretaries are not educators, the Board has no authority to certify educational secretaries.

SBEC will no longer issue certificates for educational secretaries. Individuals already certified as educational secretaries will keep their certificates, but the certificates will no longer be necessary for employment as an educational secretary.

In formulating these amendments, the Board considered the recommendations of its Advisory Committee on Educator Certificates, which recommended elimination of educational secretary certificates. Before the rule was proposed, the Board considered to the public testimony of representatives of the Texas Educational Secretaries Association (TESA), which favored continued certification of educational secretaries. But in reviewing the relevant provisions of the Education Code, the Board decided SBEC lacked proper authority to regulate educational secretaries.

Barry Alaimo, Director of Administrative and Financial Operations, SBEC, has determined that for the first five-year period the rules are in effect there will be no new fiscal implications as a result of enforcing or administering the rules as proposed. Based on the $30 fee collected for issuance of the Educational Secretary certificate, the Board generated approximately $168,270 in fee revenue (5,609 certificates) between September 1, 1997, and August 31, 1998.

Mr. Alaimo also has determined that for each year of the first five years the rules are in effect the benefit to the public of not requiring educational secretaries to be certified is increased administrative efficiency and flexibility in selection and assignment of such personnel by local school officials. The Board will comply with its statutory authority to regulate only educators. District will be free to establish qualifications for educational secretaries that meet individual district needs. Individuals serving in those positions will save the $30 application fee.

Comments on the proposals may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas, 78701-2603.

Subchapter S. EDUCATIONAL AIDE CERTIFICATE [~~PARAPROFESSIONAL CERTIFICATION~~]

19 TAC §§230.551 - 230.555, 230.559, 230.560

The amendments are proposed under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification to propose rules that specify the classes of certificates offered.

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

§230.551. Policy.

Each person employed in Texas public schools as an educational aide [~~or educational secretary~~] must be certified according to [~~the certification~~] requirements [~~or standards for each position~~] established by the State Board for Educator Certification.

§230.552. Procedures in General.

(a) School district administrators have the authority and responsibility to determine the number of educational aides

[~~paraprofessionals~~] and level of job performance desired for the operation of the school district's program. They are also responsible for preparing accurate job descriptions for each assignment, classifying each assignment, and filling these assignments with individuals certified [~~qualified personnel~~] according to this subchapter.

[~~(b) All paraprofessional certificates shall be permanent.~~]

(b) [~~(c)~~] An appropriate certificate shall be issued to a qualified individual who is recommended by the [~~an~~] employing superintendent or designee and who meets the requirement of this subchapter [~~other authorized representative of the district~~] . The school district shall submit the following materials to the SBEC:

(1) a[~~an accurately~~] completed application and recommendation for an educational aide certificate [~~or educational secretary~~] ; and

(2) the designated fee.

(c) [~~(d)~~] An individual with [~~paraprofessional~~] experience in other states must have that experience verified on a teacher service record when he or she is employed in a Texas school district.

(d) An applicant for an educational aide certificate is subject to the provisions in §230.413(b)(1)-(5) of this chapter (relating to General Requirements).

§230.553. Certification Requirements for Educational Aide I.

An applicant for an educational aide I certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate; and

(2) have experience working with students or parents as approved by the employing superintendent. Experience may be work in church related schools, day camps, youth groups, private schools, licensed day-care centers, or similar experience. [~~; and~~]

[~~(3) be recommended by the employing superintendent.~~]

§230.554. Certification Requirements for Educational Aide II.

An applicant for an educational aide II certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate;

(2) have satisfied one of the following requirements:

(A) have two creditable years of experience, as defined in Subchapter Y of this chapter (relating to Definitions), as an educational aide I; or

(B) have a minimum of 15 semester hours of college credit with some emphasis on child growth and development or related subject areas; or

(C) have demonstrated proficiency in a specialized skill area as determined by the local school district; and

(3) have experience working with students or parents as approved by the employing superintendent. [~~; and~~]

[~~(4) be recommended by the employing superintendent.~~]

§230.555. Certification Requirements for Educational Aide III.

An applicant for an educational aide III certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate;

(2) have satisfied one of the following requirements:

(A) have three creditable years of experience, as defined in Subchapter Y of this Chapter (relating to Definitions), as either an educational aide I or II; or

(B) have 30 semester hours of college credit with some emphasis on child growth and development or related subject areas; and

(3) have experience working with students or parents as approved by the employing superintendent. [~~; and~~]

[~~(4) be recommended by the employing superintendent~~]

§230.559. Assignments in Specialized Areas.

Each person employed as an educational aide must [~~a paraprofessional shall be required to~~] hold an educational aide [~~a paraprofessional~~] certificate. An educational aide [~~A paraprofessional~~] assigned to a specialized area, such as vocational education, special education, and title programs, shall meet the eligibility requirements assigned to that area; however, no certification beyond an educational aide [~~a paraprofessional~~] certificate will be required for assignment in a specialized area.

§230.560. Role Descriptions.

School districts shall use the following guidelines to assign educational aides [~~and secretaries~~].

(1) An educational aide I: is assigned and performs routine tasks under the direction and supervision of a certified teacher or teaching team; releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating; helps the teacher with clerical operations; helps the teacher supervise students in routine movement from one recreational activity to another; helps supervise the playground, bus, and lunchroom; helps the teacher prepare and use instructional media; duplicates instructional materials for teachers; performs classroom clerical operations under the supervision of a certified teacher; or performs equivalent activities determined by the local school district.

(2) An educational aide II: is assigned and performs tasks under the general supervision of a certified teacher or teaching team; releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating; helps the teacher prepare and use instructional materials; conducts drills and exercises as directed by the teacher; helps administer and score objective measurement instruments; helps the teacher work with individual students and groups; duplicates materials; records grades and attendance; prepares instructional aids, including displays and mockups; assists with play area activities; helps operate and use educational media; assists with testing routines; works with individual students in drills and exercises; conducts group drills and exercises; assists students with programmed or precise units of instruction; or performs equivalent activities determined by the local school district.

(3) An educational aide III: performs and assumes responsibility for tasks under the general guidance of a certified teacher or teaching team; releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating; helps the teacher implement methodology and use instructional media to yield an educational environment for all students; assists the teacher with instructional activities; works with individuals or groups of students in a variety of educational experiences; relieves the teacher of selected exercises and instructional drills with students; or performs equivalent activities determined by the local school district.

[~~(4) An educational secretary I: performs assigned routine clerical tasks under the direction and supervision of professional staff; performs general office tasks such as routine filing; as directed,~~

~~maintains records, such as attendance, student transcripts, reports, stencils, letters, and documents; operates office equipment; issues consumable teaching and office supplies; maintains supply inventory; performs other duties as assigned at the file clerk level; or performs equivalent activities determined by the local school district.]~~

~~[(5) An educational secretary II: performs assigned clerical tasks under the general supervision of professional personnel; performs tasks such as the functions of an educational secretary I; takes dictation in shorthand or other forms of speedwriting; operates electronic transcription equipment; schedules appointments, conferences, and interviews; assumes some limited supervisory functions; performs other duties assigned at this level, such as bookkeeping operations; or performs equivalent activities determined by the local school district.]~~

~~[(6) An educational secretary III: under the general guidance of professional personnel, performs and assumes responsibility for clerical/secretarial tasks, including preparation of correspondence, reports, requisitions, and administration and district calendars; makes routine decisions according to established priorities and policies; accepts responsibility for making office reports and supervising the office operations; is capable of fulfilling the functions of an educational secretary I and II; performs other duties assigned at the level of an educational secretary III, which may include establishing and maintaining fiscal accounts, maintaining payroll, and attending to insurance matters; operates technical business machines; or performs equivalent activities determined by the local school district.]~~

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-200000255
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 469-3011

19 TAC §230.556 - 230.558

(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 Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification to propose rules that specify the classes of certificates offered.

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

§230.556. Certification Requirements for Educational Secretary I.
§230.557. Certification Requirements for Educational Secretary II.
§230.558. Certification Requirements for Educational Secretary III.

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-200000256
Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3011

Subchapter U. ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

19 TAC §230.601

The amendments are proposed under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification to propose rules that specify the classes of certificates offered.

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

§230.601. Assignment of Public School Personnel

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

(f) A public school employee must have the appropriate credentials for his or her current assignment specified in the charts in this section, unless the appropriate permit has been issued under Subchapter Q of this chapter (relating to Permits).
Figure: 19 TAC §230.601(f)

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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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3011

Subchapter Y. DEFINITIONS

19 TAC §230.801

The amendments are proposed under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification to propose rules that specify the classes of certificates offered.

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

§230.801. Definitions

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

(1) (No change.)

(2) "Educator," consistent with the Texas Education Code (TEC), §5.001(5) and §21.003(a)–Any person who is required to hold a certificate issued by the State Board for Educator Certification, including teachers, teacher interns or teacher trainees, librarians, edu-

cational diagnosticians, educational aides [~~or secretaries~~], administrators, and counselors.

(3)-(9) (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 January 14, 2000.

TRD-200000258
Pamela B. Tackett
Executive Director
State Board of Educator Certification
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 469-3011

TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 1. TEXAS BOARD OF HEALTH

The Texas Department of Health (department) proposes the repeal of §1.2 and amendments to §§1.1, and 1.3 - 1.8 concerning procedures and policies of the Board of Health (board).

Specifically the sections address the purpose of the sections, organization of the board, powers and duties of the board, meetings of the board, actions requiring board approval, the commissioner of health, and press and public relations. The repeal of the section on membership of the board is proposed in order to delete language which is redundant of state law.

Government Code, §2001.039 requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 1.1 - 1.8 have been reviewed and the department has determined that the reasons for adopting these sections, other than §1.2 on membership of the board, continue to exist; however, the language of the sections should be updated and language that is redundant of state law should be deleted. The language is redundant of state law found in the Health and Safety Code, Chapters 11 and 12 relating to appointments of the chair and vice-chair of the board, advisory committees appointed by the board, meetings of the board, and reimbursement of expenses of board members; Open Meetings Act, Texas Government Code, Chapter 551 relating to meetings of governmental bodies; and Texas Civil Statutes, Article 6252-31 relating to dissenting votes in board meetings. In addition to clarifying language throughout the sections, §§1.4, 1.6, and 1.7 are amended to conform with House Bill 2641, enacted by the 76th Legislature. This law establishes new relationships among the Health and Human Services Commission, the Board of Health, and the Commissioner of Health (commissioner). Section 1.5(e) is added to state that time limits may be established for public comments or testimony at board and committee meetings.

The department published a Notice of Intention to Review the sections in the *Texas Register* (23 TexReg 9075) on September 4, 1998. No comments were received by the department on these sections.

Susan K. Steeg, General Counsel, has determined that for each year of the first five years the repeal and amended sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

Ms. Steeg has determined that for each year of the first five years the repeal and amended sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be improvement of the language to make the sections more readable for the public and the deletion of language that is redundant of state law. There will be no effect on small businesses or micro-businesses because the sections only govern the board, the department and the commissioner. There are no economic costs to persons who are required to comply with the sections as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Susan K. Steeg, General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7236. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Subchapter A. PROCEDURES AND POLICIES

25 TAC §§1.1, 1.3 - 1.8

The amendments are proposed under the Health and Safety Code, Chapters 11 and 12 which allow the board to adopt rules relating to advisory committees and board meetings and §12.001 which provides the board with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect the Health and Safety Code, Chapter 12; Government Code, Chapter 531, and Government Code, §2001.039.

§1.1. Purpose.

The purpose of this subchapter [~~these sections~~] is to establish requirements concerning the organization of the Board of Health, (board) [~~the~~] policies and procedures which the board will follow in implementing the duties imposed by law on the board, and the related responsibilities of the commissioner of health.

§1.3. Organization of the Board of Health

(a) Chair and vice-chair. [~~The governor, no later than September 1 of each odd-numbered year, shall designate one board member as chair and one member as vice-chair.~~]

(1) The chair shall preside at all Board of Health (board) [~~board~~] meetings, call special meetings of the board, and provide for [~~give~~] timely notice of a special meeting to each member. Meetings are described further in §1.5 of this title (relating to Meetings of the Board of Health).

(2) (No change.)

[~~(b) Committees.~~]

(b) [~~(1)~~] Board of Health [~~health~~] committees.

(1) The board may establish [~~appoint~~] standing and special committees consisting of board members to expedite the

board's work. The committees will be working extensions of the board.

(2) The chair may appoint board members to serve on any [~~board~~] committee [~~for a specific purpose if the chair determines that an appointment is necessary~~].

[~~(2) Advisory committees.~~]

[~~(A) The board may appoint advisory committees to assist the board in developing public health rules, policies and procedures, and to assist the Department of Health in providing public health services.~~]

[~~(B) The board shall adopt rules covering the composition, duration, procedures, and expenses of the advisory committees.~~]

§1.4. General Powers and Duties of the Board of Health.

(a) The powers and duties of the Board of Health (board) under this section are subject to the authority of the Health and Human Services Commission (commission) under Government Code, Chapter 531 and the memorandum of understanding between the commission and the board.

(b) [~~(a)~~] The Health and Safety Code provides that the board [~~Board of Health~~] was established to better protect and promote the health of the people of the State of Texas and have general supervision and control over all matters relating to the health of the people of the State of Texas.

(c) [~~(b)~~] The board, in discharging its legal responsibilities as the Texas Department of Health's (department) governing body, shall establish rules, policies, and procedures, which shall provide the commissioner of health with the authority and direction to administer the department's services, programs, and activities.

(d) [~~(c)~~] The board may delegate or assign to the commissioner, or to the person acting as commissioner in the commissioner's absence, any power or duty imposed by law on the board, including the authority to issue final orders and make decisions; however, the board may not delegate to the commissioner the power or duty to adopt rules.

(e) [~~(d)~~] The board shall supervise the commissioner's administration and enforcement of federal and state health laws and implementation of the powers and duties delegated or assigned by the board or by the commission to the commissioner.

§1.5. Meetings of the Board of Health.

[~~(a) The board shall meet in the city of Austin or in other places determined by the board.~~]

[~~(b) The board shall meet at least once each calendar quarter on dates determined by the board and shall hold special meetings at the call of the chair. The chair shall give timely notice to each member of any special meeting.~~]

(a) [~~(c)~~] All meetings of the Board of Health shall comply with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

[~~(1) The department shall post notice of each meeting with the secretary of state's office at least seven days prior to the date of the meeting. The notice shall specify the date, time, subject(s) of the meeting.~~]

[~~(2) Special rules exist for a meeting which needs to be convened in a case of emergency or urgent public necessity.~~]

[~~(A) A case of emergency or urgent public necessity is limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action.~~]

[~~(B) The department shall post notice of a meeting involving an emergency or urgent public necessity with the secretary of state at least two hours before the meeting is convened.~~]

(1) [~~(3)~~] All meetings shall be open to the public, except for executive sessions [~~which are discussed in paragraph (4) of this subsection~~]. All or any part of the public meeting may be recorded by any person in attendance by means of tape recorder, video camera, or any other means of sonic or visual reproduction. The chair will determine the location of any such equipment and the manner in which the recording is conducted, provided that the determination does not prevent or unreasonably impair camera coverage or tape recording.

[~~(4) Executive sessions are closed meetings of the board which may be held only as expressly authorized by the Open Meetings Act (Act). Persons who may attend and subjects which may be discussed are described in the Act.~~]

(2) [~~(5)~~] The board must have a quorum present to convene a meeting and to conduct official business. A quorum of the board is four members.

(b) [~~(6)~~] The board shall conduct a meeting in accordance with Robert's Rules of Order, latest edition, unless there are rules or statutes that require otherwise.

(c) [~~(7)~~] An affirmative vote by a majority of the board membership present and voting is required for the adoption of a rule, policy, or procedure.

[~~(8)~~ During a meeting, a board member may dissent against any board action and may enter a written statement of such dissent into the official minutes of the meeting.]

(d) [~~(9)~~] The board shall keep official minutes of the meetings as required by the Open Meetings Act. The Office of the Board of Health shall prepare [~~prepares~~] the minutes, the board must approve [~~approves~~] them, and the chair and vice-chair must sign them. Before the board approves them, the minutes shall be [~~are~~] sent to each member for review, comment, or correction prior to approval. The official minutes of all board meetings are kept in the Office of the Board of Health and are available for public review as authorized by the Open Meetings Act.

[~~(10)~~ Board members, in performing official duties, shall receive no fixed salary but shall be paid compensatory per diem and reimbursed for meals, lodging, and transportation in accordance with the General Appropriations Act.]

(e) The chair of the board may limit each person presenting public comments or public testimony on any agenda item to a certain number of minutes by announcing the period when comments or testimony are given. The chair of each board committee may also set time periods for comments or testimony given at committee meetings.

§1.6. Actions Requiring Board Approval.

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

(e) Of those appointments made by the commissioner, the following shall be subject to the approval of the board:

(1) the executive deputy and deputy commissioners of the department;

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

(f) (No change).

(g) Other actions. The board may approve any other action by the commissioner or the department where the approval of the board is required by law, delegated by the commissioner of the Health and Human Services Commission, or requested by the commissioner.

§1.7. Commissioner of Health.

(a) The powers and duties of the commissioner of health under this section are subject to the authority of the Health and Human Services Commission (commission) under Government Code, Chapter 531 and the memorandum of understanding between the commissioner of health and the commissioner of the Health and Human Services Commission. The commissioner of health, as the executive director [~~head~~] of the Texas Department of Health (department), shall perform the duties delegated and assigned by the Board of Health (board), the commissioner of the Health and Human Services Commission, and state law. [~~Subject to §1.6 of this title (relating to Actions Requiring Board Approval), the board conducts all department business through the commissioner.~~]

(b) The commissioner of health shall:

(1) administer and enforce federal and state health laws applicable to the department by issuing orders, making decisions, awarding and executing contracts, and implementing the duties delegated or assigned to the commissioner of health by the board and the commissioner of the Health and Human Services Commission;

(2) administer and implement department services, programs, and activities, maintain professional standards within the department, and represent the department as its chief executive. To accomplish this goal, the commissioner of health is authorized to hire and supervise personnel, establish appropriate organization, acquire suitable administrative, clinical, and laboratory facilities, [~~and~~] obtain sufficient financial support, provide for the operation of the department, and further delegate to departmental personnel duties delegated or assigned by the board and the commissioner of the Health and Human Services Commission;

(3)-(5) (No change.)

§1.8. Press and Public Relations.

(a) Prior to each Board of Health meeting, copies of the [~~preliminary~~] agenda shall be sent to the Capitol press corps, governor's office, Office of the Secretary [~~secretary~~] of State [~~state~~], and Legislative Budget Board.

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

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

Filed with the Office of the Secretary of State, on January 14, 2000.

TRD-200000295
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 458-7236

25 TAC §1.2

(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 Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Health and Safety Code, Chapters 11 and 12 which allow the board to adopt rules relating to advisory committees and board meetings and §12.001 which provides the board with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 12; Government Code, Chapter 531, and Government Code, §2001.039.

§1.2. Membership.

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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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

Chapter 97. COMMUNICABLE DISEASES

Subchapter F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)

25 TAC §97.141

The Texas Department of Health (department) proposes an amendment to §97.141, concerning the addition of hepatitis C training to the counseling course currently offered by the department, raising the fee charged for the course, and allowing for a waiver of the fee in certain circumstances. The changes are made to comply with Chapter 823 of the 76th Legislature, 1999, which added Health and Safety Code, Chapter 93, Education and Prevention Program for Hepatitis C.

Rose M. Brownridge, M.D., Acting Chief, Bureau of HIV and STD Prevention, has determined that for each year of the first five year period the amended section is in effect, there will be fiscal implications as a result of enforcing or administering the section as proposed. The fee for taking the course will increase the revenue to the state by approximately $6,300 per year. This revenue will be used by the department to fund the development and teaching of the additional curriculum required by the new law. It is estimated that the costs to the department to administer the new provisions will equal the estimated revenue increases. The authorizing statutes direct the department to set the fee in an amount necessary to cover the costs of providing the course. Local governments who are not under a current contract with the Bureau of HIV and STD Health Resources Division will incur the cost of the course fee in the amount of $300.

Rose M. Brownridge, M.D., Acting Chief, Bureau of HIV and STD Prevention, has also determined that for each year of the first five year period the amended section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be increased knowledge on the part of those persons providing hepatitis C counseling. Those who complete the course will have more information relating to the special needs of persons with positive hepatitis C test results, including the importance of early intervention and treatment and recognition of psychosocial needs. The HIV counseling course has not been utilized by micro- businesses or small business. Therefore, there is no anticipated cost to micro-businesses or small businesses. The only cost to individuals will be to those who wish to take the course at their own expense. The anticipated cost to such individuals is the course fee of $300. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Mr. Jeffery Seider, Policy Unit Manager, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin Texas, 78756, (512) 490-2505. Comments will be accepted for 30 days following the date of publication in the *Texas Register*.

The amendment is proposed under Health and Safety Code §85.087, which requires the board to set a fee for the training of HIV counselors; §85.016, which allows the department to adopt rules to implement this requirement; Health and Safety Code §93.003 which requires the board to set a fee for the training of hepatitis C counselors; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The proposed amendment affects Health and Safety Code §§85.087 and 93.003.

§97.141. Fee To Cover the Cost of Providing the Human Immunodeficiency Virus (HIV) Counseling and Testing Course.

(a) Purpose. The purpose of this section is to implement the provisions of the Health and Safety Code, §85.087 and §93.003 [~~Communicable Disease Prevention and Control Act, §§85.081-85.089~~], which require [~~requires~~] that the Texas Department of Health (department) develop and offer a training course for persons providing HIV and/or hepatitis C counseling, and authorizes the department to charge a [~~reasonable~~] fee for the course.

(b) Content. The training course shall include information relating to HIV risk reduction and to the special needs of persons with positive HIV and/or Hepatitis C test results[~~, including the importance of early intervention and treatment and recognition of psychosocial needs~~]. The department's Bureau of HIV and STD Prevention sets the content. Detailed information about the course may be obtained from the Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756- 3199.

(c) Fee.

(1) The fee will be $300 [~~$150~~] for each participant whose affiliation is with an entity that does not contract with the department. The Bureau of HIV and STD Prevention may waive the fee according to established internal procedures.

(2) Fees shall be made payable to the Texas Department of Health. All fees are non-refundable and must be received by the department prior to participation in the course. The accepted [~~Accepted form~~] forms of payment are [~~shall include~~] cashiers check or money order. No other form of payment will be accepted.

(d) Notice. Notice of the training courses will be announced through correspondence to contractors and other appropriate entities. [~~Detailed information about the course can be obtained from the Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.~~]

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 January 14, 2000.

TRD-200000282
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 458-7236

Chapter 133. HOSPITAL LICENSING

Subchapter C. OPERATIONAL REQUIREMENTS

25 TAC §133.45

The Texas Department of Health (department) proposes an amendment to §133.45 concerning voluntary paternity establishment services in hospitals. The amendment adds new subsection (e) relating to voluntary paternity establishment services. Hospitals licensed by the department that handle the birth of newborns will be required to provide voluntary paternity establishment services in accordance with the section as a condition of licensure.

Federal law found at 42 United States Code §666(a)(5) requires that each state establish certain procedures concerning paternity establishment services. The United States Department of Health and Human Services has adopted regulations relating to the establishment of paternity. The regulations are found at 45 Code of Federal Regulations §302.70(a)(5)(iii) and §303.5(g). The federal regulations require that all private and public birthing hospitals participate in the voluntary paternity establishment services program. The Texas Legislature enacted Acts 1999, 76th Legislature, Chapter 556, (Senate Bill 368) which amends the Family Code and the Health and Safety Code to incorporate the requirements concerning paternity establishment which are required by federal law.

This amendment requires hospitals to comply with Health and Safety Code, §192.012 relating to record of acknowledgment of paternity and the rules of the Office of the Attorney General found at Title 1, Texas Administrative Code, Chapter 55, Subchapter J (relating to Voluntary Paternity Establishment). There is no express entity identified in federal or state law, federal regulations, or the rules of the Office of the Attorney General which would be responsible for insuring enforcement of the law and rules. Therefore, this amendment is being added to the hospital licensing rules as a condition of licensure in order to ensure a hospital's compliance with the law and rules and to provide a mechanism for sanctioning a hospital that fails to comply with the requirements relating to voluntary paternity establishment services. Compliance will be determined during licensing surveys and inspections.

Jann Melton-Kissel, Bureau of Licensing and Compliance, has determined that for each year of the first five years the proposed section is in effect, there may be no fiscal implications for state government as a result of enforcing or administering this section. Since the department already surveys and inspects hospitals for compliance with other laws and rules, this section will not place any additional fiscal burden on the department. There may be fiscal implications for state or local governments which operate a hospital that handles the birth of newborns as a result of enforcing or administering this section. If the hospital fails to comply with the section, the department may assess an administrative penalty against the hospital. In addition to the administrative penalties, additional costs may be incurred by the hospital defending the imposition of the penalty or any other sanction. There are no means of determining those costs at this time since penalties and costs may vary greatly. The department does not anticipate that it will sanction a hospital solely for noncompliance with the amendment. Although there will be additional costs relating to the operation of the paternity establishment services, those costs are a result of the application of the federal and state law and the rules of the Office of the Attorney General, not because of this department's rule. Therefore, those implications are not discussed here.

Ms. Melton-Kissel 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 will be to ensure compliance by hospitals that handle the birth of newborns with requirements relating to voluntary paternity establishment services. There will be an effect on small businesses which are hospitals that handle the birth of newborns if the hospital is sanctioned by the department for noncompliance. That effect is the same as described above for state or local governments operating hospitals. There will be economic costs to persons who are required to comply with the section as proposed if the hospital is sanctioned for noncompliance with the rule. Those costs are the same as described above for state or local governments operating hospitals. There will be no effect on local employment.

Comments may be submitted to Tom Camp, Chief, Bureau of Licensing and Compliance, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-4503. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §241.026, which requires the Texas Board of Health (board) to adopt and enforce rules to further the purposes of the Texas Hospital Licensing Law including rules relating to hospital services relating to patient care and compliance with other state and federal laws affecting the rights of patients; the Family Code, §160.215 which allows the department to adopt rules to implement the requirements relating to acknowledgment or denial of paternity; the Health and Safety Code, §191.003, which allows the board to adopt necessary rules relating to vital statistics; and the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapters 191, 192 and 241, and the Family Code, Chapter 160.

§133.45. Miscellaneous Policies and Protocols.

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

(e) A hospital that handles the birth of newborns must provide voluntary paternity establishment services in accordance with:

(1) the Health and Safety Code, §192.012, Record of Acknowledgment of Paternity; and

(2) the rules of the Office of the Attorney General found at 1 Texas Administrative Code, Chapter 55, Subchapter J (relating to Voluntary Paternity Establishment).

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 January 10, 2000.

TRD-200000145
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 458-7236

Chapter 135. AMBULATORY SURGICAL CENTERS

The Texas Department of Health (department) proposes amendments to §135.3 and §135.21, the repeal of §§135.25 - 135.27, and new §§135.25 - 135.29, concerning ambulatory surgical centers. Specifically, the sections cover fees, inspections, complaints, reporting of incidents, confidentiality, emergency suspension, and administrative penalties.

The amendment to §135.3 increases the initial and renewal license fees from $1,000 to $2,000 to cover the increased cost to the department of conducting on-site licensing inspections of ambulatory surgical centers every three years in accordance with Health and Safety Code §243.006(b), as amended by Senate Bill (SB) 1249, 76th Legislature, 1999. The amendment to §135.21 adds new language to implement the amendment to Health and Safety Code §243.006(b) concerning the on-site licensing inspections of ambulatory surgical centers licensed by the department and certified under Title XVIII of the Social Security Act once every three years while the center maintains the certification.

The repeal of §§135.25 - 135.27 will allow the reorganization in a more appropriate order the sections within Subchapter A. New §§135.25 - 135.26 contain proposed new language to incorporate legislative mandates; new §§135.27 - 135.29 contain the adopted language in existing §§135.25 - 135.27, with minor corrections to the text.

New §135.25 will implement certain provisions of SB 1249, 76th Legislative, 1999. Senate Bill 1249 (SB) amended Health and Safety Code, Chapter 243 by adding §243.0115 which grants the department authority to issue an emergency order to suspend a license issued under this chapter.

New §135.26 will implement House Bill 2085, Article 3, which amends Health and Safety Code, Chapter 243, by adding §§243.015 and 243.016, relating to administrative penalties for ambulatory surgical centers. These sections set forth standard language developed by the Sunset Advisory Commission regarding the imposition of an administrative penalty on a person who violates Chapter 243 or a rule adopted under that chapter;

the amount of the penalty; the report and notice of a violation and penalty; the penalty to be paid or hearing requested; a hearing; decision by the commissioner; options following a decision to pay or appeal; stay enforcement of the penalty; collection of penalty; decisions by the court; the remittance of penalty and interest; and release of bond.

New §135.27 incorporates requirements from existing §135.25 relating to complaints. New §135.28 incorporates requirements from the existing §135.26 relating to reporting of incidents. New §135.29 incorporates the requirements of existing §135.27 relating to confidentiality.

Jann Melton-Kissel, Bureau of Licensing and Compliance, has determined that for the first five years the proposed sections are in effect, there will be fiscal implications as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue as a result of increased licensing fees. The revenue generated by increased licensing fees will cover increased costs of administering the survey process; conducting on-site licensing inspections and quality assurance review of survey documents; and administrative support. The proposed license fee increase for initial and renewal licenses from $1,000 to $2,000 is estimated to generate revenues of $1,022,500 for fiscal years 2000-2004 as follows: For FY 2000, $53,500; FY 2001, $225,000; FY 2002, $236,000; FY 2003, $248,000; and FY 2004, $260,000. In regard to the new administrative penalty section, approximately one-third of cases recommended for enforcement go through the hearing process, with the remaining cases resolved through other means. The department estimates a baseline of five violations in fiscal year 2000 at a rate of $3,000 per violation. The estimated annual growth in the number of incidents is 10% and collection rate is 75% each fiscal year, 2000-2004. The estimated total generated in administrative penalties collected and deposited in the state treasury to the credit of the general revenue fund for the same period would be $68,683 as follows: FY 2000, $11,250; FY 2001, $12,375; FY 2002, $13,613; FY 2003, $14,974; and FY 2005, $16,471. There will be no effect on local government.

Ms. Melton-Kissel 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 will be to ensure compliance by ambulatory surgical centers with the new legislative mandates. There will be no cost to small/micro businesses (except ambulatory surgical centers) to comply with the sections as proposed. A small or micro-business that is an ambulatory surgical center will incur the cost of an additional $1,000 for initial and annual renewal license fees. An ambulatory surgical center will incur the cost of an administrative penalty only if an administrative penalty is assessed against the center. Administrative penalties may not exceed $1,000 for each violation for each day a violation continues; the maximum penalty is $5,000 for each violation. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Cecil Jones, Program Director, Consolidated Programs, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register.*

Subchapter A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.3, 135.21, 135.25 - 135.29

The amendments and new sections are proposed under Health and Safety Code, Chapter 243, the Texas Ambulatory Surgical Center Licensing Act; Health and Safety Code, §243.006, regarding inspections; Health and Safety Code, §243.007, regarding fees; Health and Safety Code, §243.0115 which grants the department authority to issue an emergency suspension order to suspend a license; Health and Safety Code, §§243.015 and 243.016, which provides the department with the authority to assess administrative penalties against an ambulatory surgical center for violation of Chapter 243 and the rules adopted thereunder; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

These sections affect Health and Safety Code, Chapters 12 and 243.

§135.3. Fees.

(a) The Texas Board of Health has established the following schedule of fees for licensure as an ambulatory surgical center:

(1) initial license fee - $2,000 [~~$1,000~~].

(2) renewal license fee - $2,000 [~~$1,000~~].

(b)-(e) (No change.)

§135.21. Inspections.

(a) The department shall conduct an initial on-site inspection to determine if either the federal conditions of participation under Title XVIII or the standards for licensing set forth in these sections are being met. Prior to an inspection, the surveyor shall notify the applicant in writing of the date and time of the inspection. The department will evaluate the ASC on a standard-by-standard basis before the first annual license is issued, unless waived in accordance with §135.20(b)(7) of this title (relating to Application and Issuance of License for Initial Applicants). An on-site inspection for ASCs that are not participating in the Title XVIII Program may be conducted for license renewal. An on-site inspection for ASCs that participate in the Title XVIII Program may be conducted once every three years. An on-site inspection may be conducted if a change of ownership of a licensed ASC has occurred, if the ASC has not demonstrated compliance with standards, or if complaints against an ASC have been received by the department.

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

§135.25. Emergency Suspension.

(a) The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) An emergency suspension is effective immediately without a hearing or notice to the license holder.

(c) On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Government Code, Chapter 2001.

§135.26. Administrative Penalties.

(a) Imposition of penalty.

(1) The department may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or order adopted under this chapter.

(2) A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(3) A proceeding to impose the penalty is considered to be a contested case under Government Code, Chapter 2001.

(b) Amount of penalty.

(1) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed $5,000.

(2) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(c) Report and notice of violation and penalty.

(1) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person alleged to have committed the violation not later than 90 days following the survey exit date.

(2) The notice must include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty based upon the factors listed in subsection (b)(2) of this section; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Penalty to be paid or hearing requested.

(1) Within 20 days after the date the person receives the notice under subsection (c) of this section, the person in writing may:

(A) accept the determination and recommended penalty of the department; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health (commissioner) or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(e) Hearing.

(1) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings (SOAH).

(2) As mandated by Health and Safety Code, §243.015(i), the SOAH shall promptly set a hearing date and give written notice of the time and place of the hearing to the person.

(A) An administrative law judge of the SOAH shall conduct the hearing.

(B) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(f) Decision by commissioner.

(1) Based on the findings of fact, conclusions of law, and proposal for a decision made by the administrative law judge under subsection (e)(2) of this section, the commissioner by order may find that a violation occurred and impose a penalty, or may find that a violation did not occur.

(2) The commissioner or the commissioner's designee shall give notice of the commissioner's order under paragraph (1) of this subsection to the person alleged to have committed the violation in accordance with Government Code, Chapter 2001. The notice must include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(g) Options following decision: pay or appeal. Within 30 days after the date an order of the commissioner under subsection (f)(1) of this section that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) appeal the penalty by filing a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(h) Stay of enforcement of penalty.

(1) Within the 30-day period prescribed by subsection (g) of this section, a person who files a petition for judicial review may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the commissioner by certified mail.

(2) If the commissioner receives a copy of an affidavit under paragraph (1)(B) of this subsection, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with Health and Safety Code, §243.016(c), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(i) Collection of penalty.

(1) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(2) As provided by the Health and Safety Code §243.016(d), the attorney general may sue to collect the penalty.

(j) Decision by court. A decision by the court is governed by Health and Safety Code, §243.016(e) and (f), and provides the following.

(1) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(2) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(k) Remittance of penalty and interest and release of supersedeas bond. The remittance of penalty and interest is governed by Health and Safety Code, §243.016(g) and provides the following.

(1) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgement becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(2) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(3) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(l) Release of bond. The release of supersedeas bond is governed by Health and Safety Code, §243.016(h) and provides the following.

(1) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(2) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

§135.27. Complaints.

(a) The department or its authorized representative may enter the premises of an ASC during normal business hours as necessary to assure compliance with the Act and these sections. The investigation may be conducted on-site, unannounced or announced, or may be investigated by phone or mail.

(b) All licensed ambulatory surgical centers are required to provide the patient and his/her guardian at time of admission a written statement identifying the department as the responsible agency for ambulatory surgical centers complaint investigations. The statement shall inform persons to direct complaint to the Texas Department of Health, Health Facility Licensing and Compliance Division, 1100 West 49th Street, Austin, Texas 78756, telephone (888) 973-0022. Complaints may be registered with the department by phone or in writing. A complainant may provide his/her name, address, and phone number to the department. Anonymous complaints may be registered. All complaints are confidential.

(c) The department will evaluate all complaints against all ambulatory surgical centers. Only those allegations determined to be relevant to the Act will be authorized for investigation.

(d) Conduct of the investigation will include, but not be limited to:

(1) a conference prior to commencing the on-site inspection for the purpose of explaining the nature and scope of the inspection between the department's authorized representative and the person who is in charge of the ASC:

(2) inspection of the ASC;

(3) inspection of medical and personnel records, including administrative files, reports, records, or working papers;

(4) an interview with any willing recipient of ambulatory surgical center services at the ASC or in the recipient's home if the recipient grants permission in writing;

(5) an interview with any health care practitioner or ambulatory surgical center personnel who care for the recipient of ambulatory surgical services;

(6) a conference at the conclusion of the inspection between the department's representative and the person who is in charge of the ASC.

(A) The department's representative will identify any records that have been reproduced.

(B) Any records that are removed from an ASC (other than those reproduced) shall be removed only with the consent of the ASC.

(e) The department will review the report of the investigation and determine the validity of the complaint.

(f) Following the on-site inspection for those ASCs that do not participate under Title XVIII, the provisions of §135.21(b) , (c) , (d)(1), (d)(4), (d)(6), and (d)(7) of this title (relating to Inspections) will apply.

§135.28. Reporting of Incidents.

(a) Certain situations and incidents that occur in an ASC shall be reported directly to the department.

(b) Upon learning of the incident, the ambulatory surgical center shall report the incident to the Texas Department of Health in Austin. A written letter of explanation with supporting documents must be mailed to the department within 30 days of the incident. The mailing address is Texas Department of Health, Health Facility Licensing and Compliance Division, 1100 West 49th Street, Austin, Texas 78756.

(c) Reportable incidents include the following.

(1) Complications that result in the death of a patient must be reported.

(2) Complications that result in emergency transfer of a patient to a hospital from the ambulatory surgical center must be reported.

(3) Reports of any fire or other damage sustained at the ASC must be reported.

(d) Any theft of drugs and /or diversion of controlled drugs shall be reported to the local police agency, the State Board of Pharmacy, the Texas Department of Public Safety, and/or the Drug Enforcement Administration, and the Texas Department of Health.

§135.29. Confidentiality.

Request for information and access to records are governed by the Texas Open Records Act, Texas Government Code, Chapter 552.

(1) A written request for information is required. The request must sufficiently identify the information requested.

(2) The department may ask for a clarification if it cannot reasonably understand a particular request.

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

Filed with the Office of the Secretary of State, on January 14, 2000.

TRD-200000279
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 458-7236

25 TAC §§135.25 - 135.27

(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 Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Health and Safety Code, Chapter 243, the Texas Ambulatory Surgical Center Licensing Act; Health and Safety Code, §243.006, regarding inspections; Health and Safety Code, §243.007, regarding fees; Health and Safety Code, §243.0115 which grants the department authority to issue an emergency suspension order to suspend a license; Health and Safety Code, §§243.015 and 243.016, which provides the department with the authority to assess administrative penalties against an ambulatory surgical center for violation of Chapter 243 and the rules adopted thereunder; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

These sections affect Health and Safety Code, Chapters 12 and 243.

§135.25. Complaints.
§135.26. Reporting of Incidents.
§135.27. Confidentiality.

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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General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

Chapter 137. BIRTHING CENTERS

Subchapter C. ENFORCEMENT

The Texas Department of Health (department) proposes the repeal of §137.23, and proposes new §§137.23 - 137.25, concerning birthing centers. Specifically, the sections cover emergency suspension, administrative penalties, and complaints.

The repeal of §137.23 is only to allow the reorganization in a more appropriate order the sections within Subchapter C which contain proposed new language to incorporate legislative mandates. The adopted language in §137.23 is moved to proposed new §137.25. New §137.23 will implement certain provisions of Senate Bill 1232, 76th Legislature, 1999, which grants the department the authority to issue an emergency order to suspend a license.

New §137.24 will implement House Bill 2085, Article 4, which amends Health and Safety Code, Chapter 244 by adding §244.015 and §244.016 relating to administrative penalties for birthing centers. These sections set forth standard language developed by the Sunset Advisory Commission regarding the imposition of an administrative penalty on a person who violates Chapter 244 or a rule adopted under that chapter; the amount of the penalty; the basis for the amount of the penalty; the report and notice of a violation and penalty; the penalty to be paid or hearing requested; a hearing; decision by the commissioner; options following a decision to pay or appeal; stay enforcement of the penalty; collection of penalty; decision by the court; the remittance of penalty and interest; and release of bond. Section 137.24 incorporates the language of §244.015 and §244.016.

New §137.25 includes the adopted language of §137.23 that is proposed for repeal. In addition, a new subsection (i) is added to implement Health and Safety Code §244.0105, of Senate Bill 1232, 76th Legislature, 1999. The subsection sets forth standard language developed by the Sunset Advisory Commission authorizing that a person may file a complaint with the department against a birthing center licensed under Health and Safety Code, Chapter 244, and that a person who files a false complaint may be prosecuted under the Penal Code. Section §137.25(i) incorporates the language of §244.0105.

Jann Melton-Kissel, Bureau of Licensing and Compliance, has determined that for the first five years the proposed sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. The estimated total generated in administrative penalties collected and deposited in the state treasury to the credit of the general revenue fund for fiscal years 2000-2004 would be $98,345 as follows: FY 2000–$2,625; FY 2001–$20,625; FY 2002–$22,687; FY 2003–$24,956; and FY 2004–$27,452. There will be no effect on local government.

Ms. Melton-Kissel 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 will be to ensure compliance by birthing centers with the new legislative mandates. There will be no significant cost to small/micro

businesses to comply with the sections as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed unless a person operates a birthing center against which an administrative penalty is assessed. Administrative penalties may not exceed $1,000 for each violation for each day a violation continues; the maximum penalty is $5,000 for each violation. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Cecil Jones, Program Director, Consolidated Programs, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6646. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

25 TAC §137.23

(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 Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Health and Safety Code, Chapter 244, which authorizes the department to issue an emergency suspension order to suspend a license; which provides the department with the authority to assess administrative penalties against a birthing center for violation of Health and Safety Code, Chapter 244 and the rules adopted thereunder; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The repeal affects Health and Safety Code, Chapters 12 and 244.

§137.23. Complaints.

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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Susan K. Steeg
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Texas Department of Health
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25 TAC §§137.23 - 137.25

The new sections are proposed under Health and Safety Code, Chapter 244, which authorizes the department to issue an emergency suspension order to suspend a license; which provides the department with the authority to assess administrative penalties against a birthing center for violation of Health and Safety Code, Chapter 244 and the rules adopted thereunder; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The new sections affect Health and Safety Code, Chapters 12 and 244.

§137.23. Emergency Suspension.

(a) The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) On written request of the license holder, the department shall conduct a hearing not earlier than the seventh day or later than the 10th day after the date the notice of the emergency suspension is sent to the license holder to determine if the emergency suspension is to take effect, to be modified, or to be rescinded.

(c) The hearing and any appeal are governed by the department's rules for a contested case hearing and Government Code, Chapter 2001.

§137.24. Administrative Penalties.

(a) Imposition of penalty.

(1) The department may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or an order adopted under this chapter.

(2) A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(3) A proceeding to impose the penalty is considered to be a contested case under Government Chapter, Code 2001.

(b) Amount of penalty.

(1) The amount of the penalty may not exceed $1,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed $5,000.

(2) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(c) Report and notice of violation and penalty.

(1) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person alleged to have committed the violation not later than 90 days following the survey exit date.

(2) The notice must include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty based on the factors listed in subsection (b)(2) of this section; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Penalty to be paid or hearing requested.

(1) Within 20 days after the date the person receives the notice under subsection (c), the person in writing may:

(A) accept the determination and recommended penalty of the department; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of health (commissioner) or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(e) Hearing.

(1) If the person requests a hearing, the commissioner or the commissioner's designee shall refer the matter to the State Office of Administrative Hearings (SOAH).

(2) As mandated by Health and Safety Code, §244.015(i), the SOAH shall promptly set a hearing date and give written notice of the time and place of the hearing to the person.

(A) An administrative law judge of the SOAH shall conduct the hearing.

(B) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(f) Decision by commissioner.

(1) Based on the findings of fact, conclusions of law, and proposal for a decision made by the administrative judge under subsection (e)(2) of this section, the commissioner or the commissioner's designee by order may find that a violation occurred and impose a penalty; or find that a violation did not occur.

(2) The commissioner or the commissioner's designee shall give notice of the commissioner's order under paragraph (1) of this subsection to the person alleged to have committed the violation in accordance with Government Code, Chapter 2001. The notice must include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(g) Options following decision: pay or appeal. Within 30 days after the date the order of the commissioner or commissioner's designee under subsection (f) of this section that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) appeal the penalty by filing a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(h) Stay of enforcement of penalty.

(1) Within the 30-day period prescribed by subsection (g) of this section , a person who files a petition for judicial review in accordance with subsection (g) of this section may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the commissioner by certified mail.

(2) If the commissioner receives a copy of an affidavit under paragraph (1)(B)(ii) of this subsection, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with Health and Safety Code §244.016(c), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(i) Collection of penalty.

(1) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(2) As provided by Health and Safety Code, §244.016(d), the attorney general may sue to collect the penalty.

(j) Decision by court. A decision by the court is governed by Health and Safety Code, §244.016(e), and provides the following:

(1) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(2) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(k) Remittance of penalty and interest and release of supersedeas bond. The remittance of penalty and interest is governed by Health and Safety Code, §244.016(g) and provides the following.

(1) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(2) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(3) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(l) Release of bond. The release of supersedeas bond is governed by Health and Safety Code, §244.016(h) and provides the following:

(1) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(2) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

§137.25. Complaints.

(a) In accordance with §137.42 of this title (relating to Disclosure Requirements), all licensed centers are required to provide a client, and her guardian if the client is a minor or if guardianship is required, at the time of the initial visit, with a written statement that complaints relating to the center may be registered with the Director, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (888) 973-0022.

(b) Complaints may be registered with the department by telephone or in writing at the address listed in subsection (a) of this section. A complainant may provide his or her name, address, and phone number to the department. Anonymous complaints may be registered if the complainant provides sufficient information.

(c) The department will evaluate all complaints received.

(d) A complaint containing allegations which are a violation of the Act or this chapter will be investigated by the department.

(e) A department representative (surveyor) may enter the premises of a center at reasonable times as necessary to assure compliance with the Act and this chapter. The department is not required to notify the applicant or licensee prior to a complaint investigation.

(f) If the department determines that the complaint does not come within the department's jurisdiction, the department shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(g) The department shall inform in writing a complainant who identifies himself or herself by name and address of the following information:

(1) the receipt of the complaint;

(2) whether the complainant's allegations allege potential violations of the Act or this chapter warranting an investigation;

(3) whether the complaint will be investigated by the department; and

(4) whether and to whom the complaint will be referred.

(h) The department shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(i) A person may file a complaint with the department against a birthing center licensed under this chapter. A person who files a false complaint may be prosecuted under the Penal Code.

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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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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Subchapter D. OPERATIONAL AND CLINICAL STANDARDS FOR THE PROVISION AND COORDINATION OF TREATMENT AND SERVICES

25 TAC §137.55

The Texas Department of Health (department) proposes an amendment to §137.55 concerning voluntary paternity establishment services in birthing centers. The amendment adds new subsection (1) relating to the voluntary paternity establishment services. Birthing centers licensed by the department will be required to provide voluntary paternity establishment services in accordance with the section as a condition of licensure.

Federal law found at 42 United States Code §666(a)(5) requires that each state establish certain procedures concerning paternity establishment services. The United States Department of Health and Human Services has adopted regulations relating to the establishment of paternity. The regulations are found at 45 Code of Federal Regulations §302.70(a)(5)(iii) and §303.5(g). The federal regulations require that all private and public birthing hospitals participate in the voluntary paternity establishment services program. The Texas Legislature enacted Acts 1999, 76th Legislature, Chapter 556, (Senate Bill 368) which amends the Family Code and the Health and Safety Code to incorporate the requirements concerning paternity establishment which are required by federal law and to require birthing center administrators to comply.

This amendment requires birthing centers to comply with Health and Safety Code, §192.012 relating to record of acknowledgment of paternity and the rules of the Office of the Attorney General found at Title 1, Texas Administrative Code, Chapter 55, Subchapter J (relating to Voluntary Paternity Establishment). There is no express entity identified in federal or state law, federal regulations, or the rules of the Office of the Attorney General which would be responsible for insuring enforcement of the law and rules. Therefore, this amendment is being added to the birthing center rules as a condition of licensure in order to ensure a birthing center's compliance with the law and rules and to provide a mechanism for sanctioning a birthing center that fails to comply with the requirements relating to voluntary paternity establishment services. Compliance will be determined during licensing surveys and inspections.

Jann Melton-Kissel, Bureau of Licensing and Compliance, has determined that for the first five years the proposed section is in effect, there may be no fiscal implications for state or local governments as a result of enforcing or administering this section. Since the department already surveys and inspects birthing centers for compliance with other laws and rules, this section will not place any additional fiscal burden on state government.

Ms. Melton-Kissel 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 will be to ensure compliance by birthing centers with requirements relating to voluntary paternity establishment services. There will be an effect on small businesses which are birthing centers if the birthing center is sanctioned by the department for noncompliance. There will be economic costs to persons who are required to comply with the section as proposed if the

birthing center is sanctioned for noncompliance with the rule. The effect on small businesses and the economic costs to persons will be the payment of any administrative penalty or the costs of defending against the imposition of any sanction. There are no means of determining those costs at this time since penalties and costs may vary greatly. Although there will be fiscal implications relating to the operation of paternity establishment services, those implications arise because of the application of the federal and state law and the rules of the Office of the Attorney General, not because of this department's rule. Therefore, those implications are not discussed here. There will be no effect on local employment.

Comments may be submitted to Tom Camp, Chief, Bureau of Licensing and Compliance, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-4503. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §244.009, which requires the Texas Board of Health (board) to adopt rules under the Texas Birthing Center Licensing Act including rules relating to the provision and coordination of services; the Family Code §160.215 which allows the department to adopt rules to implement the requirements relating to acknowledgment or denial of paternity; the Health and Safety Code, §191.003, which allows the board to adopt necessary rules relating to vital statistics; and the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapters 191-192 and 244, and the Family Code, Chapter 160.

§133.55. Other State and Federal Compliance Requirements.

(a)-(k) (No change.)

(l) A birthing center must provide voluntary paternity establishment services in accordance with:

(1) the Health and Safety Code, §192.012, Record of Acknowledgment of Paternity; and

(2) the rules of the Office of the Attorney General found at 1 Texas Administrative Code, Chapter 55, Subchapter J (relating to Voluntary Paternity Establishment).

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 January 10, 2000.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

Chapter 143. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§143.2, 143.16, 143.17, 143.19, 143.20

The Texas Department of Health (department) proposes amendments to §§143.2, 143.16, 143.17, 143.19 and 143.20 concerning the regulation and certification of persons performing radiologic procedures. The amendments cover definitions; dangerous or hazardous procedures; mandatory training programs for non-certified technicians, hardship exemptions and alternative training requirements.

The proposed amendments will add a definition for pediatric; add pediatric radiography to the list of dangerous or hazardous procedures; change the total number of hours needed to complete the mandatory training program for non-certified technicians; add a new hardship exemption for x-ray equipment operators in a physician's office who are participating in a new alternate training program; make changes to the existing training requirements for podiatric medical assistants; and add alternate training to be completed under a Texas Medical Association approved program for x-ray operators in a physician's office.

Jann Melton-Kissel, Director of Budgets, Health Care Quality and Standards, has determined that for each of the first five years the sections will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Ms. Melton-Kissel has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections as proposed will be to assure that the public is protected from the harmful effects of radiation used for medical purposes by regulating persons who perform radiologic procedures.

There could be a varying impact on micro businesses, small businesses, and hospitals which are required to comply with the sections. Pediatric radiography, excluding extremities, is being identified as a hazardous procedure which may only be performed by a practitioner, medical radiologic technologist, or by a registered nurse or physicians assistant who has completed specific training. If the businesses do not already employ or engage such persons to perform pediatric radiography, then there may be additional costs. However, a practitioner may perform the procedure and the rules allow pediatric radiography to be performed with the appropriate documentation if an emergency condition exists resulting in no additional cost.

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The anticipated effect on local employment will be that only qualified persons will be allowed to perform a dangerous or hazardous radiologic procedure.

Comments on the proposal may be submitted to Jeanette Hilsabeck, Administrator, Medical Radiologic Technologist Certification Program, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3183, (512) 834-6617; FAX (512) 834-6677. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under the Medical Radiologic Technologist Certification Act, §601.052, Texas Occupations Code, which provides the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; and the Texas Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

These proposed amendments implement the Medical Radiologic Technologist Certification Act, Title 3, Texas Occupations Code, Chapter 601.

§143.2. Definitions.

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

(1)-(37) (No change.)

(38) Pediatric–A person within the age range of fetus to age 18 or otherwise required by Texas Law, when the growth and developmental processes are generally complete. These rules do not prohibit a practitioner taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

(39) [~~(38)~~] Physician–A person licensed by the Board of Medical Examiners (BME) to practice medicine.

(40) [~~(39)~~] Physician assistant–A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(41) [~~(40)~~] Podiatrist–A person licensed by the Board of Podiatry Examiners (BPE) to practice podiatry.

(42) [~~(41)~~] Portable x-ray equipment–Equipment designed to be hand-carried.

(43) [~~(42)~~] Practitioner–A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons for medical reasons.

(44) [~~(43)~~] Radiation–Ionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures.

(45) [~~(44)~~] Radiologic procedure–Any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions in humans (including diagnostic x-rays or nuclear medicine procedures) or the cure, mitigation, treatment, or prevention of disease in humans that achieves its intended purpose through the emission of ionizing radiation.

(46) [~~(45)~~] Registered nurse–A person licensed by the Board of Nurse Examiners (BNE) to practice professional nursing.

(47) [~~(46)~~] Registry–A list of names and other identifying information of non-certified technicians.

(48) [~~(47)~~] Sponsoring institution–A hospital, educational, or other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(49) [~~(48)~~] Supervision–Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(50) [~~(49)~~] Temporary certification, general or limited–An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(51) [~~(50)~~] TRCR–Texas Regulations for the Control of Radiation, 25 Texas Administrative Code, Chapter 289 of this title (relating to Texas Regulations for the Control of Radiation). The regulations are available from the Standards Branch, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189 (phone 1-512-834-6688).

§143.16. Dangerous or Hazardous Procedures.

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

(c) Hazardous procedures identified. Unless otherwise noted, the list of hazardous procedures which may only be performed by a practitioner or MRT are:

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

(10) pediatric radiography, excluding extremities, unless performed by an RN or physician assistant who is appropriately trained, as set out in §143.17 or §143.20 of this title. If an emergency condition exists which threatens serious bodily injury, protracted loss of use of a bodily function or death of a pediatric patient unless the procedure is performed without delay, a pediatric radiographic procedure is also excluded. The emergency condition must be documented by the ordering practitioner in the patient's clinical record and the record must document that a regularly scheduled MRT, LMRT, RN or physician assistant is not reasonably available to perform the procedure.

(d)-(j) (No change.)

§143.17. Mandatory Training Programs for Non-Certified Technicians.

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

(d) Training requirements. As of July 1, 2000, in [~~In~~] order to successfully complete a program, each student must complete the following minimum training:

(1) prerequisite recommended for admission include high school graduation or general equivalency diploma; certified medical assistant; graduation from a medical assistant program; or six months full time patient care experience, otherwise determined by the practitioner.

(2) [~~(1)~~] courses which are fundamental to diagnostic radiologic procedures:

(A) radiation safety and protection for the patient, self and others–22 [~~40~~] classroom hours;

[~~(B) radiographic equipment, including safety standards, operation and maintenance–25 classroom hours;~~]

(B) [~~(C)~~] image production and evaluation–24 [~~25~~] classroom hours; and

(C) radiographic equipment maintenance and operation–16 classroom hours which includes at least six hours of quality control, darkroom, processing, and Texas Control of Radiation Regulations; and

[~~(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects–eight classroom hours; and~~]

(3) [~~(2)~~] one or more of the following units of applied human anatomy and radiologic procedures of the:

(A) skull (five views: Caldwell, Townes, Waters, AP/PA, and lateral)–10 [~~16~~] classroom hours;

(B) chest–eight [~~15~~] classroom hours;

(C) spine–eight [~~20~~] classroom hours;

(D) abdomen, not including any procedures utilizing contrast media–four [~~eight~~] classroom hours;

(E) upper extremities–14 [~~15~~] classroom hours;

(F) lower extremities–14 [15] classroom hours; and/or

(G) podiatric–five classroom hours.

(e)-(i) (No change.)

§143.19. Hardship Exemptions.

(a) (No change.)

(b) General.

(1) (No change.)

(2) The applicant must demonstrate a hardship as described in subsection (c) (5) [(4)] of this section in employing an MRT, LMRT, or NCT.

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

(c) Required application materials.

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

(5) The application shall be accompanied by one or more of the following:

(A)-(J) (No change.)

(K) if the applicant employs for the purpose of performing radiologic procedures, a person who is registered to take the Texas Medical Association's Physician's Training Program for X-ray Operators approved by the department under §143.20 of this title, [had at least one year of experience performing radiologic procedures and who, by July 31, 1999, has completed four hours of study in radiation safety and protection in a program approved by the department under §143.9 of this title, §143.11 of this title (relating to Continuing Education Requirements), §143.17 of this title, or §143.20 of this title, or provided by a person who meets the requirements of §143.9(h)(1)-(2) of this title, excluding the phrase, "the subjects assigned." This subparagraph shall expire October 1, 1999.] a sworn affidavit indicating the [The] following items must be submitted:

(i) [a sworn affidavit indicating] the name(s), date of birth, and social security number of the person(s) who will perform radiologic procedures pursuant to this hardship exemption;

(ii) the name of the facility the training program will be taken, the date the program will begin and the anticipated date of completion [a sworn affidavit or other documentation stating the person(s) had at least one year of experience performing radiologic procedures between January 1, 1993, and July 1, 1998];

(iii) the name(s) of the certified medical radiologic technologist instructor meeting the requirements set out in §143.17(c) of this title [an original verification statement, certificate of completion or transcript indicating that the person(s) named in the hardship exemption application has completed or will complete by July 31, 1999, a four-hour course of study in radiation safety and protection. Documentation of completion of the four-hour course of study in radiation safety and protection shall be submitted prior to placement on the department's registry under §143.18 of this title (relating to the Registry of Non-Certified Technicians)];

(iv) the name(s) of the company and the name of the person(s) who will be the designated equipment applications specialist knowledgeable of the specific equipment to be utilized [if the applicant is a practitioner or FQHC, proof that the person(s) was registered in accordance with rules adopted under §2.08 of the Act at the time of application under this section]; and

(v) a list of the anatomical categories to be included in the training. [an acknowledgment that the persons performing radiologic procedures, as an alternative to training, will take and pass the core section of the limited certificate examination, as described in §143.8 of this title (relating to Examinations) covering radiation protection, radiographic equipment operation and maintenance, image production and evaluation, and patient care and management. An examination candidate must pass the examination on or before July 1999. A person who passes the examination described in this clause shall be included on the department's registry under §143.18 of this title. A person listed on the registry is not required to complete the training described in §143.17 of this title or §143.20 of this title. A person who does not pass the examination by the third attempt will be notified by the department that the person may no longer perform radiologic procedures under this hardship exemption. The following shall apply to this hardship exemption and the special examination administered under this clause:]

[(I) the passing score shall be an unsealed 55;]

[(II) a schedule of examinations indicating the dates, locations, fees, examination application procedures, and application deadlines will be provided to the person(s) named on the hardship exemption application as person(s) performing radiologic procedures;]

[(III) a maximum of three examination attempts shall be allowed for each person covered by the hardship exemption;]

[(IV) all examination application fees are non-refundable and must be paid by the examination application deadlines established by the department. A person who applied for a specific examination and who failed to appear for the examination shall forfeit the examination fee, even if notification is made prior to the examination that the person will be unable to take the examination;]

[(V) applications under this hardship exemption may be postmarked up to and including October 31, 1998; and]

[(VI) in no event shall any letters of exemption issued under this subparagraph extend beyond the expiration date of October 1, 1999. If the person(s) performing radiologic procedures does not apply for the examination to be administered on July 1999, the hardship exemption will expire on the examination application deadline which is two months prior to that examination.]

(6)-(7) (No change.)

(d)-(g) (No change.)

§143.20. Alternate Training Requirements.

(a) Purpose. The purpose of this section is to set out the minimum standards for registered nurses (RNs), physician assistants, [and] podiatric medical assistants (PMAs) and x-ray equipment operators in a physician's offices.

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an approved instructor. Distance learning activities and audiovisual teleconferencing may be utilized, provided these include two-way, interactive communications which are broadcast or transmitted at the actual time of occurrence. Appropriate on-site supervision of persons participating in the distance learning activities or teleconferencing shall be provided by the approved training program. No credit will be given for training completed by self-directed study or correspondence. The provisions of this subsection shall not apply to the out of classroom training requirements for podiatric medical assistants and x-ray equipment operators in a physician's offices.

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

(c) (No change.)

(d) Training requirements for registered nurses and physician assistants. A training program preparing RNs and physician assistants to perform radiologic procedures shall be designed to build on the health care knowledge base and skills acquired through completion of an educational program that qualifies the person for licensure as an RN or physician assistant. The training shall consist of:

(1) (No change.)

(2) one or more of the following units of classroom instruction in radiologic procedures:

(A) (No change.)

(B) spine (non-pediatric)–ten [~~10~~] classroom hours;

(C)-(D) (No change.)

(3) (No change.)

(e) Training requirements for podiatric medical assistants PMAs.

(1) In order to successfully complete a program, a PMA must complete the following training:

(A) radiation safety and protection for the patient, self, and others–five [~~ten~~] classroom hours and five out of classroom hours;

(B) radiographic equipment used in podiatric medicine, including safety standards, operation, and maintenance–one [~~three~~] classroom hour [~~hours~~] and two out of classroom hours;

(C) podiatric radiologic procedures, imaging production and evaluation–one [~~five~~] classroom hour [~~hours~~] and four out of classroom hours; and

(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects–one [~~two~~] classroom hour [~~hours~~] and one out of classroom hour.

(2) (No change.)

(3) The out of classroom training hours require successful completion of learning objectives approved by the department as verified by the supervising podiatrist.

(f) Training requirements for an x-ray equipment operator in a physician's offices.

(1) In order to successfully complete a program, a x-ray equipment operator in a physician's office must complete the Texas Medical Association's Physician's Training Program for X-ray Operators.

(2) Successful completion of the x-ray operators training program allows the x-ray operator to perform radiologic procedures only under the instruction or direction of a physician.

(g) [~~(f)~~] Application procedures for training programs. The Texas Department of Health (department) shall use the same process as described in §143.17(e) of this title.

(h) [~~(g)~~] Application materials. The department shall require the same materials as described in §143.17(f) of this title.

(i) [~~(h)~~] Application approval. The department shall use the same process as described in §143.17(g) of this title.

(j) [~~(i)~~] Application processing. The department shall use the same process as described in §143.17(h) of this title.

(k) [~~(j)~~] Renewal. The department shall use the same process as described in §143.17(i) of this title.

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 January 14, 2000.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

Chapter 146. TRAINING AND REGULATION OF PROMOTORAS

25 TAC §§146.1 - 146.10

The Texas Department of Health (department) proposes new §§146.1-146.10 relating to the creation of a voluntary training and regulation program for promotoras or community health workers. These rules are proposed to implement a portion of Chapter 857, 76th Legislature, 1999, creating Health and Safety Code Chapter 46, which creates the voluntary training and regulation program for promotoras or community health workers. Chapter 857 defines promotora or community health worker and outlines the promotora training program and the certification program for promotoras.

Specifically, the new sections are needed to accomplish the following: define the terms in the legislation, discuss the formation and actions of a permanent promotora/community health worker training and certification advisory committee, establish applicability, establish application requirements and procedures, propose the types of certificates and applicant eligibility criteria for promotoras or community health workers, instructors, and sponsoring institutions or training programs, establish the standards for the approval of curricula, describe the process for certificate issuance and renewal, and to establish continuing education requirements.

Concerning §146.1(1) the department would like comments on the department's proposed definition of promotora or community health worker. The proposed definition for promotora or community health worker is derived from the National Community Health Advisor Study, June 1998 which defines the seven core roles of a community health worker or promotora. The department has chosen to use this definition because of its inclusiveness.

Concerning §146.2(f) the department would like comments on the department's proposal to establish a permanent promotora/community health worker training and certification advisory committee. Chapter 857 creates a temporary Promotora Program Development Committee until September 1, 2001 whose function is to study the development of a framework for a promotora development program and to advise the department. The permanent promotora/community health worker training and certification advisory committee would review applications and

recommend to the department qualifying applicants as sponsoring institutions, training instructors, or promotora or community heath workers. The committee would also recommend new or amended rules for the approval of the board.

Concerning §§146.4, 146.5, and 146.6 the department would like comments on application requirements and procedures for promotoras or community health workers, instructors, and sponsoring institutions or training programs.

Concerning §146.7(d), (e), and (f) the department would like comments on applicant eligibility and 146.7(b) regarding special provisions for persons who have performed previous promotora or community health worker services and special provisions for persons who have performed previous service as an instructor to promotoras or community health workers.

Concerning §146.8(b)(1) and (2) the department, in particular, would like comments on core competencies for promotoras and community health workers and the minimum number of clock hours of knowledge and skill-building per core competency.

Concerning §146.10 the department would like comments on continuing education requirements which a promotora or community health worker and instructor must complete to maintain certification.

Donna C. Nichols, MSEd, CHES, Director, Public Health Promotion, has determined that for each year of the first five year period the sections are in effect, there will be no fiscal implication to state or local government as a result of implementing these rules.

Donna C. Nichols, MSEd, CHES, Director, Public Health Promotion, has determined that for each of the first five years the sections are in effect relevant to the Training and Regulation of Promotoras, the public benefit anticipated will be a trained, competent lay community health workforce which can support local community health infrastructure and improve health status of community residents by helping individuals and groups take greater control over their health and their lives. There is no anticipated cost to small businesses or micro businesses since this is a voluntary training and certification program. There are no anticipated costs to persons or employees who are required to comply with the sections as proposed since this is a voluntary training and certification program. There will be no anticipated impact on local employment since this is a voluntary training and certification program.

Comments on the proposal may be submitted to Donna C. Nichols, MSEd, CHES, Director, Public Health Promotion (Suite M-631), Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7405. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The new sections are proposed under Health and Safety Code §46.003, which requires the Texas Board of Health (board) to adopt rules that provide minimum standards and guidelines, for issuance of a certificate to persons who act as promotoras; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The proposed new rules affect Health and Safety Code Chapter 46.

§146.1. Definitions.

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

(1) Administrator–The department employee designated as the administrator of regulatory activities authorized by the Chapter 46 of the Health and Safety Code.

(2) Applicant–A promotora or community health worker who applies to the Texas Department of Health for a certificate of competence, a sponsoring institution or training program who applies to the department to offer training or an instructor who applies to the department to train promotoras or community health workers.

(3) Board–The Texas Board of Health.

(4) Certificate of Competence–A promotora or community health worker certificate issued by the Texas Department of Health.

(5) Committee–The Promotora/Community Health Worker Training and Certification Advisory Committee established by §146.2 of this Chapter.

(6) Department–The Texas Department of Health.

(7) Instructor–An individual approved by the department to provide instruction and training in public health education to promotoras or community health workers in an educational setting.

(8) Instructor certification–An authorization to train or instruct promotoras or community health workers in public health education services.

(9) "Promotora" or "Community Health Worker"–A person who, with or without compensation: provides cultural mediation between communities and health and human service systems; informal counseling and social support; and culturally and linguistically appropriate health education; advocates for individual and community health needs; assures people get the health services they need; builds individual and community capacity; or provides direct health services.

(10) Sponsoring institution or training program–An approved educational, community health, training program or other program or facility that offers or intends to offer promotora or community health worker training or instructor preparation.

(11) Sponsoring institution or training program certification–An authorization to offer promotora or community health worker training or instructor preparation.

§146.2. Promotora/Community Health Worker Training and Certification Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Promotora/ Community Health Worker Training and Certification Advisory Committee.

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to Texas Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to review applications and to recommend to the department qualifying applicants as sponsoring institutions, training instructors or as promotoras or

community health workers. The committee shall also recommend new or amended rules for the approval of the board.

(d) Tasks.

(1) The committee shall advise the board concerning rules to implement standards adopted under Chapter 46 relating to the training and regulation of persons working as promotoras or community health workers.

(2) The committee shall recommend to the department qualifying sponsoring institutions or training programs, instructors, and promotoras or community health workers.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By November 1, 2003, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee or abolished.

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of committee shall include:

(1) two certified promotoras or community health workers or the equivalent;

(2) one public member;

(3) one member from the Texas Higher Education Coordinating Board;

(4) one licensed physician, physician assistant or nurse practitioner who practices in a community setting and has experience in working with promotoras or community health workers;

(5) two higher education faculty who have teaching experience in community health, public health or adult education; and

(6) two members from the Texas Department of Health who have public health program or professional experience in working with promotoras or community health workers.

(g) Terms of office. The term of office each member shall be four years, and may be reappointed.

(1) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(2) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1 of each even-numbered year.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except what a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

§146.3. Applicability.

(a) The purpose of this section is to describe who is eligible for this voluntary training and certification program under Health and Safety Code, Chapter 46.

(b) The provisions of this chapter apply to any promotora or community health worker, and instructor, representing that he or she performs or will perform as a certified promotora or community health worker or, trains or will train promotoras or community health workers respectively. It also applies to any institution or training program that will sponsor or sponsors or provides training programs for promotoras or community health workers, who will expect certification under this chapter.

(c) Nothing in this chapter requires promotoras or community health workers, instructors, sponsoring institutions or training programs to participate in this voluntary training and certification program.

§146.4. Application Requirements and Procedures for Promotoras or Community Health Workers.

(a) Purpose. The purpose of this section is to set out the application procedures for certification of promotoras or community health workers.

(b) Promotora or community health worker certificate of competence.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation on official department forms and submit the required information and documentation electronically or in hard copy to the department.

(2) The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(c) Required application materials. The application form shall contain the following items:

(1) specific personal data, social security number or status, birth date, current and previous promotora or community health worker activity (if applicable), and any educational and training background;

(2) a statement that the applicant understands Health and Safety, Chapter 46 and this chapter and agrees to abide by them;

(3) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;

(4) a statement that the applicant, if issued a certificate, shall return the certificate and identification card(s) to the department upon the expiration, revocation, or suspension of the certificate;

(5) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(6) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;

(7) a statement that the applicant shall advise the department of his or her current mailing address within 30 days of any changes of address;

(8) the dated signature of the applicant certifying the truth of the information submitted; and

(9) the signature of the instructor, sponsoring institution or training program indicating successful completion of the promotora or community health worker training and the date when the training was successfully completed.

(d) Application approval.

(1) The committee shall be responsible for reviewing all applications and recommending promotoras or community health workers to be certified to the administrator.

(2) The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (e) of this section.

(e) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this section;

(B) has not successfully completed an approved competency-based promotora or community health worker training;

(C) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;

(D) has engaged in unprofessional conduct; or

(E) has developed an incapacity, which in accordance with the Americans with Disabilities Act, prevents the practice of promotora or community health worker service with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application;

(3) The applicant whose application has been disapproved under paragraph one of this subsection shall be permitted to reapply after a period of not less than six months from the date of the disapproval and shall submit a current application, the certification fee and proof, satisfactory to the department, of compliance with the then current requirements of this chapter and the provisions of the Act.

(f) Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required:

(1) letter of acceptance of application for certification–30 days.

(2) letter of application deficiency–30 days.

§146.5. Application Requirements and Procedures for Instructors.

(a) Purpose. The purpose of this section is to set out the application procedure for certification of instructors.

(b) Instructor certificate.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation of credentials on official department forms and submit the required information and documentation electronically or in hard copy to the department.

(2) The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(c) Required application materials. The application form shall contain the following items:

(1) specific personal data, social security number or status, birth date, current and previous places of employment, other state licences and certificates held, and educational and training background;

(2) a statement that the applicant understands the Health and Safety Code, Chapter 46 and this chapter and agrees to abide by them;

(3) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;

(4) a statement that the applicant, if issued a certificate, shall return the certificate and identification card(s) to the department upon the expiration, revocation, or suspension of the certificate;

(5) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(6) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;

(7) a statement that the applicant shall advise the department of his or her current mailing address within 30 days of any changes of address;

(8) the dated signature of the applicant certifying the truth of the information submitted; and

(9) the signature of the executive officer of a sponsoring institution or training program which attests to the competence of the instructor.

(d) Application approval.

(1) The committee shall be responsible for reviewing all applications and recommending those to be certified by the administrator.

(2) The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (e) of this section.

(e) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter;

(B) does not have the appropriate training or experience to qualify as an instructor;

(C) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;

(D) has engaged in unprofessional conduct; or

(E) has developed an incapacity, and in accordance with the Americans with Disabilities Act, that prevents the instructor from practicing with reasonable skill, competence, and safety to the public as the result of:

(i) illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application;

(3) The applicant whose application has been disapproved under paragraph one of this subsection shall be permitted to reapply after a period of not less than six months from the date of the disapproval and shall submit a current application satisfactory to the department, of compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 46.

(f) Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required:

(1) letter of acceptance of application for certification–130 days.

(2) letter of application deficiency–30 days.

§146.6. Application Requirements and Procedures for Sponsoring Institutions and Training Programs.

(a) Purpose. The purpose of this section is to set out the application procedures for certification of sponsoring institutions and training programs.

(b) Sponsoring institution or training program certificate.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation of credentials on official department forms and submit the required information and documentation electronically or in hard copy.

(2) The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(c) Required application materials. The application form shall contain the following items:

(1) specific organizational data, current and previous experience with training or sponsoring training for promotoras or community health workers, educational and training qualifications of staff, accrediting information, curricula and collateral materials, workplace assurances, registration policies and procedures for promotoras or community health workers.

(2) a statement that the applicant understands Health and Safety Code, Chapter 46 and this chapter and agrees to abide by them;

(3) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;

(4) a statement that the applicant, if issued a certificate, shall return the certificate(s) to the department upon the expiration, revocation, or suspension of the certificate(s);

(5) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(6) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;

(7) a statement that the applicant shall advise the department of the organization's current mailing address within 30 days of any changes of address; and

(8) the dated signature of the chief executive officer certifying the truth of the information submitted.

(d) Application approval.

(1) The committee shall be responsible for reviewing all applications and recommending those to be certified to the administrator.

(2) The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (e) of this section.

(e) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter; or

(B) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification.

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application;

(3) The applicant whose application has been disapproved under paragraph one of this subsection shall be permitted to reapply after a period of not less than six months from the date of the disapproval and shall submit a current application, the certification fee and proof, satisfactory to the department, of compliance with the

then current requirements of this chapter and the provisions of the Act.

(f) Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required:

(1) letter of acceptance of application for certification–30 days.

(2) letter of application deficiency–30 days.

§146.7. Types of Certificates and Applicant Eligibility.

(a) Purpose. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants.

(1) The Texas Department of Health (department) shall issue promotora or community health worker certificates of competence, instructor certificates, and sponsoring institutions or training program certificates.

(2) Certificates shall be signed by the commissioner of the department and presiding officer of the advisory committee. Identification cards issued to promotoras/community health workers and instructors shall bear the signature of the commissioner.

(3) Any certificate or identification card(s) issued by the department remains the property of the department and shall be surrendered to the department on demand.

(4) A promotora or community health worker and instructor shall carry the original identification card. A sponsoring institution or training program shall display the original certificate at the training or educational site. Photocopies shall not be carried or displayed.

(5) A person certified as a promotora or community health worker shall only allow his or her certificate to be copied for the purpose of verification by employers, professional organizations, and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the administrator in writing or by phone to verify certification.

(6) No one shall display, present, or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(7) No one shall make any alteration on any certificate or identification card issued by the department.

(b) Special provisions for persons who have performed promotora or community health worker services during the three year period, preceding the effective date of these rules Upon submission of the application forms by the practicing promotora or community health worker and upon approval by the department, the department shall issue a certificate of competence to a person who has performed promotora or community health services for not less than 12 consecutive months, as documented on form(s) prescribed by the department.

(c) Special provisions for persons who are nationally certified health education specialists in good standing and for promotoras or community health workers who have acted as supervisors, have experience in performing promotora or community health services and have attended a competency-based training program within the three years from the date these rules are final. Upon submission of the application forms by an instructor or certified health education specialist and upon approval by the department, the department shall issue an instructor certificate to a person who is certified by the National Commission for Health Education Credentialing, Inc. and to a promotora or community health worker who meets the above qualifications.

(d) Minimum eligibility requirements for promotora or community health worker certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of subsection (b) of this section:

(1) attainment of 18 years of age or an eligible and informed minor as determined by the committee;

(2) freedom from physical or mental impairment, in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of clients;

(3) submission of a satisfactory completed application on a form supplied by the department; and

(4) successful completion of an approved competency-based training program.

(e) Minimum eligibility requirements for instructor certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of subsections (c) of this section:

(1) graduation from high school or its equivalent as determined by the sponsoring institution or the training program or six years of continuous service as a promotora or community health worker;

(2) attainment of 18 years of age or an eligible and informed minor as determined by the committee;

(3) attendance at an instructor/trainer program by an approved sponsoring institution or training program;

(4) freedom from physical or mental impairment, which in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of participants; and

(5) submission of a satisfactory completed application on a form supplied by the department.

(f) Minimum eligibility requirements for sponsoring institution or training program certification. The following requirements apply to all institutions or programs applying for certification:

(1) usage of an approved curriculum for promotora or community health worker training, instructor certification and/or for continuing education of promotoras/community health workers and instructors that meets the standards and guidelines established by the department and as set forth in §146.8 of this chapter; and

(2) submission of a satisfactory completed application on a form supplied by the department.

§146.8. Standards for the Approval of Curricula.

(a) Purpose. The purpose of this section is to establish the minimum standards for approval of curricula and programs to train persons to perform promotora or community health worker services and to quality for the certificate of competence.

(b) All curricula to be used and programs developed to train individuals to perform promotora or community health worker services or to act as instructors must:

(1) assure that the eight core competencies, identified in the National Community Health Advisor Study, June 1998 for promotoras or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base are addressed;

(2) include at a minimum five clock hours of knowledge and skill-building per core competency for promotoras or community health workers and include at a minimum 40 clock hours for instructor training;

(3) evaluate and document the acquisition of knowledge and mastery of skills by the individual and the success of the training program according to the performance measures framework established within the National Community Health Advisor Study, June 1998;

(4) be approved by the department and be offered within the geographic limits of the State of Texas;

(5) be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution;

(6) be submitted to the department along with supporting materials in a three-ring binder with all pages clearly legible and consecutively numbered with a table of contents and divided with tabs identified to correspond to the core competencies, including evaluation materials and other programmatic information and assurances required within this section;

(7) provide a list of approved instructors, facilities and locations for the training program;

(8) provide a yearly calendar of scheduled training events by dates, times and locations;

(9) identify the method for recruiting persons to the program;

(10) report the names of individuals to the department who have successfully completed the training program within 30 days of program completion;

(11) maintain an accurate record of each person's attendance and participation for not less than five years;

(12) be live and interactive and directed by an approved instructor; and

(13) focus on the seven core roles of the promotora or community health worker as noted in the definition of promotora or community health worker.

§146.9. Certificate Issuance and Renewals.

(a) Purpose. The purpose of this section is to set out the rules for issuing certificates and certificate renewal.

(b) Issuance of certificates.

(1) Upon approval of the application, the department shall issue the promotora or community health worker, instructor or sponsoring institution or training program a certificate with an expiration date and a certificate number. An identification card shall be included for the promotora or community health worker and the instructor.

(2) The department shall replace a lost, damaged, or destroyed certificate or identification card upon written request.

(c) Certificate renewal. Each promotora or community health worker, instructor and sponsoring institution or training program shall renew the certificate biennially.

(1) Each promotora or community health worker, instructor and sponsoring institution is responsible for renewing the certificate before the expiration date. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal.

(2) Each promotora or community health worker, instructor and sponsoring institution is responsible for completing a renewal form.

(3) The department may not renew the certificate of a promotora or community health worker, instructor or sponsoring institution or training program who is in violation of the Act or this chapter at the time of renewal.

(d) Expired certificates. The department, by certified mail using the last address known, shall attempt to inform each promotora or community health worker, instructor, or sponsoring institution or training program who has not timely renewed a certificate, after a period of more than 10 days after the expiration of the certificate that the certificate has automatically expired. A person or institution or training program whose certificate automatically expires is required to surrender the certificate and identification cards to the department.

(e) Right to inspect. The department reserves the right to inspect facilities and documentation and to monitor sponsoring institutions, training programs, and instructors.

§146.10. Continuing Education Requirements.

(a) Purpose. The purpose of this section is to establish the continuing education requirements which a promotora or community health worker and instructor must complete to maintain certification. The requirements are intended to maintain and improve the quality of professional services provided by promotoras or community health workers and instructors and to keep these individuals knowledgeable of current programs, techniques and practices. Approved sponsoring institutions and/or training programs can offer continuing education opportunities for promotoras or community health workers and instructors.

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period. A promotora or community health worker must complete 16 contact hours of continuing education acceptable to the department during each biennial renewal period. An instructor must complete 16 contact hours of continuing education acceptable to the department during each biennial renewal period.

(1) At least 50% of the required number of hours shall be satisfied by attendance and participation in instructor-directed activities.

(2) No more than 50% of the required number of hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, or a combination thereof which meet the requirements set out in this section.

(3) A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(c) Content. All continuing education activities should provide for the professional growth of the community health worker or promotora and instructor.

(1) At least 50% of the required hours must be skill-based activities which are directly related to promotora or community health worker competencies.

(2) The remaining 50% can be related to new knowledge base or programmatic activity.

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and is offered by an approved sponsoring institution and/or training program.

(e) Reporting of continuing education. Each promotora or community health worker and instructor is responsible for and shall complete and file with the department at the time of renewal a continuing education report form approved by the department listing the title, date and number of hours for each activity for which credit is claimed. The sponsoring institution or training program must provide a list of instructors, promotoras or community health workers who successfully complete continuing education contact hours within 30 days of the continuing education event.

(f) Failure to complete the required continuing education.

(1) An instructor, promotora or community health worker may request a one time only 120-day extension in order to complete the continuing education requirement.

(2) An instructor, promotora, or community health worker who has not corrected the deficiency by the expiration date of the 120-day extension shall be considered as noncompliant with the renewal requirements and may no longer be certified under the expired certificate.

(3) An instructor, promotora or community health worker may take the required training again to become an instructor, promotora or community health worker if deadlines for renewal were not met.

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 January 14, 2000.

TRD-200000297
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 458-7236

Chapter 221. MEAT SAFETY ASSURANCE

Subchapter B. MEAT AND POULTRY INSPECTION

25 TAC §§221.11 - 221.15

The Texas Department of Health (department) proposes amendments to existing §§221.11 - 221.14, and new §221.15 concerning meat and poultry inspection. Sections 221.11 - 221.14 are being proposed with changes, and are open for comment.

Section 221.11 adds the requirements that bison meat or buffalo meat must contain the words bison meat or buffalo meat on the label, as appropriate. Section 221.13 adds new definitions of alternate source food animals, bison, bison meat, buffalo, buffalo meat, commissioner, director, and grant of poultry/rabbit exemption; and requirements have been revised to include poultry/rabbit exemption. Section 221.13 is being amended to include new language under Administrative Penalties, Severity Level V, for any person failing to maintain records of custom operations. In §221.14, new language concerning the labeling of insecticides and rodenticides in or near food areas has been added.

Proposed changes to §§221.11 - 221.14 include new definitions to facilitate understanding of proposed new §221.15, establish the relationship between United States Department of Agriculture (USDA) officials and department officials, and incorporate new provisions required by HB 1145 as passed by the 75th Legislature. Other changes are proposed to clarify intent and to be consistent with changes in USDA regulations.

Pursuant to the Government Code, §2001.039 (formerly known as Rider 167), each state agency is required to review and consider for readoption, each rule adopted by that agency. The sections have been reviewed and the department has determined that reasons for adopting the sections continue to exist.

Proposed new §221.15 concerns rules for inspection of alternate source food animals, such as exotic wild game, quail, rabbits, ostrich, emus, and other related species. The proposed new sections are intended to establish standards for the sanitary handling of meat beginning with the slaughter and dressing operations. Effective control over sanitary dressing procedures is vital to the production of a clean, wholesome and safe product. It is the principal objective of sanitary dressing procedures to remove or clean the hide or skin and to remove the gastrointestinal tract and other internal organs with minimum contamination of the meat. The process is difficult enough in healthy animals. It is more complicated in animals with localized or generalized diseases, many of which are not detected until the dressing operation has been partially or entirely completed. Since inspectional procedures are designed to detect and remove these abnormal conditions and since it is not known with certainty, prior to inspection, all the animals which are affected, sanitary dressing procedures must be designed to eliminate common contact of skinned carcasses during dressing operations. The diseased animal may also pose a serious contamination threat and public health hazard via other tissues and fluids, such as bile, urine, milk and fluids and tissues from the reproductive tract. All diseased tissues and associated fluids (such as pus) must not be allowed to contaminate the product, workers, equipment or environment. When such contamination does occur, by accidental or other means, strict, careful correction must be immediately accomplished. This emphasizes the necessity of the plant and equipment being designed, constructed and arranged so that they are easy to clean. The slaughtering and viscera separation departments, in addition to handling a large volume and variety of clean and unclean materials, are supplied with abundant moisture and warm temperatures. This is ideal for rapid growth of microorganisms; therefore, strict sanitation and orderly handling of the product to ensure rapid chilling are essential.

Dr. Lee C. Jan, Director, Meat Safety Assurance Division, has determined that for each year of the first five-year period the sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

Dr. Jan has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated will be continued assurance of consumer safety by enforcing current USDA regulations and current and new Texas Administrative Code regulations relating to meat and poultry slaughter and processing. There will be no significant cost to micro or small businesses or individuals who are required to comply with these sections as proposed, due to the fact that proposed §221.15 codifies rules under which voluntary inspection of alternate species is currently carried out. There will be no impact on local employment.

Comments on the proposal may be submitted to Lee C. Jan, D.V.M., Director, Meat Safety Assurance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512/719-0205. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments and new section are proposed under the Health and Safety Code, Chapter 433, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 433; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments and new section affect the Health and Safety Code, Chapter 433; Chapter 12; and the Government Code, §2001.039, as passed by the 76th Legislature.

§221.11. Federal Regulations on Meat and Poultry Inspection.

(a) The Texas Department of Health (TDH) adopts by reference the following federal requirements in the Code of Federal Regulations (CFR), as amended:

(1) - (17) (No change.)

(18) 9 CFR, Part 319, "Definitions and standards of identity or composition", TDH adds the following requirements:

(A) products prepared from bison meat must contain the words "bison meat," "North American bison meat" or "Native American bison meat"; and

(B) products prepared from buffalo meat must contain the words "water buffalo meat," or "Asian buffalo meat";

(19) - (31) (No change.)

(32) 9 CFR, Part 381, "Poultry products inspection regulation", except §381.10(a)(3) through §381.10(c);

(33) - (34) (No change.)

(b) (No change.)

§221.12. Meat and Poultry Inspection.

(a) (No change.)

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

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

(3) Alternate source food animals–Animals slaughtered and processed for food that are amenable to inspection under the Texas Meat and Poultry Inspection Act but are not amenable to inspection under the federal meat and poultry inspection acts.

(4) Bison–An animal known by the scientific name Bovidae bison bison, commonly known as the North American prairie bison; or an animal known by the scientific name Bovidae bison athabascae, commonly known as the Canadian woods bison.

(5) Bison meat The meat or flesh of a bison.

(6) Buffalo–An animal known by the scientific name Bovidae bubalus bubalus, commonly known as the Asian Indian buffalo, water buffalo, or caraboa; an animal known by the scientific name Bovidae syncerus caffer, commonly known as the African buffalo or the Cape buffalo; an animal known by the scientific name Bovidae anoa depressicornis, commonly known as the Celebes buffalo; or an animal known by the scientific name Bovidae anoa mindorenis, commonly known as the Philippine buffalo or Mindoro buffalo.

(7) Buffalo meat The meat or flesh of a buffalo.

(8) [~~(3)~~] Change in ownership–

(A) A change in the business organization operating the business which changes the legal entity responsible for operation of the business; or

(B) any change in control of the business; or

(C) any change in ownership of the business which requires a reapplication to the Texas Department of Health for a grant of inspection and/or custom exemption to operate.

(9) Commissioner–Commissioner of Health. The term secretary when used in 9 CFR, for the purposes of this subchapter, shall mean commissioner.

(10) [~~(4)~~] Custom operations–The slaughtering of livestock or the processing of an uninspected carcass or parts thereof for the owner of that livestock animal, carcass, or parts or the selling of livestock, inspected carcasses, or parts to be slaughtered and/or processed by the purchaser on premises owned or operated by the seller for the exclusive use of the purchaser.

(11) [~~(5)~~] Custom processor–A person who prepares meat food products from uninspected livestock carcasses or parts thereof for the owner of those carcasses or parts [~~or sells inspected carcasses or parts to be prepared by the purchaser on premises owned or operated by the seller for the exclusive use of the purchaser~~].

(12) [~~(6)~~] Custom slaughterer–A person who slaughters livestock for the owner of the livestock animal for the exclusive use of the owner of the livestock or sells livestock to be slaughtered by the purchaser on premises owned or operated by the seller, for the exclusive use of the purchaser of the livestock.

(13) [~~(7)~~] Department–Texas Department of Health.

(14) Director– Meat Safety Assurance Division Director. The term Administrator, when used in 9 CFR, Parts 301-417, for the purpose of this section, shall mean director.

(15) [~~(8)~~] Exotic animal–A member of a species of game not indigenous to this state, including an axis deer, nilgai [~~nilga~~] antelope, [~~red sheep,~~] or other cloven hoofed [~~hooved~~] ruminant animal.

(16) [~~(9)~~] Federal regulations–The regulations adopted by reference by the department in §221.11 of this title (relating to Federal Regulations on Meat and Poultry Inspection).

(17) [~~(10)~~] Feral swine–Nondomestic descendants of domestic swine that have either escaped or were released and subsequently developed survival skills necessary to thrive in the wild. Some are out-crossed with "Russian boar."

(18) [~~(11)~~] Game animals–Wild animals that are hunted for food or recreational purposes and for which the hunter must obtain a hunting license from the Texas Parks and Wildlife Department prior to hunting such animals.

(19) [~~(12)~~] Grant of custom exemption–An authorization from the department to engage in a business of custom slaughtering and/or processing livestock for the owner of the livestock for the owner's personal use.

(20) [~~(13)~~] Grant of inspection–An authorization from the department to engage in a business subject to inspection under the Act.

(21) Grant of poultry/rabbit exemption–An authorization from the department to engage in a very low volume business of slaughtering and processing poultry or rabbits of his/her own raising on his/her own property and personally distributing the carcasses and/or parts, provided that the following conditions are met:

(A) the person slaughters 1000 but not more than 10,000 birds or rabbits in a calendar year;

(B) the person does not buy and sell other poultry products (except live chicks);

(C) only sound healthy poultry or rabbit are slaughtered and all processes and handling are conducted under sanitary standards and procedures resulting in poultry and rabbit products that are not adulterated;

(D) the product bears the processor's name and address and the statement "Exempted P.L. 90-492"; and

(E) the poultry is not a ratite.

(22) [~~(14)~~] Heat-treated–Meat or poultry products that are ready-to-eat or have the appearance of being ready-to-eat because they received heat processing.

(23) [~~(15)~~] Livestock–Cattle, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds.

(24) [~~(16)~~] Person–Any individual, partnership, association, corporation, or unincorporated business organization.

(25) [~~(17)~~] Poultry–A live or dead domesticated bird.

(26) Ratite Poultry such as ostrich, emus, or rhea.

(c) Grant of inspection, [~~and/or~~] custom exemption, and/or poultry/rabbit exemption.

(1) Basic requirements.

(A) A person shall not engage in a business subject to the Act unless that person has met the standards established by the Act, the federal regulations as adopted by the department, and these sections, and has obtained the appropriate grant of inspection, [~~and/or~~] custom exemption, and/or poultry/rabbit exemption issued by the department.

(B) (No change.)

(C) A person shall not engage in exempted poultry or rabbit slaughter and processing operations unless that person has met the standards established by the Act, the federal regulations, and these sections, and has obtained a grant of poultry/rabbit exemption issued by the department.

(2) Application. To apply for a grant of inspection, [~~and/or~~] custom exemption, and/or poultry/rabbit exemption, a person shall complete department application forms which can be obtained from the Meat Safety Assurance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) Duration. The applicant who has complied with the standards in the Act, the federal regulations, and these sections will receive a grant of inspection and/or custom exemption for an indefinite period subject to the denial, suspension, and revocation provisions in paragraph (6) [~~(7)~~] of this subsection.

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

[~~(6) Temporary exemption. Each person engaged in a business subject to the Act at the time of enactment of the Act may be allowed a maximum period of 36 months to provide the drawings (blueprints of the business's physical plant) as required by the federal regulations and to bring the facility into compliance with these drawings. This 36-month period will begin upon the date the department gives the person official notice by certified mail that the person has 36 months to provide the drawings.~~]

(6) [~~(7)~~] Denial, suspension and revocation.

(A) The department may deny a grant of inspection and/or custom exemption to any applicant who does not comply with the standards of the Act, the federal regulations, and these sections.

(B) The department may suspend or revoke a grant of inspection and/or custom exemption of any person who violates the standards of the Act, the federal regulations, and these sections.

(C) A person whose grant has been denied, suspended, or revoked is entitled to an opportunity for a formal hearing in accordance with §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

(d) (No change.)

§221.13. Administrative Penalties.

(a) Purpose. The purpose of this section is to establish the criteria and procedures by which the commissioner of health will assess administrative penalties for violations relating to [~~by persons operating under~~] the provisions of the Texas Meat and Poultry Inspection Act, Health and Safety Code, Chapter 433, these rules, and licenses and orders issued pursuant to the Act or [~~of~~] the rules.

(b) (No change.)

(c) The seriousness of the violation.

(1) (No change.)

(2) The severity of a violation shall be increased if the violation involves deception[~~, fraud,~~] or other indication of willfulness. In determining the severity of a violation, there shall be taken into account the economic benefit gained by a person through noncompliance.

(3) The following are examples only of severity levels; they are not exhaustive or controlling.

(A) Severity Level I shall apply to:

(i) (No change.)

(ii) any person causing an unidentified or incorrectly identified and undecharacterized meat or poultry (such as meat from condemned livestock or livestock that died other than by slaughter) to be placed in food channels where it could enter the human food chain undetected; or [~~and~~]

(iii) (No change.)

(B) Severity Level II shall apply to:

(i) (No change.)

(ii) any person selling livestock slaughtered without approved state or federal ante-mortem and post-mortem inspection; or [~~and~~]

(iii) (No change.)

(C) Severity Level III shall apply to:

(i) (No change.)

(ii) any person denying access to review the records and/or a place of business where livestock products are being slaughtered, processed, sold, or made available for sale; or [~~and~~]

(iii) (No change.)

(D) Severity Level IV shall apply to:

(i) any person failing to maintain records of business transactions which will correctly identify all purchases and sales involving livestock product; or [~~and~~]

(ii) (No change.)

(E) Severity Level V shall apply to:

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

(iv) any person selling or making available for sale ground beef, hamburger, or similar items whose fat content exceeds the standard limitation or the fat content stated on the product label as set out in Title 9, Code of Federal Regulations, §319, titled "Definitions and Standards of Identity or Composition," as amended; [~~and~~]

(v) any person failing to correct labeling irregularities as set out in Title 9, Code of Federal Regulations, §317, titled "Labeling, Marking Devices, and Containers," as amended; or[~~.~~]

(vi) any person failing to maintain records of custom operations as required by these sections.

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

§221.14. Custom Slaughter and Processing.

(a) Custom slaughter requirements. The requirements of this section shall apply to the custom slaughter by any person of livestock, as defined in §221.12(b) of this title (relating to Meat and Poultry Inspection), delivered by or for the owner thereof for such slaughter, not for sale to the public and exclusively for use, in the household of such owner, by him and members of his household and nonpaying guests. The requirements of this section do not apply to hunter killed game animals, hunter killed exotic animals, and hunter killed feral swine, as defined in §221.12(b) of this title.

(1) Animals for slaughter. No adulterated animals as defined in §221.12(b)(2) of this title shall be accepted for custom slaughter. Only healthy animals, exhibiting no abnormalities, may be accepted for custom slaughter at custom slaughter establishments. Unhealthy or unsound animals are those that exhibit any condition that is not normally expected to be exhibited in a healthy and sound member of [~~by~~] that species.

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

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

(4) Facilities.

(A) The custom slaughter establishment shall maintain well distributed, sufficient light of good quality, and sufficient ventilation for all rooms and compartments to ensure [~~insure~~] sanitary condition, as specified in the department's guideline titled "Construction Guide No. 1, Texas State Inspected Meat Packing Plants: A Guide to Construction and Layout," dated May 1995.

(B) (No change.)

(5) - (9) (No change.)

(10) Rodent and pest control.

[~~(A)~~] A rodent and pest control and surveillance program shall be implemented to exclude flies, rats, mice, and other vermin from custom slaughter establishments. The use of poisons for any purpose in rooms or compartments where any carcass is stored or handled is forbidden. The use of insecticides, rodenticides [~~rodenticide~~], and similar pest control substances in hide cellars, inedible product departments, outbuildings, or similar places, or in storerooms containing canned products may be used provided they are labeled for use in or near areas when exposed food is present [~~have been approved by the U.S. Department of Agriculture (USDA)~~]. So-called rat viruses shall not be used in any part of an establishment or the premises of the custom slaughter establishments.

[~~(B) A list of approved pest control substances is available upon request from the Scientific Services, Meat and Poultry Inspection, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.~~]

(11) - (15) (No change.)

(16) Operations, procedures, and clothing.

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

(C) All tools, utensils, and equipment which become contaminated [~~used~~] in dressing carcasses shall be thoroughly cleansed and dipped in hot water having a minimum temperature of 180 degrees Fahrenheit or in a disinfectant used and prepared according to a written procedure, developed by the custom slaughterer specifying mixing methods, concentrations, contact time, the need to rinse with clean water, and storage of mixed solutions. The use of disinfectant solutions must be safe and effective. [~~A list of approved disinfectants is available upon request from the Scientific Services, Meat and Poultry Inspection, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.~~]

(D) All persons that handle any product within the custom slaughter establishment shall keep their hands clean. All persons shall wash their hands after using the toilet rooms or urinals before handling any product, tool, utensil, or equipment used in the preparation of product.

(E) - (G) (No change.)

(17) - (19) (No change.)

(20) Marking and labeling of custom prepared products. Carcasses and parts therefrom that are prepared on a custom basis shall be marked at the time of preparation with the term "Not for Sale" in letters at least three-eighths inch in height, and shall also be identified with the owner's name or a code that allows identification of the carcass or carcass part to its owner. Ink used for marking such

products must be labeled [~~USDA approved~~] for such purpose. Ink containing FD&C Violet No. 1 shall not be used.

(21) - (23) (No change.)

(b) Custom processing requirements. The requirements of this section shall apply to the custom processing by any person of uninspected livestock carcasses or parts, delivered by or for the owner thereof for such processing, not for sale to the public and exclusively for use, in the household of such owner, by him and members of his household and nonpaying guests. The requirements of this section shall not apply to processing hunter killed game animals, hunter killed exotic animals, and hunter killed feral swine as defined in §221.12(b) of this title.

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

(4) Facilities.

(A) The custom processing establishment shall maintain well distributed, sufficient light of good quality, and sufficient ventilation for all rooms and compartments to ensure [~~insure~~] sanitary condition, as specified in the department's guideline titled "Construction Guide No. 1, Texas State Inspected Meat Packing Plants: A Guide to Construction and Layout," dated May 1995.

(B) (No change.)

(5) - (9) (No change.)

(10) Rodent and pest control.

[~~(A)~~] A rodent and pest control and surveillance program, shall be implemented to exclude flies, rats, mice, and other vermin from custom processing establishments. The use of poisons for any purpose in rooms or compartments where any carcass is stored or handled is forbidden. The use of insecticides, rodenticide, and similar pest control substances in inedible product departments, outbuildings, or similar places, or in storerooms containing canned products may be used provided they are labeled for use in areas or near areas where food is present [~~have been approved by the United States Department of Agriculture (USDA)~~]. So-called rat viruses shall not be used in any part of an establishment or the premises of the custom processing establishments.

[~~(B) A list of approved pest control substances is available upon request from the Scientific Services, Meat and Poultry Inspection, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.~~]

(11) - (14) (No change.)

(15) Operations, procedures, and clothing.

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

(C) All tools, utensils, and equipment which become contaminated [~~used~~] in processing [~~deboning~~] carcasses or parts, shall be thoroughly cleansed and dipped in hot water having a minimum temperature of 180 degrees Fahrenheit or in a disinfectant used and prepared according to a written procedure, developed by the custom processor specifying mixing methods, concentrations, contact time, the need to rinse with clean water, and storage of mixed solutions. The use of disinfectant solutions must be safe and effective. [~~A list of approved disinfectants is available upon request from the Scientific Services, Meat and Poultry Inspection, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.~~]

(D) - (G) (No change.)

(16) - (22) (No change.)

(23) Approval of substances for use.

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

(C) Nitrates shall not be used in curing bacon.

(i) Nitrites in the form of sodium nitrite may be used at 120 parts per million (ppm) ingoing (or in the form of potassium nitrite at 148 ppm ingoing) maximum for injected, massaged, or immersion cured bacon; and 550 ppm of sodium ascorbate or sodium erythorbate (isoascorbate) for injected, massaged, or immersion cured bacon shall [~~may~~] be used.

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

(D) (No change.)

(24) - (25) (No change.)

§221.15. Inspection of Alternate Source Food Animals.

(a) Requirements. Specific requirements of this section shall be in addition to those required by the rules adopted for inspection of livestock, under the Texas Meat and Poultry Inspection Act, and federal regulations as listed in §221.11 of this title (relating to Federal Regulations on Meat and Poultry Inspection).

(b) Fees. Fees shall be assessed in one-half hour increments for inspection services, provided by a department Meat Safety Assurance Division (MSA) inspector to a facility holding a grant of inspection, as specified in §221.12(d) of this title (relating to Meat and Poultry Inspection). Failure of a grant holder to promptly pay invoices will result in cessation of overtime inspection services. Inspection time includes, but is not limited to:

(1) the MSA inspector's time in the field during a hunt;

(2) the MSA inspector's time spent completing inspection records;

(3) the MSA inspector's time spent waiting for any purpose to facilitate the processor;

(4) the MSA inspector's time for travel between hunt sites; and

(5) the MSA inspector's time for travel from the inspector's official duty location to the field site and return.

(c) Sanitary dressing procedures. The following are general guidelines of sanitary dressing applicable to all species of livestock slaughtered.

(1) The person performing slaughter operations must not permit any contamination of edible portions of the carcass with materials such as feces, urine, hair, ingesta, milk, bile, pathological tissues and exudates, and other filth. All controls of slaughter and dressing procedures must be aimed at accomplishing this purpose.

(2) Slaughter operations must be conducted in a manner that precludes contamination, i.e., adequate separation of carcasses, parts, and viscera during dressing; routine cleaning and disinfection of certain equipment and hand tools; design and arrangement of equipment to prevent the contact of successive carcasses and parts; and appropriately located, functional lavatories and disinfection units.

(3) In the event that contamination does occur, it must be handled promptly and in a manner that ensures adequate protection to the remaining product. Contamination with feces, milk, pus, or pathological tissue or exudate must be promptly removed by trimming. Removal must be complete. Enough tissue must be removed so only clean meat remains. Scraping with the edge or back

of a knife, wiping with a cloth or towel, or the use of a water spray are unacceptable procedures for removal of this type of contamination.

(d) Exotic animal.

(1) Sanitation. All slaughter operations, including field slaughter, are to be conducted in a way that precludes contamination. The following conditions, as a minimum, shall be met.

(A) The slaughter facility or mobile slaughter unit shall be constructed of smooth and impervious material capable of being thoroughly cleaned and sanitized prior to commencing operations and must be so maintained.

(B) Only potable water shall be used in conjunction with exotic animal slaughter procedures. Water from private water wells shall be tested for potability by an approved laboratory within six months prior to use. Water from portable water tanks shall be tested by an approved laboratory every six months to determine that potable water remains potable after being in the portable tanks. Results of such testing shall be made available to the TDH inspector.

(C) Hot water at a minimum of 180 degrees Fahrenheit is required on the skinning/evisceration floor for equipment and unit sanitization during pre-operational and operational sanitation procedures. For emergency situations involving loss of unit power, an approved procedure should be available for utilizing chemical sanitization in lieu of hot water for sanitization during the remaining period of the hunt.

(D) Mobile as well as fixed slaughter units shall provide adequate measures to control flies, other insects, and dust.

(E) A sufficient number of inedible barrels must be available during each harvest. Barrels shall be marked "INEDIBLE" in letters at least two inches high. An adequate amount of denaturant will be used on all products placed in the "INEDIBLE" barrels.

(2) Ante-mortem procedures.

(A) The producer must certify by completing and signing form MSA-71, Microchip Certification and Drug Advisory For Alternate Food Animal Species, whether the animal(s) have been identified with a microchip device.

(B) For mobile slaughter, the assigned inspector will accompany the vehicle carrying the hunter for the purpose of performing ante-mortem inspection to assure that the animals being harvested appear healthy. Once an animal has been shot, the animal will be bled as soon as possible in the field with a properly sanitized knife.

(C) For field slaughter, the inspector shall designate the number of animals that may be slaughtered before it is necessary to return to the mobile slaughter unit for skinning and eviscerating. The time lapse will depend on several factors such as environmental temperature and the anatomical site of bullet entry. High environmental temperature may shorten the time lapse prior to dressing, as dressing must begin before the abdomen of the carcass becomes distended due to intestinal gas formation. The TDH inspector has the final decision in determining the actual time allowed between bleeding and skinning; however, a two and one half hour time lapse shall not be exceeded.

(3) Post-mortem procedures.

(A) The vehicle used for transporting the slaughtered exotic animals shall be clean prior to use and shall be cleaned as needed, during the operation.

(B) Dressing procedures are to begin at the slaughter unit as soon as practical after slaughter.

(C) Heads from animals slaughtered by gunshot to the head shall not be used for food purposes. Such heads shall be denatured and placed into inedible containers.

(D) In the event that an animal is shot in an area other than the head, the resulting wound area and/or bruised areas must be trimmed of all contamination.

(E) The dressing of any animal whether it be the removal of a foot, head, or any part is strictly forbidden in any area other than inside the slaughter unit, regardless of the size of the animal. However, the removal of the antlers only is permitted prior to entering the slaughter facility.

(4) Dressing procedures.

(A) It is imperative that persons butchering an animal keep their hands as clean as possible; adequate facilities for washing hands must be readily accessible.

(B) Skinning operations begin at the hind legs and must be conducted in a sanitary manner.

(C) As the pelt is removed, care must be taken to prevent contamination of the carcass by dirty hands, knife or pelt.

(D) If a pelt puller is used in such a manner that the carcass is raised to a horizontal position, the carcasses of the female animals must be checked closely for urine leakage.

(E) Scalping is done after the pelt is loosened from the carcass. Heads that the establishment elects not to scalp must remain with the carcass until inspection is completed. Nasal and oral cavities should be flushed before heads are placed on inspection tables.

(F) Overall washing of carcasses should be accomplished before any openings are made for inspection or evisceration. The washer should take care to prevent filling the rectum with water during washing operations.

(G) The knife or other instrument used to open the breast must be disinfected after each use.

(H) The bung is not to be dropped until washing is completed. After opening the pelvic area, the neck of the bladder and the dropped bung should be grasped firmly and held until they clear the body cavity.

(I) Evisceration must be accomplished in a manner that precludes contamination of the carcass with contents from the bladder or intestine; viscera is to be placed in an inspection pan.

(J) If intestines are to be saved, contamination should be prevented by stripping and/or tying between the large and small intestine before removing from the table and sending to the next station.

(5) Processing. Processing of carcasses shall be conducted in a manner and location that complies with requirements for processing all livestock carcasses, including the provisions adopted under §221.11 of this title.

(e) Ratites.

(1) Purpose. Meat from ratites (ostrich, emu, and rhea) is becoming a popular alternate meat food source. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products derived from ratites are wholesome, unadulterated, properly marked, labeled, and packaged.

It is also essential to ensure that the preparation of ratite bird meat and meat food products does not result in adulteration of other meat and meat food products that may be produced at the same establishment. Specific requirements of this subsection shall be in addition to those already required by the Texas Meat and Poultry Inspection Act and other parts of this subchapter.

(2) Facilities.

(A) Ante-mortem facilities shall be furnished as required to provide for adequate inspection of the birds, at rest and in motion. An adequate suspect pen shall be furnished as required.

(B) A separate pre-evisceration area equipped with an exhaust fan will be available for operations described in paragraph (4) of this subsection (related to Slaughter procedures – pre-evisceration).

(C) Slaughter facilities shall be provided which allow humane slaughter and production of a wholesome product. It shall meet the standards as set forth by the Act and by the regulations.

(D) Rails shall be of sufficient height to allow dressing to be accomplished without causing contamination of the carcass.

(3) Ante-mortem procedures.

(A) Microchip certification. The producer must certify by completing and signing form MSA-71, Drug Certification For Exotic Game and Alternative Species Animals, whether the bird(s) had been identified by use of a microchip device and state the location of the chip implant. The producer must also certify whether the previous owner used a microchip implant for identification and state the location of the implant.

(B) Ante-mortem inspection. The bird shall be observed at rest and in motion to ascertain that no abnormal conditions exist. Some examples of abnormal conditions are:

(i) loose stools characterized by excessive fecal stains around the vent and/or a pasty vent;

(ii) bloody diarrhea;

(iii) regurgitation of food;

(iv) disinclination to rise from sternal recumbency; and

(v) weight loss, particularly notable over back and thighs.

(4) Slaughter procedures - pre-evisceration.

(A) Stunning and bleeding. The bird shall be rendered unconscious by an electrical stunner, a captive bolt device, or other humane method; hobbled/shackled prior to or after stunning; and hoisted from a designated dry landing area, by one or both legs. A cut shall be made through the thoracic inlet to sever the heart and/or major arteries and veins exiting the heart to ensure complete bleeding. Because of the peculiar external fat layer of emus, immediate removal of the head may be an acceptable alternative to severing the heart and/or major arteries and veins exiting the heart. The removed head shall be presented for inspection.

(B) Air injection. To facilitate feather and skin removal after the bird has bled thoroughly, an approved filtered air injection system may be used to inject air via needle beneath the skin.

(C) De-feathering. Feathers are removed and collected in an acceptable container. Wing tips and tail set may be removed to facilitate complete feather removal.

(5) Slaughter procedures - skinning and evisceration. Defeathered carcasses are transferred to the evisceration area. If the operator also works in the pre-evisceration area, the operator's hands, arms and apron must be washed to remove dust and dander prior to beginning the skinning and evisceration operations.

(A) Head removal. If the head was not removed immediately after stunning, the head should be removed by cutting the skin of neck to expose the esophagus and trachea. The esophagus is loosened from the neck, cut at the head, stripped and tied. If the head was removed immediately after slaughter, the esophagus should be exposed, stripped from the neck and tied. When the breast plate is removed to facilitate evisceration, tying the esophagus may not be required. The head and trachea shall be removed from the neck and presented for inspection.

(B) Feet (toes) removal. The feet/toes shall be removed prior to proceeding with the skinning operations. Using a gambrel for hanging the carcass by both legs will reduce the possibility of the ligaments tearing and the carcass falling to the ground. A sanitized chain may be attached proximal to the hock joint and attached to a hook for hanging the carcass.

(C) Venting/bunging. The vent shall be excised, taking care to prevent contamination from cloacal material. After the attachments to the vent are loosened, the vent shall be drawn from the carcass and encased in a plastic bag and tied.

(D) Skinning. Skinning shall be done in a manner that does not result in carcass contamination. "Fisting" or "knuckling" whereby the skin is removed leaving the fat attached to the carcass to be removed in a second step, does not provide a sanitary dressing procedure.

(E) Neck removal. If the length of the neck causes its contamination by touching the floor it shall be removed. The neck is to be identified appropriately with the carcass.

(F) Evisceration. Evisceration and pluck removal shall be accomplished in such a manner as not to cause contamination of any part of the carcass.

(6) Post-mortem inspection. Each carcass and all parts thereof (except feathers and toes), and accompanying viscera, shall be presented for inspection. Any carcass or viscera exhibiting physiological or pathological (disease) characteristics shall be tagged "Texas Retained" and held for inspection by a MSA veterinarian.

(A) Microchip implants. Birds that have been identified with microchip implants must have all implanted chips removed in toto. If a chip cannot be located, the entire part where the chip was implanted will be condemned and placed in an acceptable container marked "condemned". This condemned part may not be allowed to enter normal rendering operations unless assurance is made that the part will not be used in processing animal foods.

(B) Final trim and rinse. The carcass shall first be trimmed of all visible contamination and then thoroughly rinsed with potable water. The inspector-in-charge shall make a final inspection prior to final rinse. Trimmed parts including external fat containing pin feathers or feather quills shall be placed in acceptable containers marked "inedible". The permit for transport to the rendering facility may be issued by the region. The passed carcass shall be stamped with the approved Texas Inspected and Passed brand bearing the appropriate "V" and number.

(7) Pathological conditions.

(A) The following abnormalities may be suggestive of pathological conditions:

(i) low body fat - may indicate septicemia;

(ii) thickening or granulomatous lungs - may indicate air sacculitis;

(iii) thickening of intestine, enlargement of spleen, miliary pattern of liver - may suggest tuberculosis; or

(iv) splenomegaly - any swelling of the spleen may suggest a pathological condition.

(B) The following may also suggest pathological conditions:

(i) hemorrhagic changes in the intestinal tract;

(ii) petechial to ecchymotic hemorrhages on serosal aspect of the intestine;

(iii) intestinal lumen devoid of digesta, but containing serosanguinous fluid;

(iv) subcapsular hepatic hemorrhage;

(v) ecchymotic hemorrhage of epicardium and/or endocardium;

(vi) hemoperitoneum;

(vii) weight loss, particularly notable over back and thighs;

(viii) depressed attitude; or

(ix) swelling of one or more joints.

(8) Temperature and chilling requirements. Ratites slaughtered and prepared in official establishments are to be chilled in accordance with 9 CFR, Chapter III, Subchapter C, §381.66, MPI Regulations. Specifically, the internal temperature of the carcasses shall be reduced to 40 degrees Fahrenheit or less within 16 hours by air chilling.

(f) Rabbits. See 9 CFR, Part 354, as adopted by §221.11 of this title.

(g) Migratory water fowl, game birds, squab. See 9 CFR, Part 362, as adopted by §221.11 of this title.

(h) Certified products for dogs, cats, and other carnivora. See 9 CFR, Part 355, as adopted by §221.11 of this title

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 January 14, 2000.

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Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 458-7236

Chapter 253. ENVIRONMENTAL ENGINEERING

25 TAC §253.1

(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 Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Health (department) proposes the repeal of §253.1 concerning the incorporation by reference of federal regulations affecting federal grants and assistance relating to environmental functions.

This rule was adopted by the Texas Department of Health Resources (TDHR) in 1976. At the time, TDHR (and later its successor, department) was responsible for environmental protection programs such as, for example, solid waste (including hazardous waste), drinking water, protection of public drinking water supplies and bodies of water, on-site sewage disposal systems, and on-site wastewater treatment research. These environmental protection programs were and are eligible for federal grants. Adoption of these rules was necessary to ensure eligibility for federal grants relating to these environmental protection programs. Authority and responsibility for these environmental programs now reside at the Texas Natural Resource Conservation Commission (except pesticide regulation which is at the Texas Department of Agriculture). The Texas Natural Resource Conservation Commission and the Texas Department of Agriculture – not the department – apply for and receive relevant grants from the U.S. Environmental Protection Agency. The department no longer has authority to pursue grants contemplated by the underlying federal regulations. Therefore these rules are being repealed.

Mr. John A. Jacobi, P.E., Chief, Bureau of Environmental Health, has determined that the proposed repeal will have no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Jacobi has also determined that the public benefit anticipated as a result of enforcing the repeal will be the elimination of a potential source of public confusion regarding responsibility for certain environmental issues. There will be no adverse impact on public health. There will be no adverse economic effect on micro-businesses and/or small businesses because the department does not apply for or receive federal grants relating to environmental programs transferred to the Texas Natural Resource Conservation Commission and the Texas Department of Agriculture. There are no anticipated costs to persons who are required to comply with the repeal. There will be no effect on local employment.

Comments regarding the proposed repeal may be sent to John A. Jacobi, P.E., Chief, Bureau of Environmental Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, (512) 834-6640. Comments regarding the proposed repeal will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed under the Health and Safety Code, §12.001, which provides the Board of Health (board) with authority to adopt rules to implement every duty imposed by law on the board, the department and the Commissioner of Health.

The repeal does not affect any Texas statute.

§253.1. Federal Regulations of Environmental Protection.

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 January 14, 2000.

TRD-200000281
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 458-7236

Part 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Chapter 401. SYSTEM ADMINISTRATION

Subchapter D. CONTRACTS MANAGEMENT FOR COMMUNITY-BASED SERVICES

25 TAC §401.351

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes an amendment to §401.351 (relating to Methods of Procurement) of Chapter 401, Subchapter D, concerning contracts management for community-based services.

The amendment would allow local authorities of TDMHMR to procure qualified contractors of any community service through open enrollment in order to establish and maintain a provider network.

Bill Campbell, chief financial officer, has determined that for each year of the first five years the proposed amendment is in effect, enforcing or administering the rule will have no significant fiscal impact relating to cost or revenue of the state or local governments.

Leon Evans, director of community services, has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit expected is the ability of local authorities to more effectively establish and maintain provider networks. Contracting with multiple providers of a particular service allows local authorities to present consumers of the service with a wide variety of providers to choose from. It is anticipated that there would be no significant economic cost to persons required to comply with the proposed amendment because they do not impose significant economic requirements on such persons.

It is anticipated that the proposed amendment will not affect a local economy because the amendment does not include requirements that relate to a local economy.

It is anticipated that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the requirements in the proposed amendment that would economically affect small businesses or micro-businesses is consistent with generally accepted business and procuring practices.

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.

This section is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority, and §534.052(a), which requires the board to adopt rules it considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local mental health or mental retardation authority.

This section affects the Texas Health and Safety Code, §532.015(a) and §534.052(a).

§401.351. Methods of Procurement.

The state authority [~~and all local authorities~~] shall procure community-based services to be provided by another organization through either the method described in paragraph (1) or paragraph (2) of [~~one of the methods described in~~] this section. All local authorities shall procure community-based services to be provided by another organization through one of the methods described in this section.

(1) Request for proposal [~~Proposal~~] (RFP). A contract may be procured using the request for proposal method in accordance with this subsection.

(A) Determination of method. A contract must be procured through the RFP method unless a determination is made that the sole source method is permissible under this section or that open enrollment will be used. The RFP method is typically applicable to those situations where funds of greater than $1,000 are available to the contracting entity for the provision of a service without reference to a particular person with a mental disability.

(B) Solicitation.

(i) The contracting entity must make a reasonable effort to give notice of the intent to contract for services to each potential provider in the authority's local service area. An RFP must be published in a local newspaper or professional association newsletter, or solicited through announcements by direct mail to all known providers by the contracting entity at least 10 days, but not more than 60 days, prior to the due date of submission of proposals. An RFP must contain, but is not limited to, the following information:

(I) the community-based service to be purchased;

(II) the approximate number of persons with a mental disability to be served pursuant to the contract;

(III) the geographic area to be served pursuant to the contract;

(IV) applicable funding limitations;

(V) method of payment;

(VI) the contract term;

(VII) any limitations on who may submit a proposal and any limitations in the services;

(VIII) the procedure for requesting a procurement package; and

(IX) the date by which proposals must be submitted.

(ii) A contracting entity must provide a procurement package to each entity that requests one. No requirement that restricts competition by unreasonably eliminating or limiting partici-

pation in the procurement process may be included in the procurement package. A procurement package must contain:

(I) a detailed description of the community-based services to be purchased, including all information included in the RFP;

(II) a detailed description of information to be included in a proposal;

(III) instructions for the submission of questions concerning the procurement by potential offerors;

(IV) instructions for the submission of proposals;

(V) requirements that a potential offeror must fulfill to participate in the procurement process, including assurances that:

(-a-) the offeror has made no attempt nor will make any attempt to induce any person or firm to submit or not submit a proposal;

(-b-) the offeror has arrived at the proposal independently without consultation, communication, or agreement for the purposes of restricting competition;

(-c-) the offeror and its officers or employees have no relationship now or will have no relationship during the contract period that interferes with fair competition or that is a financial or other conflict of interest, real or apparent; and

(-d-) no member of the offeror's staff or governing authority has participated in the development of specific criteria for award of the contract, nor will participate in the selection of the proposal to be awarded the contract.

(VI) the criteria for evaluation of proposals.

(iii) A proposal must include, but is not limited to, the following information:

(I) the offeror's name, address, telephone number, and type of legal entity;

(II) the offeror's credentials for providing the community-based service, including applicable certifications, licenses, and/or evidence of compliance with applicable TDMHMR community standards;

(III) information concerning the factors set forth in subparagraph (C)(iii) of this paragraph.

(iv) Changes to a procurement package may be made by the contracting entity prior to the date designated for submission of proposals, provided all offerors that have obtained a procurement package are notified of the change and are provided fair opportunity to respond.

(v) Except as provided in the Texas Open Records Act, Texas Government Code, Chapter 552, all information submitted in a proposal is confidential until a contract has been awarded.

(vi) Any amendments to a proposal must be made by the offeror in writing and must be received prior to the submission date for proposals.

(vii) The contracting entity must document all transactions concerning contracts.

(viii) The contracting entity may validate any information in a proposal by using outside sources or materials.

(C) Award.

(i) For a proposal to be considered for award, the offeror must follow all instructions and meet all requirements specified in the procurement package.

(ii) Clarification or confirmation of information submitted in a proposal may be obtained if such information is necessary to complete the award process; however, no offeror may be given information which would give that offeror an unfair competitive advantage.

(iii) The award of a contract is made by determining the lowest and best proposal. The determination shall include consideration of any relevant information included in the RFP, including:

(I) price;

(II) the ability of the offeror to perform the contract and to provide the required services;

(III) whether the offeror can perform the contract or provide the services within the period required, without delay or interference;

(IV) the offeror's history of compliance with the laws relating to its business operations and the affected services and whether it is currently in compliance;

(V) whether the offeror's financial resources are sufficient to perform the contract and to provide the services;

(VI) whether necessary or desirable support and ancillary services are available to the offeror;

(VII) the character, responsibility, integrity, reputation, and experience of the offeror;

(VIII) the quality of the facilities and equipment available to or proposed by the offeror;

(IX) the ability of the offeror to provide continuity of services; and

(X) the ability of the offeror to meet all applicable written policies, principles, and regulations.

(iv) Negotiation may be conducted either to complete the procurement process or to complete an evaluation of an acceptable proposal. When only one proposal has a reasonable chance of being awarded, contract staff and the potential contractor/subcontractor will negotiate the contract requirements as necessary to complete the procurement process. When more than one acceptable proposal is received, negotiation is used to further evaluate competitive proposals and to select one or more for award. In this situation, no potential contractor/subcontractor is given information that will give the contractor/subcontractor a competitive advantage over the other potential contractors/subcontractors.

(v) An RFP may be canceled without award for any reason or for no reason.

(vi) Each offeror who submits an acceptable proposal but is not awarded a contract is entitled to timely notification in writing that the proposal is no longer being considered.

(vii) Upon written request, an unsuccessful offeror is entitled to receive information concerning why its proposal was not accepted.

(2) Sole source. A contract may be procured using the sole source method in accordance with this section.

(A) Determination of method. The sole source method is typically applicable in those situations where funds are available for the provision of services and certain conditions exist which indicate that the RFP method is not appropriate.

(i) A contract may be procured using the sole source method, only if:

(I) it is documented that only one source can or will provide the needed services;

(II) the contract is with another governmental entity;

(III) there exists an emergency situation in which a delay may result in harm to person(s) with a mental disability who is to receive the community-based service;

(IV) the contract is for less than $1,000 for a one-year period; or

(V) no acceptable proposal was received through a substantially similar RFP within the previous 12 months.

(ii) A contract procured using the sole source method pursuant to clause (i)(III) of this subparagraph, may be for a term of only six months or for the balance of the fiscal year, whichever is greater.

(iii) A contract procured using the sole source method pursuant to clause (i)(IV) of this subparagraph may not be divided in order to qualify for the sole source method.

(iv) The contracting entity must justify and document awarding a sole source contract. Documentation must accurately and concisely substantiate the necessity for a sole source contract on the basis of one or more of the reasons listed in clause (i) of this subparagraph.

(B) Award. The procedure for awarding contracts using the sole source method is established by the contracting entity.

(3) Open enrollment. A local authority may use open enrollment to establish and maintain a provider network in accordance with this subsection.

(A) Determination of method. Open enrollment is used by a local authority to procure qualified contractors for inclusion in the local authority's provider network.

(B) Solicitation.

(i) At least once every two years the local authority must publish in a local newspaper or professional association newsletter a request for applications notice to procure qualified contractors for inclusion in the local authority's provider network. In addition, the local authority must continuously and prominently display such request for applications notice at the local authority's administrative office(s). The request for applications notice must include:

(I) the types of community services, including brief descriptions, for which the local authority intends to contract;

(II) the geographic area to be served under the contracts;

(III) the procedure for obtaining the request for applications for inclusion in the local authority's provider network; and

(IV) the date and time by which applications must be submitted, if any.

(ii) A local authority must provide the request for applications to each entity that requests one. A request for applications must include:

(I) a detailed description of each type of community service for which the local authority intends to contract, including all information included in the request for applications notice;

(II) the amount of payment for each type of community service for which the local authority intends to contract and the method used to determine that amount;

(III) a detailed description of the information to be included in an application;

(IV) instructions for the submission of applications;

(V) eligibility requirements an applicant must fulfill to be included in the local authority's provider network (e.g., credentials for providing the community service(s), such as applicable certifications, licenses; evidence of compliance with relevant TDMHMR rules; evidence of accessibility; evidence of providing quality services; evidence of financial solvency; and evidence of liability insurance);

(VI) assurances that:

(-a-) the applicant is not currently held in abeyance or barred from the award of a federal or state contract;

(-b-) the applicant is not currently delinquent in its payments of any franchise tax owed to the state of Texas; and

(VII) the criteria for approval.

(iii) An application must include the following information:

(I) the applicant's name, address, telephone number, and type of legal entity;

(II) the type(s) of community service(s) that the applicant intends to provide;

(III) assurances that the applicant meets the requirements described in subparagraph (B)(ii)(VI) of this paragraph;

(IV) evidence that the applicant fulfills the eligibility requirements described in subparagraph (B)(ii)(V) of this paragraph; and

(V) a statement that the applicant agrees to provide the specified community service(s) at the amount of payment described in the request for applications.

(C) Approval process for inclusion on a local authority's provider network.

(i) The local authority may obtain clarification or confirmation of information submitted in an application.

(ii) The local authority must approve for inclusion on its provider network all applicants whose applications are complete and who meet all requirements specified in the request for applications.

(D) Provider network contracts. All contracts for a specific type of community service provided through a provider network must contain the same contract conditions, provisions, and requirements, including:

(i) the requirement that the contractor immediately notify the local authority of any change, or potential change, in its status that could affect its inclusion on the network;

(ii) the requirement that, before services can be delivered to consumers, the contractor or its designated staff participate in orientation conducted by the local authority relating to the local authority's policies and procedures;

(iii) the statement that the contractor is prohibited from:

(I) offering any gift with a value in excess of $10 to potential consumers; and

(II) soliciting potential consumers through direct-mail or by telephone.

(iv) the requirement that the local authority maintain and make available to consumers and potential consumers, current information about each contractor of community services participating in its network that:

(I) represents all participating contractors fairly;

(II) is organized and relevant to consumers and potential consumers; and

(III) includes results from consumer satisfaction surveys; and

(v) the requirement that the local authority allow consumers to choose freely any participating contractor of a specific type of community service within its network, without influence by any local authority staff or representative.

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 January 12, 2000.

TRD-200000201
Charles Cooper
Chairman
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 206-4516

TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 101. GENERAL AIR QUALITY RULES

Subchapter A. GENERAL RULES

30 TAC §§101.1, 101.6, 101.7, 101.11

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §101.1, concerning Definitions; §101.6, concerning Upset Reporting and Recordkeeping Requirements; §101.7, concerning Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and §101.11, concerning Exemptions from Rules and Regulations; and revisions to the State Implementation Plan (SIP). The commission also proposes to withdraw the revisions to the SIP which included the amendments to these rules effective August 5, 1997.

BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE PROPOSED RULES

On July 9, 1997, the commission adopted amendments to the sections in Chapter 101 concerning the upset, maintenance, start-up and shutdown rules that are the subject of this proposal. These amendments modified the method by which owners and operators of sources releasing excess emissions due to upset, maintenance, start-up and shutdown (U/M) events would report those episodes to the commission. The adopted amendments used the concept of a "reportable quantity" (RQ) to govern when a source must report excess emissions due to upsets. Based on similar rules concerning solid waste and on evaluation of the effects of emissions of regulated compounds to the atmosphere, the amendments did not require a report of U/M emissions below a significance threshold. The owner or operator of the source is required to keep records of all U/M events, but is only required to report to the commission those events where the U/M emissions equal or exceed an RQ. This report must be submitted to the commission within 24 hours of discovery of the event. Records of events below the RQ are maintained at the source site and are to be made available to the commission on request. The 1997 amendments also required that records of U/M events causing unauthorized emissions, both reportable and not, contain specific information including date, time, duration, substance released and quantity, cause of the event, and actions taken to correct the situation. To gain an exemption from emission limitations, owners or operators must first comply with this reporting requirement. Additionally, the episode must have been reasonably avoidable, the operator must have taken appropriate corrective actions as soon as practicable after the onset of the event, and the operator must have minimized the emissions to the extent practicable. Similar requirements were adopted for excess emissions resulting from maintenance, start-up, or shutdown of a source. The commission adopted these amendments and requested staff to examine the effectiveness of the rules as implemented over the next two years. Additionally, the commission submitted the rules to the United States Environmental Protection Agency (EPA) as a revision to the SIP. The commission adopted the 1997 amendments to reduce the number of U/M reports being submitted, through the use of RQs, allowing concentration of staff time on the most significant or higher priority events. While records of all events are kept on-site, the number of reports submitted to the commission has been limited to significant events. Reporting has been reduced by approximately 50%.

In November 1998, EPA informed the commission that the 1997 amended version of the U/M rules could not be approved as a SIP revision and that it intended to begin formal disapproval procedures. EPA specifically cited the reporting requirements of the rule as being deficient. Records of events below an RQ are not routinely submitted to the commission, but are currently maintained at the site and submitted on request of the commission. EPA believes that this procedure does not give the general public sufficient access to this information, requiring them to go through the commission to obtain reports. Secondly, EPA stated that the commission's method of exempting excess emissions released during an U/M event did not require sufficient proof from a source operator that the event was reasonably unavoidable. EPA stated that the commission's rule did not place the burden of such proof on the source owner or operator and was

not specific enough as to what would constitute "reasonably unavoidable."

On January 29, 1999, the commission published in the *Texas Register* a notice of rule review of Chapter 101, as required by the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The intent of the rule review was to determine if a need for the rules in Chapter 101 continues to exist. In addition to other generally applicable rules, Chapter 101 contains all the rules relating to U/M. During the public comment period for rule review, the commission received comments from the Texas Chemical Council (TCC) and the Texas Industrial Project (TIP) requesting changes to the U/M rules. The agency response to these requested changes was as follows: "The commission adopted amendments to the upset/maintenance rules in the summer of 1997. At that adoption the commission directed the staff to further evaluate the rules after two years. The staff has initiated that review and will consider all comments concerning upset/maintenance and the definition of reportable quantity as part of that review. The commission will consider upset/maintenance rules for possible amendment, including administrative changes, after the evaluation is completed. Rulemaking resulting from the evaluation would likely be initiated prior to the end of calendar year 1999." As part of this two-year review, the commission specifically instructed the executive director to evaluate the burdens placed on the regulated community, explain what is obtained from U/M reporting, how the data was used, and make recommendations on the future disposition of the rule. As stated earlier, the major impact of the 1997 amendments was a major reduction in the number of U/M reports being submitted through the use of RQs, thus reducing the reporting burden on the regulated community. Furthermore, the 1997 amendments allowed the agency to concentrate its resources on the most significant or higher priority events. However, the scope of this review was considerably changed with EPA's pending disapproval of the U/M SIP revisions. One of EPA's major criteria for obtaining SIP approval of the U/M rules is the reporting of all excess emissions from U/M episodes. While this may place additional burdens on the regulated community, EPA believes that this reporting is necessary to provide the public access to information on emissions that affect their communities.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §§101.1, 101.6, 101.7, and 101.11 to address comments received during the rule review of Chapter 101, and EPA comments concerning the acceptability of the rules as SIP amendments.

At the suggestion of TCC and TIP, the commission is proposing to add certain compounds to the list of substances with an RQ of 5,000 pounds. Other TCC and TIP suggestions received during rule review have not been proposed. The commission addresses those comments in greater detail where specific proposals for individual sections are described.

To address EPA concerns about insufficient public information, the commission is proposing that the 24-hour initial notice be followed up with a written report sent to the appropriate regional office within two weeks of the end of the event. This will provide the regional offices information on the most significant events that can be made available for public inspection. Facilities must still create and maintain records of events below an RQ, but these records will not routinely be sent to the commission. This is consistent with the concept of an RQ which establishes a significance threshold to reduce regulatory burden and the amount of information received by regulatory agencies.

TIP recommended either eliminating the 100-pound default RQ or raising it to 5,000 pounds. TIP recognized that adding Texas-specific compounds to the definition at an RQ of 5,000 pounds is also an available option. It recommend adding butyl acrylate, ethanol, heptenes, hexanes, hexenes, isopropyl alcohol, methyl acrylate, mineral spirits, octenes, pentanes, pentenes, and unspeciated volatile organic compounds (VOC). TCC commented that the commission should modify its list of RQs to contain the following general compounds with an RQ of 5,000 pounds: butanes, pentanes, pentenes, heptenes, hexenes, octanes, decanes, and ethanol. It also suggested that the commission raise its default RQ from 100 pounds to 5,000 pounds. Five thousand pounds is the highest RQ for hazardous substances on the RQ list under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The commission's default value of 100 pounds applies to air contaminants not found on the CERCLA hazardous substance list or the Emergency Planning and Community Right-to-Know Act (EPCRA) list.

The commission proposes to amend the definition of "reportable quantity" to include the following air contaminants at an RQ of 5,000 pounds: butanes (all isomers), pentanes (all isomers), hexanes (all isomers), octanes (all isomers), decanes (all isomers), ethanol, isopropyl alcohol, and mineral spirits. Since isobutylene is one of the isomers of butene, it would be deleted as an individual compound from the RQ list. These air contaminants proposed for inclusion under a 5,000-pound RQ are not listed in CERCLA and EPCRA lists, but are air contaminants common to Texas industries.

The commission declines to add pentenes, hexenes, heptenes, octenes, butyl acrylate, and methyl acrylate at an RQ of 5,000 pounds based on their potential to emit strong odors at low concentrations. Unspeciated VOCs were not included in the proposal to ensure that the agency will receive appropriate information on the chemical characteristics of the releases. Unspeciated VOCs can include significantly hazardous constituents listed in CERCLA, EPCRA, and agency permits. The commission also believes that it is not appropriate to raise the default RQ to 5,000 pounds from 100 pounds because certain compounds, such as dimethyl sulfide, are potentially hazardous when released to the air in much smaller amounts. Additionally, the 100-pound default RQ is needed to cover all potentially problematic compounds not listed in CERCLA or EPCRA. The commission will consider individual compounds, as submitted, for a higher RQ.

The commission proposes the correction of a formatting error in §101.1(127)(B)(i), (ii), and (iii). The term "definition" is being replaced with the term "paragraph."

The commission also proposes the correction of a typographical error in §101.1(127)(B)(iv). The language should have read, "where natural gas or air emissions from crude oil are known...." This change will clarify that the intent of the language was to allow either natural gas or air emissions from crude oil to have an RQ of 5,000 pounds. The current definition indicates that the 5,000-pound RQ applies to a combination of emissions from natural gas and crude oil.

TIP suggested that unauthorized emissions from flares be treated similarly to emissions from boilers and combustion turbines. TIP stated that unauthorized emissions from flares

should be reportable in terms of how long a flare smokes in excess of the time specified in a permit or rule.

The commission declines to propose this suggestion because the sources are not comparable. The 15-percentage point opacity level of boilers and combustion turbines is for units using fuels containing very low concentrations of hazardous air pollutants (less than 0.02% by weight). Typically, it is not the flare that will be in an upset condition (i.e., a problem with the burner tips); instead, it is normally the process feeding the flare which will be in upset. A facility operator should have knowledge of the compounds which are present in the affected process, and should be able to provide a reasonable estimate of the amounts of compounds being emitted.

TIP requested that the commission consider some mechanism to authorize routine emissions resulting from start-up, shutdown, and maintenance (SSM). It stated that while such emissions are episodic, the vast majority do not pose a threat requiring immediate response, and requested the opportunity to discuss this situation further with the staff. Additionally, the commenter stated that the commission should consider exempting SSM emissions in compliance with an EPA-required start-up, shutdown, and maintenance plan. TIP also requested that the commission incorporate into the U/M rules the reduced reporting obligations for continuous releases under CERCLA and the EPCRA because of the routine and predictable emissions resulting from SSM.

The commission does not propose any changes to the current rule in response to this comment. The definition of continuous release under CERCLA in 40 Code of Federal Regulations (CFR) §302.8(b) requires that the release be "routine, anticipated, and intermittent and incidental to normal operations...." The same section defines "routine" as a release "that occurs during normal operating procedures or processes." The analogous situation under the air emission rule would be the normal operation of a pollution source with the anticipated emissions. The commission does not require reports for normal operation of air emission sources. The commission's rule currently does not require owner/operators to notify the agency of emissions from SSM unless it is expected that unauthorized emissions will be released in amounts at or above a RQ. The commission believes that this is justified because, as with upsets, releases at or above an RQ have the strongest potential for causing effects off property. Because the majority of SSM emissions are predictable, the commission believes that its current rule allows source operators to conduct maintenance with predictable and reasonable reporting requirements.

TCC commented that the commission should delete recordkeeping requirements for non- reportable upsets. A non-reportable upset is one that results in a release of air contaminants less than an RQ. It commented that the current U/M rule has been in place for over one year, and that the commission has had adequate time to collect information regarding non-reportable upsets. In addition, elimination of this requirement would reduce the recordkeeping burden on industry. In a related comment, TIP suggested that the commission should make an exception to recordkeeping for releases only slightly above authorized amounts. It suggested that the commission either exempt from recordkeeping amounts that are less than a certain percentage (for example, 10%) of an RQ above an authorized emission, or set a non-recordkeeping level at less than one pound above authorized limits for substances with an RQ at ten pounds or higher.

The commission declines to propose the amendments as suggested by TIP and TCC. The commission believes that establishing a "grace amount" of 10% or some other value above an authorized limit does, in effect, establish a new limit. This introduces an unnecessary complication in determining whether an event should be recorded. In response to the suggestion by TCC, the commission will continue to require that records of all unauthorized emissions be created and maintained by the source. These records will allow the commission to identify sources with chronic or pattern upsets.

The commission proposes an amendment to §101.6(a)(2) and (3) and also to §101.7(b)(1) and (2) that if the cause of the upset or the type of activity and the reason for the maintenance, startup, or shutdown are known at the time of notifications, the owner or operator of the source must provide that information at that time.

The commission proposes amendments to §101.6(a)(4), (b), and (e) and to §101.7(c) which would allow any local or federal air pollution program with jurisdiction, to review U/M records being maintained at the facility and to request more detailed information on the event. Specifically, the term "local" was deleted to clarify that EPA Region VI also has jurisdiction to review such records. The term "local" remains in provisions discussing the submission or notification of reports. Initial reporting of U/M events to EPA Region VI is not required.

The commission proposes an amendment to §101.6(b)(5) and §101.7(c)(5) to correctly reference that the source must report the compound descriptive type of the individually-listed compounds or mixtures of air contaminants for all U/M activities, not just those equal to or greater than a reportable quantity.

To address EPA's comments on public accessability of records, the commission proposes to add §101.6(c) and §101.7(d) that will require that records of all U/M events at or above an RQ be submitted to the appropriate regional offices no later than two weeks after the end of the event. This record is in addition to the initial notification of the event. However, if the cause of the upset or the type and reason for the maintenance, start-up, or shutdown is known at the time that the initial notification is submitted, and all other required information submitted at the time of the notification is correct and no additional changes are needed, then the notification will be considered to be the final record of the U/M event and no additional report is needed. The commission believes that this reporting frequency will provide timely public accessability to records of the most significant events and will not impose an unreasonable burden on affected sources.

The proposed amendment §101.6(d) would allow boilers and combustion turbines equipped with a continuous emission monitoring system providing updated readings at a minimum 15-minute interval to be exempt from creating, maintaining, and submitting records of reportable and non- reportable upsets as long as the source is required to submit excess emission reports by another state or federal requirement. This same language is also proposed for §101.7(e), thus exempting the previously mentioned sources from creating, maintaining, and submitting records of maintenance, start- up, or shutdown activities under the same conditions. This proposed amendment results from the staff review of the U/M rules and is consistent with the initial concept of the 1997 amendments to reduce duplicate reporting.

TIP pointed out what appear to be typographical errors in §101.7(b)(2)(B), now proposed as §101.7(b)(2)(C), resulting

in incorrect references to "upset" when the subject of the section is SSM. The commission proposes an amendment to §101.7(b)(2)(B) to correct the typographical error and correctly reference "maintenance, start-up, or shutdown" instead of "upset." The commission also proposes an amendment to §101.7(c) to require the maintenance of SSM records for five years. This was the commission's original intent and would correct a typographical error referring to "maintaining records on-site for a minimum of two years."

The commission proposes an amendment to the title of §101.11. In an effort to better describe what the section is intended to address, the title is being changed from "Exemptions from Rules and Regulations" to "Demonstrations."

The proposed amendments to §101.11 would satisfy EPA's second concern for obtaining SIP approval. EPA believes that the current U/M rules are inconsistent with EPA's policy on excess emissions resulting from upset, startup, shutdown, and malfunctions. According to EPA's policy on excess emissions, any request for exemption from emission limits needs to clearly state that the event was not caused by poor or inadequate design, operation, or maintenance, and was not of a recurring pattern indicating inadequate design, operation, or maintenance. The EPA policy also requires exemption requests to indicate that repairs were made in an expeditious manner and, if a bypass of a control equipment occurred, that the bypass was necessary to prevent loss of life, personal injury, or severe property damage. The proposal would clarify these conditions in §101.11(a) and (b). The intent of the proposed changes is to detail the existing terms and conditions that a source owner or operator must demonstrate to qualify for an exemption of otherwise unauthorized emissions. Proposed new language in §101.11(e) would clarify the commission's existing practice of not exempting sources from complying with federal requirements. EPA requested language to specifically make clear that §101.11(e) is not intended to grant waivers or exempt sources from complying with any requirement established under a federal program. The proposed new §101.11(g) would state that the burden of proof is placed on the owner or operator to demonstrate that a source meets the criteria to be exempt from compliance with emission limits.

The new §101.11(h) states that emissions from upsets, maintenance, start-ups, or shutdowns may not contribute to a condition of air pollution. This new subsection also clarifies that the rule is not intended to limit the commission's power to require corrective action necessary to minimize emissions. This authority exists under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.085, Unauthorized Emissions Prohibited; and Texas Water Code, §7.002, Enforcement Authority; §7.032, Injunctive Relief; and §7.073, Corrective Action.

The agency regional staff will continue to evaluate reported upset, startup, shutdown, and maintenance events to determine whether it would be appropriate to visit the source site as the event is occurring. Staff will also review previously submitted reports related to the source to determine whether there is a pattern of events that may suggest inappropriate or inadequate responses to previous events. Regional staff may elect to conduct a site inspection specifically related to a source with reoccurring upsets, startups, shutdowns, and/or maintenance or other circumstances as determined by the executive director or other air pollution program with jurisdiction based upon the reported information.

Regional staff will review upset, startup, shutdown, and maintenance reports prior to conducting SIP inspections. While onsite, the inspector will review the source operator's records, which include the records of events below the RQs. A review and evaluation of these records will allow the executive director to identify sources with chronic pattern problems. The executive director will request additional information from the source operator as permitted by §101.11(g) if the executive director discovers a source that appears to have a chronic pattern of upsets, startups, shutdowns, and/or maintenance, they will request additional information from the source operator. The operator will be asked to make the demonstrations found in §101.11. This demonstration must be made in a reasonable amount of time. The executive director will evaluate any information provided by the operator to determine whether the event(s) meet the criteria to be exempt from compliance with emissions limits.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for the commission and other units of state and local government as a result of administration or enforcement of the proposed amendments to Chapter 101, General Rules, concerning U/M reporting.

The purpose of the proposed amendments is to revise and clarify state rules to conform with federal regulations and policies with regard to U/M reporting. The term "upset" generally refers to an unscheduled occurrence of a process or operation that results in unauthorized release of emissions of air contaminants. The proposed amendments would require records of unauthorized emissions at or above the RQ to be maintained and reported to the commission within two weeks of the event instead of the current practice, which requires U/M records to be maintained on site and submitted to the commission on request. Initial reports of upsets with emissions at or above the RQ will continue to be required within 24 hours of discovery of the upset.

The proposed amendments would also require that any request for exemption from emission limits needs to clearly demonstrate that the event was not caused by poor or inadequate design, operation, or maintenance; the event was not that of a recurring pattern indicative of inadequate design, operation, or maintenance; the repairs were made in an expeditious manner; and, if a bypass of control equipment occurred, the bypass was necessary to prevent loss of life, personal injury, or severe property damage. These requirements are intended to make state requirements conform to language in EPA requirements.

In the proposed amendments, the RQ for certain air contaminants has been raised from the default level of 100 pounds to 5,000 pounds because these contaminants are not listed in the CERCLA and the EPCRA. Other compounds were retained at the default RQ because of their potential to emit strong odors at low concentrations or because they are potentially hazardous when released to the air in amounts smaller than 5,000 pounds. The default RQ remains at 100 pounds because certain compounds are potentially hazardous when released into the air in small amounts.

Current rules, which allow routine emissions from maintenance, start-ups, or shut-downs below the RQ to remain unreported, remain unchanged because the majority of start-up, shut-down, and maintenance emissions are routine and predictable, and

should have predictable and routine reporting requirements. The proposal retains the requirement that emissions at or above a reportable quantity resulting from maintenance, start-ups, or shut-downs be reported within 24 hours, but adds a requirement for a permanent record to be submitted within two weeks after the event. The proposed amendments would allow any air pollution program having jurisdiction to review U/M records being maintained at a facility.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 101 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased access to excess air emission data and emission-related information resulting from upset, maintenance, startup, and shut-down operations at certain facilities regulated by the TNRCC.

The proposed amendments are intended be consistent with federal regulations and policies while minimizing regulatory reporting requirements. There are no significant additional costs anticipated to any person or business as a result of complying with the proposed amendments to Chapter 101. Since current rules require U/M reports below the RQ to be generated and maintained on-site, the cost of transmitting these reports to the commission's regional offices and the Industrial Emissions Assessment Section are not anticipated to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

No significant adverse economic effects are anticipated to any person, small business, or micro- business as a result of implementing the provisions of the proposed amendments to the rules. The purpose of the proposed amendments to Chapter 101 is to revise and clarify state rules to conform with the federal regulations and policies regarding U/M reporting. While the proposed amendments add the requirement to submit records of unauthorized emissions at or above the RQ to the commission within two weeks, it is anticipated that these costs would not be significant and would have no significant adverse economic effect on small and micro-businesses. This proposal does not require that any new records be created. It only requires that the information contained in those records be transmitted to the commission. Additionally, the commission does not anticipate that a large number of small or micro-businesses use raw material in such quantities as to exceed a reportable quantity in the event of an upset.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposal requires that records of upsets causing releases above an RQ be submitted to the commission within two weeks of the event if any information changes from that transmitted in the original report sent within 24 hours of the event. These are records that are being created under the current rule. The commission believes that the cost of transmitting these records will not add any significant new costs above those incurred by creating the records. This proposal would create a new reportable quantity for certain substances, but does not authorize any new emissions of these substances; thus, it does not cause an adverse effect on the environment or increase risks to human health. Therefore, the rulemaking does not meet the definition of a "major environmental rule." In addition, the proposed amendments to Chapter 101 do not meet any of the four applicability requirements of a "major environmental rule." The proposed amendments do not exceed a standard set by federal law, an express requirement of state law, or exceed a requirement of a delegation agreement. The amendments are also proposed under the specific state laws of Texas Health and Safety Code, TCAA, §§382.011, 382.012, 382.014, 382.016, 382.017, 382.025, and 382.085.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. These amendments require that records of upsets that cause emissions at or above an RQ be submitted to the commission within two weeks of the event. They do not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore do not constitute a taking.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council. The commission has determined that this rulemaking relates to an action or actions subject to the CMP in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. For the actions in the proposed amendments to 30 TAC Chapter 101, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q), which requires the commission to protect air quality in coastal areas. The commission has determined that the specific actions detailed in previous explanations under the headings "Explanation of Proposed Rules," "Public Benefit," "Small Business and Micro-Business Analyses," "Draft Regulatory Impact Analysis," and "Takings Impact Analysis" are consistent with 40 CFR 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and will not allow any new emissions to the atmosphere. Persons may comment on this consistency review.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on February 22, 2000, at 10:00 a.m. at the TNRCC Complex in Building E, Room 201S, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an

agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99050- 101-AI. Comments must be received by 5:00 p.m., February 28, 2000. For further information, please contact Keith Sheedy, P.E., of the Office of Compliance and Enforcement, at (512) 239-1556, or Beecher Cameron, of the Regulation Development Section, at (512) 239-1495.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.014, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emission inventory; §382.016, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.025, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.085, which prohibits the unauthorized emissions of air contaminants; and Federal Clean Air Act (FCAA), §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.014, concerning Emission Inventory; §382.016, concerning Monitoring Requirements; Examination of Records; §382.017, concerning Rules; and §382.085, concerning Unauthorized Emissions Prohibited.

§101.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(81) (No change.)

(82) Reportable quantity (RQ) - Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures, either:

(i) the lowest of the quantities:

(I)-(II) (No change.)

(III) listed as follows:

(-a-) butanes (all isomers) [~~butane~~] - 5,000 pounds;

(-b-) butenes (all isomers, except 1,3-butadiene) - 5,000 pounds;

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

[~~(-e-) isobutylene - 5,000 pounds;~~]

(-e-) [~~(-f-)~~] pentanes (all isomers) [~~pentane~~] - 5,000 pounds;

(-f-) [~~(-g-)~~] propane - 5,000 pounds;

(-g-) [~~(-h-)~~] propylene - 5,000 pounds;

[~~(-i-) isobutane - 5,000 pounds; or~~]

(-h-) ethanol - 5,000 pounds;

(-i-) isopropyl alcohol - 5,000 pounds;

(-j-) mineral spirits - 5,000 pounds;

(-k-) hexanes (all isomers) - 5,000 pounds;

(-l-) octanes (all isomers) - 5,000 pounds; or

(-m-) decanes (all isomers) - 5,000 pounds

(ii) (No change.)

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound which equals or exceeds the amount specified in subparagraph (A) of this paragraph [~~definition~~];

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph [~~definition~~] is not known, any amount of the mixture which equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph [~~definition~~];

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph [~~definition~~] are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph [~~definition~~] are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas or [~~and~~] air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C)-(D) (No change.)

(83)-(109) (No change.)

§101.6. Upset Reporting and Recordkeeping Requirements.

(a) The following requirements for reportable upsets shall apply.

(1) (No change.)

(2) The notification for reportable upsets, except for boilers or combustion turbines referenced in §101.1 of this title (relating to Definitions) in the definition of reportable quantity, shall identify:

(A) the cause of the upset, if known;

(B) [~~(A)~~] the processes and equipment involved;

(C) [~~(B)~~] the date and time of the upset;

(D) [~~(C)~~] the duration or expected duration of the upset;

(E) [~~(D)~~] the compound descriptive type of the individually listed compounds or mixtures of air contaminants in the definition of reportable quantity which are known through common process knowledge or past engineering analysis or testing to exceed the reportable quantity;

(F) [~~(E)~~] the estimated quantities for those compounds or mixtures described in subparagraph (E) [~~(D)~~] of this paragraph except in the case of upsets determined on opacity only, where opacity will be estimated; and

(G) [~~(F)~~] the actions taken or being taken to correct the upset and minimize the emissions.

(3) The notification for reportable upsets for boilers or combustion turbines referenced in the definition of reportable quantity shall identify:

(A) the cause of the upset, if known;

(B) [~~(A)~~] the processes and equipment involved;

(C) [~~(B)~~] the date and time of the upset;

(D) [~~(C)~~] the duration or expected duration of the event;

(E) [~~(D)~~] the estimated opacity; and

(F) [~~(E)~~] the actions taken or being taken to correct the upset and minimize the emissions.

(4) The owner or operator of a facility must report additional or more detailed information on the upset when requested by the executive director or any [~~local~~] air pollution control agency with jurisdiction.

(5) (No change.)

(b) The owner or operator of a facility shall create a final record [~~records~~] of reportable and non-reportable upsets as soon as practicable, but no later than two weeks after the end of an upset. Final [~~The~~] records shall be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any [~~local~~] air pollution program with [~~having~~] jurisdiction. If a site is not normally staffed, records of upsets may be maintained at the staffed location within Texas that is responsible for day-to-day operations of the site. Such records shall identify:

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

(5) the compound descriptive type of the individually listed compounds or mixtures of air contaminants [~~in the definition of reportable quantity~~] which are known through common process knowledge or past engineering analysis or testing [~~to exceed the reportable quantity~~], except for boilers or combustion turbines referenced in the definition of reportable quantity;

(6)-(7) (No change.)

(c) For all reportable upsets, if the information required in subsection (b) of this section differs from the information provided in the 24-hour notification under subsection (a) of this section, the owner or operator of the facility shall submit a copy of the final record to the commission's regional office for the region in which the facility is located no later than two weeks after the end of the upset. If the owner or operator does not submit a record under this subsection, the information provided in the 24-hour notification under subsection (a) of this section will be the final record of the upset.

(d) [~~(c)~~] The owner or operator of a boiler or combustion turbine referenced in the definition of reportable quantity that is equipped with a continuous emission monitoring system providing updated readings at a minimum 15-minute interval and is required to submit excess emission reports by other state or federal requirements, is exempt from creating, [~~and~~] maintaining, and submitting records of reportable and non-reportable upsets of the boiler or combustion turbine under subsection (b) of this section [~~this section~~].

(e) [~~(d)~~] The owner or operator of any facility subject to the provisions of this section shall perform, upon request by the executive director or any [~~local~~] air pollution control agency with jurisdiction, a technical evaluation of the upset event. The evaluation shall include at least an analysis of the probable causes of the upset and any necessary actions to prevent or minimize recurrence. The evaluation shall be submitted in writing to the executive director within 60 days from the date of request. The 60-day period may be extended by the executive director.

§101.7. Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

(a) (No change.)

(b) The owner or operator shall notify the commission's regional office for the region in which the facility is located and all appropriate local air pollution control agencies at least ten days prior to any maintenance, start-up, or shutdown which is expected to cause an unauthorized emission which equals or exceeds the reportable quantity in any 24-hour period. If notice cannot be given ten days prior to any start-up, shutdown, or maintenance which is expected to cause an unauthorized emission that will equal or exceed a reportable quantity in any 24-hour period, notification shall be given as soon as practicable prior to the maintenance, start-up, or shutdown. Any maintenance, start-up, or shutdown which results in an unexpected unauthorized emission that equals or exceeds the reportable quantity shall be considered a reportable upset and subject to §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements).

(1) The notification, except for boilers and combustion turbines referenced in §101.1 of this title (relating to Definitions) in the definition of reportable quantity, shall identify [~~include~~] :

(A) the type of activity and the reason for the maintenance, start-up, or shutdown, if known;

(B) [~~(A)~~] the expected date and time of the maintenance, start-up, or shutdown;

(C) [~~(B)~~] the processes and equipment involved;

(D) [~~(C)~~] the expected duration of the maintenance, start-up, or shutdown;

(E) [~~(D)~~] the compound descriptive type of the individually listed compounds or mixtures of air contaminants in the definition of reportable quantity which are known through common process knowledge or past engineering analysis or testing to exceed the reportable quantity;

(F) [~~(E)~~] the estimated quantities for those compounds or mixtures described in subparagraph (E) of this paragraph [~~paragraph (4) of this subsection~~], except in the case of unauthorized emissions determined on opacity only, where opacity will be estimated; and

(G) [~~(F)~~] the actions taken to minimize the emissions from the maintenance, start-up, or shutdown.

(2) The notification [~~for reportable upsets~~] for boilers or combustion turbines referenced in the definition of reportable quantity shall identify [~~include~~] :

(A) the type of activity and the reason for the maintenance, start-up, or shutdown, if known;

(B) [~~(A)~~] the processes and equipment involved;

(C) [~~(B)~~] the date and time of the maintenance, start-up, or shutdown [~~upset~~];

(D) [~~(C)~~] the duration or expected duration of the event;

(E) [~~(D)~~] the estimated opacity; and

(F) [~~(E)~~] the actions taken or being taken to minimize the emissions from the maintenance, start-up, or shutdown.

(c) The owner or operator of a facility shall create a final record [~~records~~] of all maintenance, start-ups, and shutdowns with unauthorized emissions as soon as practicable, but no later than two weeks after the maintenance, start-up, or shutdown. Final [~~The~~] records shall be maintained on-site for a minimum of five [~~two~~] years and be made readily available upon request to commission staff or personnel of any [~~local~~] air pollution program with [~~having~~] jurisdiction. If a site is not normally staffed, records of maintenance, start-ups, and shutdowns [~~upsets~~] may be maintained at the staffed location within Texas that is responsible for day to day operations of the site. Such records shall identify:

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

(5) the compound descriptive type of the individually listed compounds or mixtures of air contaminants [~~in the definition of reportable quantity~~] which are known through common process knowledge or past engineering analysis or testing [~~to exceed the reportable quantity~~], except for boilers or combustion turbines referenced in the definition of reportable quantity;

(6) the estimated quantities for those compounds or mixtures described in paragraph (5) of this subsection, except in the case of unauthorized emissions determined on opacity only, where opacity shall [~~will~~] be estimated; and

(7) (No change.)

(d) For any maintenance, start-up, or shutdown event which causes an unauthorized emission which equals or exceeds the reportable quantity in any 24-hour period, if the information required in subsection (c) of this section differs from the information provided under subsection (b) of this section, the owner or operator of the facility shall submit a copy of the final record to the commission's regional office for the region in which the facility is located no later than two weeks after the end of the maintenance, start-up, or shutdown event. If the owner or operator does not submit a record under this subsection, the information provided under subsection (b) of this section will be the final record of the maintenance, start-up, shutdown event.

(e) [~~(d)~~] The owner or operator of a boiler or combustion turbine referenced in the definition of reportable quantity that is equipped with a continuous emission monitoring system providing updated readings at a minimum 15-minute interval and is required to submit excess emission reports by other state or federal regulations, is exempt from creating , [~~and~~] maintaining , and submitting records of maintenance, start-ups, and shutdowns with unauthorized emissions [~~of the boiler or combustion turbine~~] under subsection (c) of this section [~~this section~~].

(f) [~~(e)~~] The executive director may specify the amount, time, and duration of emissions that will be allowed during the maintenance, start-up, or shutdown. The owner or operator of any source subject to the provisions of this section shall submit a technical plan for any start-up, shutdown, or maintenance when requested by the executive director. The plan shall contain a detailed explanation of the means by which emissions will be minimized during the maintenance, start-up, or shutdown. For those emissions which must be released into the atmosphere, the plan shall include the reasons such emissions cannot be reduced further.

§101.11. Demonstrations [~~Exemptions from Rules and Regulations~~].

(a) Upset emissions are exempt from compliance with air emission limitations established in permits, rules, and orders of the commission, or as authorized by TCAA [~~Texas Clean Air Act~~], §382.0518(g) if the owner or operator properly complies with the requirements of §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements) and satisfies all of the following:

(1) the excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the owner or operator;

(2) the excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned for, and could not have been avoided by better operation and maintenance practices;

(3) to the maximum extent practicable, the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

(4) repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

(5) the amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(6) all possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(7) all emission monitoring systems were kept in operation if at all possible;

(8) the owner or operator's action in response to the excess emissions were documented by properly signed, contemporaneous operation logs, or other relevant evidence; and

(9) the excess emissions were not part of the recurring pattern indicative of inadequate design, operation, or maintenance.

[~~(1) the owner or operator properly complies with the requirements of §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements);~~]

[~~(2) the upset was not reasonably avoidable; and~~]

[~~(3) appropriate corrective actions were taken as soon as practicable after initiation of the upset.~~]

(b) Emissions from any maintenance, start-up, or shutdown are exempt from compliance with air emission limitations established in permits, rules, and orders of the commission, or as authorized by TCAA [~~Texas Clean Air Act~~], §382.0518(g)[~~,~~] if the owner or operator properly complies with the requirements of §101.7 of this title (relating to Maintenance, Start-up and Shutdown Reporting,

Recordkeeping, and Operational Requirements)[,] and satisfies all of the following: [the emissions are minimized to the extent practicable.]

(1) the periods of excess emissions from any maintenance, start-up, or shutdown were short and infrequent and could not have been prevented through careful planning and design;

(2) the excess emissions from any maintenance, start-up, or shutdown were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(3) if the excess emissions from any maintenance, start-up, or shutdown were caused by a bypass (an intentional diversion of control equipment), the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(4) at all times, the facility was operated in a manner consistent with good practice for minimizing emissions;

(5) the frequency and duration of operation in maintenance, startup, or shutdown mode was minimized to the maximum extent practicable;

(6) all possible steps were taken to minimize the impact of the excess emissions from any maintenance, start-up, or shutdown on ambient air quality;

(7) all emissions monitoring systems were kept in operation if at all possible; and

(8) the owner or operator's action during the period of excess emissions from any maintenance, start-up, or shutdown were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

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

(e) Sources emitting air contaminants which cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules and regulations when so determined and ordered by the commission [Texas Air Control Board]. The commission [board] may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements.

(f) (No change.)

(g) The owner or operator has the burden of proof to demonstrate that the criteria identified in subsection (a) of this section for upsets, or in subsection (b) of this section for maintenance, start-up, or shutdown occurrences are satisfied for each occurrence of unauthorized emissions. The executive director or any air pollution program with jurisdiction may request documentation of the criteria in subsections (a) and (b) of this section at their discretion. Satisfying the burden of proof is a condition to unauthorized emissions being exempt under this section.

(h) Upset emissions and emissions from any maintenance, start-up, or shutdown may not cause or contribute to a condition of air pollution. This section does not limit the commission's power to require corrective action as necessary to minimize emissions, or to order any action indicated by the circumstances to control the condition.

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 January 14, 2000.

TRD-200000226
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 17, 2000
For further information, please call: (512) 239-1966

Chapter 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

Subchapter B. MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

30 TAC §114.21

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §114.21 (Exclusions and Exceptions). This amendment is proposed to Subchapter B (Motor Vehicle Anti-tampering Requirements) of Chapter 114 (Control of Air Pollution from Motor Vehicles) and to the State Implementation Plan (SIP). The commission proposes these revisions in order to align the statewide anti-tampering provisions for motor vehicle air pollution control systems with the federal requirements outlined in §203(a)(3) of the Federal Clean Air Act (FCAA), (42 United States Code, §7522(a)(3)).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Federal anti-tampering provisions regarding emission control equipment on motor vehicles and motor vehicle engines prohibit any person from removing or rendering inoperative any emission control device. The only federal exemptions to this requirement are for vehicles used primarily for sanctioned motor sports competition, research, or training purposes. In addition to the federally approved exemptions, §114.21 currently allows for exemptions for vehicles registered as farm vehicles (such as pickup trucks). In addition, exclusions are allowed for vehicles whose owners believe the continued operation of certain emission control equipment will result in a clear danger to persons or property. Historically, the most common emission control equipment being addressed is the catalytic converter. Section 114.21 was adopted in the mid-1980s in response to reported incidents of grass fires resulting from high-operating temperatures believed to be associated with catalytic converters.

In correspondence and discussions in April 1998, the United States Environmental Protection Agency (EPA) requested that the commission phase out the tampering exclusions in §114.21 within two years or face possible sanctions. This request was based on the fact that: 1) Texas is not in compliance with Title 40 Code of Federal Regulations (CFR), Part 85 (Control of Air Pollution from Mobile Sources), 2) Texas is the only state that offers waivers to allow removal of catalytic converters, and 3) newer model year vehicles now have improvements and advancements in technology in both engines and exhaust systems. These improvements include the positioning of the catalytic converter to areas closer to the engine compartment which provides greater ground clearance beneath the vehicle, and new catalytic converter technologies.

As a result, the Technical Analysis Division (formerly the Air Quality Planning and Assessment Division) completed a contract study to re-examine the long-standing concern that hot ve-

hicle exhaust systems, specifically the catalytic converter, can create a potentially hazardous fire-starting situation. The scope of the contract was to determine the risk of fire-starting with new and emerging vehicle engine and catalytic converter technologies. The contract awarded to Wallace Environmental Testing Laboratories, Inc. of Houston, Texas was completed June 30, 1999. The final report submitted by Wallace Environmental Testing Laboratories, Inc. showed that of the 11 vehicles tested, the hottest point on the exhaust system was consistently that point closest to the engine, with or without the catalytic converter. The study indicated that "while peak exhaust system temperatures crossed piloted ignition thresholds for dry grass and pine needles, catalyst removal did not reduce exhaust system temperatures." In addition, removal of the catalytic converter did not change the location of the hottest point on the exhaust system. It was also noted that, in all but one vehicle, the pipe installed to replace the catalytic converter reached a higher temperature than the converter it replaced. In some cases, these temperatures were substantially higher. The report also quantified the effect of the removal of the catalytic converter on a vehicle exhaust emissions. The study showed that after the catalytic converters were removed, carbon monoxide emissions increased by an average of 4,732%, hydrocarbons by an average of 15,730%, and nitrogen oxides by an average of 5,070%.

SECTION BY SECTION DISCUSSION

The proposed rule would revise §114.21(a)(1) by removing the exemption for registered farm vehicles. Section 114.21(b) would be amended by adding the word "Control" to the phrase "DoD Privately Owned Vehicle Import Program" before the word "Program." Section 114.21(c) would be revised by removing the language allowing exclusions and the conditions which must be met to claim an exclusion. In addition, new provisions are proposed in §114.21(c) to exempt registered farm vehicles that have had their emission control equipment modified or removed prior to June 1, 2000, and vehicles that were granted an exclusion prior to June 1, 2000, from the requirements of §114.20 (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles). Section 114.21(e)(2) is proposed to be amended to correctly refer to the title of §114.50 as "Vehicle Emissions Inspection Requirements."

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments.

Federal anti-tampering provisions regarding emission control equipment on motor vehicles and motor vehicle engines prohibit any person from removing or rendering inoperative any emission control device. The proposed amendments to Chapter 114 would make this chapter conform with federal regulations by repealing the current state exemptions for farm vehicles and repealing the exemption for vehicles whose owners allege that the continued operation of certain emission control equipment will result in a clear danger to persons or property. Recent research and testing by Wallace Environmental Testing Laboratories, Inc. has indicated that these exemptions are no longer useful nor necessary. The EPA has requested that the commission phase out the state tampering exemptions or face possible sanctions. Sanctions may include the loss of significant federal funding for transportation projects provided to nonattainment areas.

The proposed amendments would, however, allow existing exempt registered farm vehicles that have had their emission control equipment modified or removed prior to June 1, 2000 to maintain their exemptions. In addition, other vehicles that were granted an exemption prior to June 1, 2000 from the requirements in Chapter 114, may maintain their exemption until such time as the vehicle is sold. When an exempted vehicle is sold, it is the seller's responsibility to bring the vehicle back to its original certified emission control configuration prior to sale. In most situations, the catalytic converter has to be re-installed to bring a vehicle back to its original configuration. The cost of re-installing the catalytic converter is approximately $100 to $250 per converter depending on the vehicle make, model, etc. According to agency records, 832 vehicles have been granted exemptions and the agency has been notified of 37 vehicles that have re-installed the catalytic converter. The provision requiring the vehicle to be configured to its original emission control configuration exists in the current rule and has not changed so there is no fiscal implication attributable to the proposed amendments.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 114 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be potentially improved air quality associated with eliminating the option to remove catalytic convertors from motor vehicles, potential reductions in emissions of carbon monoxide, hydrocarbons, nitrogen oxides, and potential reductions in ozone.

The intent of the proposed amendments to Chapter 114 is to make state rules conform to federal regulations by repealing the current state exemption for farm vehicles and the exclusion for vehicles whose owners allege that the continued operation of certain emission control equipment will result in a clear danger to persons or property. Recent research and testing by Wallace Environmental Testing Laboratories, Inc. has indicated that these exemptions are no longer useful nor necessary. The EPA has requested that the commission phase out the tampering exemptions or face possible sanctions.

The proposed amendments apply to persons in Texas owning or operating a motor vehicle or motor vehicle engine who maintain or request an exemption from the rules regarding a system or device used to control emissions from the motor vehicle in compliance with federal motor vehicle rules. Specifically, the amendments apply to registered farm vehicles and vehicles whose owners allege that the continued operation of certain emission control equipment will result in a clear danger to persons or property. There are no significant fiscal implications anticipated to individuals or businesses as a result of administration or enforcement of the proposed amendments because vehicles which hold an exemption prior to June 1, 2000 will be allowed to maintain/continue their exemption until such time as they sell the vehicle.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

There are no anticipated fiscal implications to small businesses and micro-businesses as a result of implementing the proposed

amendments. The proposed amendments to Chapter 114 repeal the current state exemptions for farm vehicles and the exemption for vehicles whose owners allege that the continued operation of certain emission control equipment will result in a clear danger to persons or property. Recent research and testing by Wallace Environmental Testing Laboratories, Inc. has indicated that these exemptions are no longer useful nor necessary. The EPA has requested that the commission phase out the tampering exemption or face possible sanctions.

The proposed amendments allow existing exempt registered farm vehicles that have had their emission control equipment modified or removed prior to June 1, 2000 to maintain their exemptions. In addition, other vehicles that were granted an exemption prior to June 1, 2000 from the requirements in Chapter 114, may maintain their exemption until such time as the vehicle is sold. When an exempted vehicle is sold, it is the seller's responsibility to bring the vehicle back to its original certified emission control configuration prior to sale. In most situations, the catalytic converter has to be re- installed to bring a vehicle back to its original configuration. The cost of re-installing the catalytic converter is approximately $100 to $250 per converter depending on the vehicle make, model, etc. According to agency records, 832 vehicles have been granted exemptions and the agency has been notified of 37 vehicles that have re-installed the catalytic converter. The provision requiring the vehicle to be configured to its original emission control configuration exists in the current rule, §114.20(c), and has not changed so there is no fiscal implication attributable to the proposed amendments.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and has determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 114 repeal certain exemptions while allowing existing exemptions until the vehicle is sold. The proposed amendments do not impose additional fiscal requirements to existing requirements and may have the positive effect of preventing the cost of removing pollution control devices on certain motor vehicles. The proposed amendments are not anticipated to have an adverse affect in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program or; 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendments do not exceed federal standards but were developed to make state rules conform to federal regulations. This proposal does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency but were specifically developed to make state rules conform to federal regulations. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to remove specific exemptions and exclusions relating to the removal of air pollution control systems (catalytic converters) from motor vehicles and does not create a burden on private real property. Therefore, this revision will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 *et seq.*), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy (31 TAC §501.14(q)) that commission rules comply with federal regulations at 40 CFR 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and 40 CFR 85 (Control of Air Pollution from Mobile Sources) to protect and enhance air quality in the coastal are (31 TAC §501.14(q)). The effect of the proposed rules will be to make the state rules, which are currently less stringent than the federal rules, essentially equivalent to the federal rules found in 40 CFR 85. No new sources of air contaminates will be authorized by the proposed rule amendments, and emissions from mobile sources will be reduced as a result of not allowing vehicles to remove emissions control equipment. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on February 22, 2000, at 2:00 p.m., in Building F, Room 3202A at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency

staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 99066-114-AI. Comments must be submitted no later than 5:00 p.m. on February 28, 2000. For further information, please contact Alan Henderson at (512) 239-1510 or Bob Reese at (512) 239-1439.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.039, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

This amendment implements TCAA, §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; and §382.039, relating to Attainment Program.

§114.21. Exemptions [~~Exclusions and Exceptions~~].

(a) The following exemptions shall apply to specified motor vehicles or motor vehicle engines.[~~:~~]

(1) Motor vehicles or motor vehicle engines which are [~~registered as farm vehicles with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation and are intended solely or primarily for use on a farm or ranch; or are~~] intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or for instruction in a bona fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used are exempt from the provisions of §114.20(a), (b), and (d) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to [~~To~~] Control Emissions From Motor Vehicles).

(2) (No change.)

(b) Vehicles belonging to members of the U.S. Department of Defense (DoD) participating in the DoD Privately Owned Vehicle Import Control Program or other persons being transferred to a foreign country are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions are met. [~~:~~]

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

(c) Motor vehicles are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions apply: [~~Any person owning or operating a motor vehicle or motor vehicle engine may apply to the executive director for an exclusion from the provisions of §114.20(a) and (b) of this title. Such an exclusion may be granted if the following conditions are met.~~]

(1) the motor vehicles are registered as farm vehicles with the Vehicle Titles and Registration Division of the Texas Department of Transportation, are intended solely or primarily for use on a farm or ranch, and their air pollution control devices or systems were removed or made inoperable prior to June 1, 2000; or [~~The application shall include the applicant's full name, business address, and telephone number. A single vehicle and vehicle engine shall be specified in the application and must be identified by the unique vehicle identification number assigned to that vehicle by the manufacturer and by the manufacturer's engine family number.~~]

(2) the motor vehicles were granted an exemption from the provisions of §114.20(a) and (b) of this title by the Texas Natural Resource Conservation Commission (commission) or its predecessor agency prior to June 1, 2000. [~~The air pollution control systems or devices on the vehicle or vehicle engine which would be covered by the exclusion shall be specified in the application.~~]

[~~(3) A demonstration shall be made in the application that provides adequate justification for special consideration of the specified vehicle under the provisions of this chapter. This demonstration shall include, but shall not be limited to, the following information necessary to determine that the use of certain pollution control devices or systems on the vehicle to be covered by the exclusion would result in a clear danger to persons or property or would be detrimental to the purpose for which the vehicle is intended to be used:~~]

[~~(A) Proposed use of the vehicle and description of adverse circumstances;~~]

[~~(B) Locations where the vehicle will primarily be operated;~~]

[~~(C) Estimated length of time the vehicle is expected to be operated in adverse circumstances;~~]

[~~(D) Estimated percentages of the time the vehicle will primarily be operated in adverse circumstances and on public roadways;~~]

[~~(E) History of problems related to the use of specified control devices or systems;~~]

[~~(F) Evidence of the potential hazards and consequences of operating the vehicle for the intended use with the identified control devices or systems in place.~~]

(A) [~~(4)~~] A [~~The applicant shall agree and ensure that a~~] copy of the exemption [~~exclusion~~] shall be kept with the vehicle at all times and shall be available for inspection by representatives of the commission [~~Texas Natural Resource Conservation Commission~~], the Texas Department of Public Safety (DPS), or any other law enforcement agency upon request. The approved exclusion shall also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the DPS.

(B) [~~(5)~~] The exemption [~~applicant shall agree and ensure that the exclusion~~] shall be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the exclusion when the vehicle changes ownership or is no longer used for the purpose identified in the exclusion application. The

executive director shall be informed in writing prior to the change of ownership or usage.

~~[(6) The applicant shall comply with all special provisions and conditions specified by the executive director in the exclusion.]~~

(d) (No change.)

(e) Federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.20(c) of this title if the following conditions are met.

(1) The Texas Department of Public Safety (DPS) [~~DPS~~] motor vehicle safety inspection certificates must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed that deficiencies may be present in the vehicle pollution control systems on the vehicle. The buyer must also be informed of the liabilities to the buyer under §114.20 of this title and §114.50 of this title (relating to Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment and shall make it available, upon request.

(f) (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 January 14, 2000.

TRD-200000230
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: February 28, 2000
For further information, please call: (512) 239-4712

Chapter 331. UNDERGROUND INJECTION CONTROL

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§331.9, 331.11, 331.131, 331.132, and 331.133, Underground Injection Control.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Chapter 331, relating to Underground Injection Control, regulates all injection wells and activities related to injection wells regulated by the commission under Texas Water Code, Chapter 27. The proposed amendments to Subchapter A, General Provisions, will clarify authorization by rule requirements related to Class V injection wells. The proposed amendments to Subchapter H, Standards for Class V Wells, will update construction and closure standards to those standards and practices currently accepted as being more protective of groundwater. The proposed changes to Chapter 331 will also ensure consistency with drilling standards associated with similar well types adopted by the Texas Department of Licensing and Regulation (TDLR), which regulates the conduct of licensed well drillers.

SECTION BY SECTION DESCRIPTION

The proposed amendment to §331.9(a) adds a reference to closure standards for Class V injection wells authorized under this rule. The current language in §331.9(a) refers to closure standards in §331.46 which are appropriate for Class I injection wells. The proposed amendment to §331.9(a) will state that the appropriate closure standards for Class V injection wells are located in §331.133.

The proposed amendment to §331.9(b)(2)(E) prohibits injection into Class V wells unless the construction standards in Subchapter H, and in the case of aquifer storage wells, both Subchapters H and K, are met.

Proposed new §331.11(a)(4)(B) will clarify that closed loop injection wells are contained within the Class V category. Under §331.11(a)(4), Class V wells are any injection well that is not a Class I, III, or IV, under the jurisdiction of the commission. This section provides several examples of Class V wells, but it does not specifically list closed loop injection wells (a vertical closed water circulating loop capable of absorbing or rejecting heat as part of heat pump system), even though this type of well is also a Class V well (as provided under 40 Code of Federal Regulations §144.3 and §144.6). Amending §331.11(a)(4) to include closed loop injection wells will provide additional protection of groundwater resources because the commission can ensure that this type of well is constructed and closed in accordance with the standards in Subchapter H.

The commission is also proposing amendments to Subchapter H, §§331.131-331.133, relating to Standards for Class V Wells. The proposed amendment to §331.131, Applicability, replaces the agency name "Texas Water Commission" with "commission." The proposed amendment also adds language that references Subchapter K, Additional Requirements for Class V Aquifer Storage Wells, to the applicable sections in Subchapter H. It also clarifies that aquifer storage wells must also comply with Subchapter K.

Several amendments to §331.132, relating to Construction Standards, are being proposed to provide clarification for the regulated community and update the standards to currently accepted well construction that are consistent with existing well drilling standards for water well drillers. With the transfer of the licensing and regulation of water well drillers and pump installers from the commission to the TDLR in 1997, some of the construction standards for Class V injection wells that were contained within the commission rules regulating drillers were inadvertently repealed by the commission when the rules governing the licensing of drillers were repealed as part of the transfer of the program. The construction standards proposed in §331.132 clarify that these construction standards for the design and closure of Class V injection wells are part of the commission's underground injection control program and not just a requirement for drillers.

The proposed amendment to §331.132(a) provides authorization to the executive director to approve alternative standards to those contained in §331.132. Proposed changes to §331.132(a) also require all Class V wells to be installed by a driller licensed by the TDLR. As a result of this proposed amendment, all Class V wells are to be installed by a licensed profes-

sional. The use of a licensed water well driller, who is trained and experienced in current well construction practices, will help ensure the proper construction of these wells and should ensure that the necessary level of groundwater protection is maintained once the well is put into operation.

The proposed amendments to §331.132(b) provide clarification for the regulated community on the reporting requirements related to the construction and operation of a Class V injection well. Except for closed loop injection and air conditioning return flow wells, new §331.132(b)(1)(A) provides that prior to construction of the well, the owner/operator must submit all information required under §331.10(a) to the executive director. Except for closed loop injection wells and air conditioning return flow wells, proposed §331.132(b)(1)(B) provides that after completion of construction, a report to the executive director must be submitted on the state well report form which is provided by the TDLR. This subparagraph has also been modified to provide for submission of this form within 30 days from the date the well construction is completed.

A proposed new §331.132(b)(2) addresses reporting requirements for closed loop injection wells and air conditioning return flow wells. The paragraph requires no reporting prior to construction and requires the submittal of the state well report form to the executive director within 30 days from the date the well construction is complete. Information on any additives, constituents, or fluids other than potable water that are used in the closed loop system must be reported in the water quality section on the state well report form.

A proposed new §331.132(c)(2) is added to address the general sealing of the annular space and casing for injection wells and the filling of the top of the well bore for closed loop injection wells. Proposed amendments to §331.132(d) provide standards for surface completion for all types of wells except for below grade closed loop inject wells, which are required to follow the provisions in §331.132(c)(2). Proposed amendments to §331.132(d)(2) provide standards for completion at the top of the casing. The provisions related to flood elevation have been moved to new §331.132(g) and the provisions related to capping or completion to prevent pollutants from entering the well, formerly in §331.132(g), have been moved to §331.132(d)(2). Provisions under §331.132(e) have been moved to §331.132(d). Provisions related to the use of a pitless adaptor, which is a sanitary underground discharge assembly providing a watertight subsurface connection for buried pump discharge or suction lines, are proposed for deletion because this technology is not applicable to Class V injection wells.

A proposed new §331.132(e) clarifies the construction standards for wells utilizing a steel sleeve or PVC sleeve. The proposed new §331.132(f) clarifies and consolidates all the standards for the placement of Class V injection wells in flood-prone areas and specifies that a Class V injection well should not be located in areas subject to flooding. If a well must be placed in a flood-prone area, the proposed subsection provides for appropriate and more stringent construction standards. For the purpose of this subsection, a flood-prone area is defined as that area within the 100-year flood plain as determined on the Federal Emergency Management Agency (FEMA) Flood Hazard Maps for the National Flood Insurance Program. If FEMA has conducted a flood insurance study of the area, and has mapped the 50-year flood plain, then the smaller geographic areas within the 50-year boundary are considered to be flood prone.

A proposed new §331.132(g) clarifies and consolidates other protective measures that must be taken when a well is installed. These measures prohibit the commingling of water from different zones of water quality, which causes degradation of any aquifer containing fresh water and requires zones containing undesirable groundwater be sealed off and confined to the zone of origin. The proposed amendments to §331.132(g)(2) clarify that undesirable groundwater is water that is injurious to human health and the environment or water that can cause pollution to land or other waters and the well should be constructed so that the undesirable groundwater is isolated from any underground source of drinking water and confined to the zone of origin.

The proposed amendments to §331.133(a) clarify that it is the responsibility of the owner/operator of a Class V injection well to properly plug the well when its use is permanently discontinued or the well is abandoned. The proposed amendment to §331.133(b) provides for the method that will be used to pressure fill the well with cement. The proposed amendments to §331.133(c) clarify that an alternative method to subsection (b) for well closure can be used as long as the well is not completed through a zone or zones containing undesirable groundwater. Proposed amendments to §331.133(d) clarify that an alternative method to subsection (b) for well closure can be used for plugging Class V injection wells that have encountered undesirable groundwater. A proposed modification in subsection (d) changes the recommended bentonite grout weight from 9.5 pounds per gallon to 9.1 pounds per gallon. This change in grout weight reflects a change in well plugging technology and common practice which is equally effective in preventing groundwater contamination.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant adverse fiscal implications for the commission and other units of state or local government as a result of administration or enforcement of the proposed amendments.

The purpose of the proposed amendments to Chapter 331, Underground Injection Control, is to clarify existing rules and definitions, update references, clarify and update Class V injection well standards to currently accepted well construction and closure standards, and to provide conformity with standards for drillers installing similar well types adopted by the TDLR. A Class V injection well is, generally, a well for injecting nonhazardous fluids into or above formations that contain underground sources of drinking water. The proposed amendments also clarify that it is the responsibility of the owner/operator of a Class V injection well to properly plug a well when its use is permanently discontinued or the well is abandoned. The proposed amendments will add closed loop injection wells to the list of injection wells included in the definition of a Class V well and provide construction standards for these wells that are consistent with standards promulgated by TDLR. The proposed amendments also provide authorization to the executive director to approve alternative standards to those contained in the rules and requires all Class V wells to be installed by a driller licensed by the TDLR. The proposed amendments will also clarify that TDLR provides the state well report form formerly provided by the commission and the deadline by which the form must be filed with the commission.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 331 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be clarification and updating of standards and requirements that provide necessary, reasonable, and adequate protection of groundwater and are consistent with standards promulgated by TDLR for drillers installing similar type wells.

There are no significant adverse economic impacts anticipated to any person or business required to comply with the sections as proposed. The proposed amendments to Chapter 331 clarify existing rules and definitions, clarify and update Class V injection well standards, conform to currently accepted well construction and closure standards, and are consistent with current standards for drillers installing similar well types adopted by the TDLR.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

No significant adverse economic effects are anticipated to any person, small business, or micro- business as a result of implementing the provisions of the proposed amendments to Chapter 331 of the rules. The intent of the proposed amendments to Chapter 331 is to clarify existing rules and definitions, clarify and update Class V injection well standards to currently accepted well construction and closure standards, and provide consistency with standards for drillers installing similar well types adopted by the TDLR. Since the proposed standards are consistent with those required by TDLR for licensed water well drillers, adoption of the proposed amendments should have no significant fiscal impact.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are intended to protect the environment and reduce risks to human health from environmental exposure. Although certain standards have been revised, the proposed amendments reflect what is considered to be current well drilling practice and is not anticipated to have an adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency, but are proposed under authority of Chapter 27 of the Texas Water Code, which authorizes the commission to regulate injection wells. The state standards do not exceed the standard set by federal law because federal regulations, required under Title 42 Public Health and Welfare, §330h(b)(1), contain the minimum requirements and restrictions on a state injection well program and include requirements that prohibit injection which is not authorized by permit or rule and require that no state program which provides for authorization of underground injection by rule may promulgate rules which endanger drinking water sources.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. Promulgation and enforcement of these rules will not affect private real property because the rulemaking clarifies the definition of a Class V well to include a closed loop injection well. The rulemaking also proposes clearer guidance for the construction and closure standards for Class V wells under the jurisdiction of the commission.

Private property is not affected or burdened by these rules because the rules do not restrict or limit an owner's right to property that would otherwise exist in the absence of the proposed changes. In other words, a property owner may still use his property in any manner he wishes, in accordance with applicable state law and rules of the commission.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

This rulemaking is not subject to the Texas Coastal Management Plan (CMP). The rulemaking proposes clearer guidance for the construction and closure of Class V wells under the jurisdiction of the commission. The executive director has reviewed the rulemaking and found that the proposed rules and rule changes do not govern specific actions identified in the CMP as being subject to consistency with the CMP, including air pollution emissions, on-site sewage disposal systems, or underground storage tanks expressly identified under Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the CMP. Neither do the proposed rules or rule changes qualify as an individual agency action subject to 31 TAC §505.11(a).

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on February 23, 2000 at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle. Individuals may present oral or written statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted 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. All comments should reference Rule Log Number 99009-331-WT. Comments must be received by 5:00 p.m., February 28, 2000. For further information, please contact Mary Ambrose, Regulatory Development Section, (512) 239-4813.

Subchapter A. GENERAL PROVISIONS

30 TAC §331.9, §331.11

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, Chapter 27. Section 27.003 provides that it is the policy of the state and the purpose of Chapter 27 to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare, the operation of existing industries, and the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy. Section 27.019 requires the commission to adopt rules and procedures reasonably required for the performance of its powers and duties under Chapter 27.

Texas Water Code, §5.103 and §5.105, authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the Texas Water Code and other laws of Texas.

No other codes or statutes will be affected by this proposal.

§331.9. Injection Authorized by Rule.

(a) Plugging and abandonment of a well authorized by rule at any time after January 1, 1982, shall be accomplished in accordance with the standards of §331.46 of this title (relating to Closure Standards). Class V wells shall be closed according to standards under §331.133 of this title (relating to Closure Standards).

(b) Injection into Class V wells [Wells], unless otherwise provided , is authorized by virtue of this rule. Injection [; injection] into new Class V wells used for the disposal of over 1,000 gallons per day of sewage or sewage effluent must be authorized by [apply for and obtain] a permit from the commission before operations begin.

(1) (No change.)

(2) An owner or operator of a Class V well is prohibited from injecting into the well:

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

(C) upon failure to submit inventory information in a timely manner under §331.10 of this title (relating to Inventory of Wells Authorized by Rule); [or]

(D) upon failure to comply with a request for information from the executive director in a timely manner; or [.]

(E) upon failure to comply with provisions contained in Subchapter H of this chapter (relating to Standards for Class V Wells) and, if applicable, Subchapter K of this chapter (relating to Additional Requirements for Class V Aquifer Storage Wells).

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

§331.11. Classification of Injection Wells.

(a) Injection wells within the jurisdiction of the commission are classified as follows. [:]

(1) Class I : [.]

(A) wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells ; [.]

(B) (No change.)

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

(4) Class V. Generally, wells covered by this paragraph inject nonhazardous [non- hazardous] fluids into or above formations that contain USDWs. Class V wells are injection [Injection] wells within the jurisdiction of the commission, but are not included in Classes I, III, or IV. Class V wells include, but are not limited to:

(A) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

(B) closed loop injection wells which are closed system geothermal wells used to circulate fluids including water, water with additives, or other fluids or gases through the earth as a heat source or heat sink;

(C) [(B)] cesspools or other devices that receive wastes, which have an open bottom and sometimes have perforated sides;

(D) [(C)] cooling water return flow wells used to inject water previously used for cooling;

(E) [(D)] drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(F) [(E)] dry wells used for the injection of wastes into a subsurface formation;

(G) [(F)] recharge wells used to replenish the water in an aquifer;

(H) [(G)] salt water intrusion barrier wells used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the fresh water;

(I) [(H)] sand backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into mined out portions of subsurface mines;

(J) [(I)] septic system wells used:

(i) to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank; or

(ii) for a multiple dwelling, community, or regional cesspool; [.]

(K) [(J)] subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(L) [(K)] aquifer storage wells used for the injection of water for storage and subsequent retrieval for beneficial use.

(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 January 14, 2000.

TRD-200000222

Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 31, 2000
For further information, please call: (512) 239-1966

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Subchapter H. STANDARDS FOR CLASS V WELLS

30 TAC §§331.131 - 331.133

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, Chapter 27. Section 27.003 provides that it is the policy of the state and the purpose of Chapter 27 to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare, the operation of existing industries, and the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy. Section 27.019 requires the commission to adopt rules and procedures reasonably required for the performance of its powers and duties under Chapter 27.

Texas Water Code, §5.103 and §5.105, authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the Texas Water Code and other laws of Texas.

No other codes or statutes will be affected by this proposal.

§331.131. Applicability.

The sections of this subchapter apply to all new Class V injection wells under the jurisdiction of the commission [~~Texas Water Commission~~]. Aquifer storage wells must also comply with Subchapter K of this chapter (relating to Additional Requirements for Class V Aquifer Storage Wells) in addition to this subchapter.

§331.132. Construction Standards.

(a) All Class V wells shall be completed in accordance with the [~~following~~] specifications contained in this section, unless otherwise authorized by the executive director, and shall be installed by a water well driller licensed by the Texas Department of Licensing and Regulation [~~commission~~].

(b) Reporting.

(1) General.

(A) Prior to construction. Except for closed loop injection and air conditioning return flow wells, information required under §331.10(a) of this title (relating to Inventory of Wells Authorized by Rule) shall be submitted to the executive director prior to construction.

(B) After completion of construction. Except for closed loop injection and air conditioning return flow wells, the state well report form, provided by the Texas Department of Licensing and Regulation under 16 TAC §76.700 (relating to Responsibilities of the Licensee-State Well Reports), shall be completed and submitted to the executive director within 30 days from the date the well construction is completed.

(2) Closed loop and air conditioning return flow wells. No reporting prior to construction is necessary for these two types of wells. A state well report form provided by the Texas Department of Licensing and Regulation under 16 TAC §76.700 shall be completed and submitted to the executive director within 30 days from the date the well construction is completed. Any additives, constituents, or fluids (other than potable water) that are used in the closed loop injection well system shall be reported in the Water Quality Section on the state well report form.

[~~(b) For all Class V wells, a form provided by the executive director or the form of the Water Well Drillers Board shall be completed and submitted to the executive director.~~]

(c) Sealing of casing.

(1) General. Except for closed loop injection wells, the [~~The~~] annular space between the borehole and the casing shall be filled from ground level to a depth of not less than ten [~~10~~] feet below the land surface or well head with cement slurry. In areas of shallow, unconfined groundwater aquifers, the cement need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement need not be placed below the top of the water-bearing strata.

(2) Closed loop injection well. The annular space of a closed loop injection well shall be backfilled to the total depth with impervious bentonite or a similar material. Where no groundwater or only one zone of groundwater is encountered, sand, gravel, or drill cuttings may be used to backfill up to 30 feet from the surface. The top 30 feet shall be filled with impervious bentonite. Alternative impervious materials may be authorized by the executive director upon request.

(d) Surface completion.

[~~(d) In all wells where plastic casing is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.~~]

(1) All wells must have a concrete slab or sealing block placed above the cement slurry around the well at the ground surface.

(A) [~~(1)~~] The slab or block shall extend at least two feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(B) [~~(2)~~] The surface of the slab shall be sloped so that liquid will [~~to~~] drain away from the well.

(C) Closed loop injection wells which are completed below grade are exempt from the surface completion standards in this paragraph; however, the provisions in subsection (c)(2) of this section must be followed.

(2) [~~(3)~~] The top of casing shall extend a minimum of 12 inches [~~one foot~~] above the original ground surface [~~or known flood elevation~~]. The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(e) Use of a steel or PVC sleeve. The steel sleeve shall be a minimum of 3/16 inches in thickness and/or the PVC sleeve shall be a minimum of Schedule 80 sun-resistant and 24 inches in length, and shall extend 12 inches into the cement slurry.

[~~(e) In wells where steel casing is used, a slab or block as described in subsection (d)(1)of this section will be required above the cement slurry, except when a pitless adapter is used.~~]

[~~(1) Pitless adapters may be used in such wells provided that:~~]

[~~(A) the adapter is welded to the casing or fitted with another suitably effective seal; and~~]

[(B) the annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.]

[(2) The casing shall extend a minimum of one foot above the original ground surface or known flood elevation.]

(f) Well placement in a flood-prone area. All wells shall be located in areas not generally subject to flooding. If a well must be placed in a flood-prone area, it shall be completed with a watertight sanitary well seal, so as to maintain a junction between the casing and injection tubing, and a steel sleeve extending a minimum of 36 inches above ground level and 24 inches below the ground surface shall be used. For the purpose of this subsection, a flood-prone area is defined as that area within the 100-year flood plain as determined on the Federal Emergency Management Agency (FEMA) Flood Hazard Maps for the National Flood Insurance Program. If FEMA has conducted a flood insurance study of the area, and has mapped the 50-year flood plain, then the smaller geographic areas within the 50-year boundary are considered to be flood prone. Closed loop injection wells and air conditioning return flow wells are exempt from the completion standards in this subsection.

(g) Other protection measures.

(1) [(f)] Commingling prohibited. All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer containing fresh water [zone].

[(g) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.]

(2) [(h)] Undesirable groundwater. When undesirable groundwater, water that is injurious to human health and the environment or water that can cause pollution to land or other waters, [water] is encountered in a Class V well, the well shall be constructed so that the undesirable groundwater is isolated from any underground source of drinking water [water shall be sealed off] and is confined to the zone(s) of origin.

§331.133. Closure Standards.

(a) It is the responsibility of the owner and/or operator [landowner or person having the well drilled, deepened, or otherwise altered,] to plug or have plugged, under standards set forth in this section [these sections], a Class V well which is to be permanently discontinued or abandoned.

(b) Closure shall be accomplished by removing all of the removable casing and the entire well shall be pressure filled via a tremie pipe with cement from bottom to the land surface [filled with cement to land surface].

(c) As an alternative to [In lieu of] the procedure in subsection (b) of this section , if a class V well is not completed through zones containing undesirable groundwater, water that is injurious to human health and the environment or water that can cause pollution to land or other waters, [and if the use of a Class V well that does not contain undesirable water is to be permanently discontinued], the well may be filled with fine sand, clay, or heavy mud followed by a cement plug extending from land surface to a depth of not less than ten [10] feet below the land surface.

(d) As an alternative to [In lieu of] the procedure in subsection (b) of this section , if a Class V well is completed through zones containing undesirable groundwater, water that is injurious to human health and the environment or water that can cause pollution to land or other waters [and if the use of a Class V well that does contain undesirable water is to be permanently discontinued], either the zone(s) containing undesirable groundwater [water] or the fresh groundwater [water] zone(s) shall be isolated with cement plugs and the remainder of the wellbore filled with bentonite grout (9.1 pounds per gallon mud or more) followed by [sand, clay, or heavy mud to form a base for] a cement plug extending from land surface to a depth of not less than ten [10] feet below the land surface.

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 January 14, 2000.

TRD-200000223
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 31, 2000
For further information, please call: (512) 239-1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 9. TEXAS ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

Chapter 286. ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

The Texas On-Site Wastewater Treatment Research Council (Council) proposes new Chapter 286 containing §§286.1, 286.2, 286.9, 286.14, 286.31, 286.32, 286.34, 286.51 - 286.53, 286.74, 286.91 - 268.98 and 286.131 concerning the On-Site Wastewater Treatment Research Council under TAC Title 31 (relating to Natural Resources and Conservation). This proposed new chapter will replace existing Chapter 286 concerning the On-Site Wastewater Treatment Research Council under TAC Title 30 (relating to Environmental Quality).

EXPLANATION OF PROPOSED RULE

The Council is proposing new Chapter 286 to move its rules to Title 31, Part 9, relating to the Texas On-Site Wastewater Treatment Research Council, to provide for clearer administration of its programs as a separate state agency from the Texas Natural Resource Conservation Commission (the Commission). Currently the Council rules are imbedded within Title 30, Part I, which is reserved for rules of the Commission. As per the Texas Health and Safety Code, Chapter 367, relating to the On-Site Wastewater Treatment Research Council, the Council is a separate state agency for which the Commission provides staff and other administrative support.

While the entire proposed chapter will be new, there are only a few changes from the existing rules that are being proposed by the Council. These are amendments to §286.2 (relating to Definitions), §286.34 (relating to Indemnification), §286.51 (relating to Applied Research Grants), §286.52 (relating to Demonstration and Monitoring Grants), §286.53 (relating to Technology Transfer Grants), §286.74 (relating to Mailing Address), §286.91 (relating to Receipt of Proposals), §286.92 (relating

to Council Review), §286.93 (relating to Discussions of Proposals), §286.96 (relating to Awards), and §286.131 (relating to Grants and Donations). Throughout the rules, cross references and citations to other statutes have been updated.

The Council will not be proposing the following existing sections be carried over to new Chapter 286: §286.3 (relating to Meetings), §286.4 (relating to Transaction of Official Business), §286.5 (relating to Attendance), §286.6 (relating to Agendas), §286.7 (relating to Minutes), §286.8 (relating to Elections), §286.10 (relating to Committees), §286.11 (relating to Executive Secretary), §286.12 (relating to Reimbursement for Expenses), §286.13 (relating to Official Record), §286.14 (relating to Impartiality and Non-discrimination), and §286.33 (relating Funding). The Council finds that these sections are redundant with the statute and their absence will provide the Council with more flexibility in addressing its internal management and organization.

New proposed Subchapter A (relating to Council Procedures) consists of the existing §§286.1 (relating to Purpose and Scope), 286.2 (relating to Definitions), 286.9 (relating to Officers), and 286.14 (relating to Impartiality and Non-discrimination) under Title 30. The proposal contains changes from existing §286.2(a)(9) under Title 30, to correct the name of the Uniform Grant Management Standards from Uniform Grant and Contract Management Standards as cited in the Texas Government Code, Chapter 783, and the rules promulgated under 1 TAC §§5.141-5.167.

New proposed Subchapter B (relating to Grants) consists of the existing §§286.31 (relating to Purpose), 286.32 (relating to Council Objectives), 286.34 (relating to Indemnification), 286.51 (relating to Applied Research Grants), 286.52 (relating to Demonstration and Monitoring Grants), 286.53 (relating to Technology Transfer Grants), 286.74 (relating to Mailing Address), 286.91 (relating to Receipt of Proposals), 286.92 (relating to Council Review), 286.93 (relating to Discussion of Proposals), 286.94 (relating to Status of Proposals), 286.95 (relating to Decision Making), 286.96 (relating to Awards), 286.97 (relating to Denials), and 286.98 (relating to Tabling Decision) under Title 30.

The proposal contains changes from existing §286.34 under Title 30, relating to Indemnification, to clarify language regarding indemnification of the Council due to the action resulting from grantee's performance under the grant award. The Council does not believe that the receipt of a grant award by the grantee will result in liability, but the Council wishes to ensure that the state will not be subject to liability based on grantee's conduct in performance of the grant contract.

The proposals also contains changes from existing §286.51, relating to Applied Research Grants under Title 30, to add language consistent with the requirements of Texas Health and Safety Code, §367.008(b)(1), and to clarify language regarding unsolicited proposals.

The proposal contains changes from existing §286.52, relating to Demonstration and Monitoring Grants under Title 30, to add language to describe a demonstration and monitoring project, make a distinction between solicited and unsolicited projects, and delete the restriction of awarding only one grant per designated period.

The proposal contains changes from existing §286.53, relating to Technology Transfer Grants under Title 30, to clarify language regarding unsolicited proposals.

The proposal contains changes from existing §286.91, relating to Receipt of Proposals under Title 30, to clarify that the Council is not required to review the proposals at the next meeting and changes from existing §286.92, relating to Council Review under Title 30, to clarify the amount of time required for the Council members to review proposals.

The proposal contains changes from existing §286.93, relating to Discussion of Proposals under Title 30, to clarify when the proposals will be discussed and that the proposal will be included on the agenda to be posted with the open meeting notice.

The proposal contains changes from existing §286.96, relating to Awards under Title 30, to clarify that a written contract is required to be executed before receiving any funds and to add language to clarify the intent of the Council to fund indirect costs only if required by law to better utilize the funds for research, demonstration, and technology transfer projects.

New proposed Subchapter C (relating to Grants and Donations to the Council) consists of the existing §286.131 (relating to Grants and Donations) under Title 30.

FISCAL NOTE

Warren Samuelson, Executive Secretary for the Council, has determined that for the first five-year period the provisions as proposed are in effect, there will be no fiscal implications for state or local governments as a result of administration or enforcement of the proposed amendments. Enforcement of the rules will not result in an increase in workload for the Council staff.

PUBLIC BENEFIT

Mr. Samuelson has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated from enforcement and compliance with the proposed rules will be clearer procedures for developing grant proposals for research, demonstration, and technology transfer projects, which could result in a cost savings to the homeowners with on-site sewage facility systems.

SMALL AND MICRO-BUSINESS IMPACT ANALYSES

The proposed rules are not anticipated to impose costs on individuals, small businesses, or micro- businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The Council has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code.

TAKINGS IMPACT ASSESSMENT

The Council has prepared a takings assessment for these rules pursuant to Texas Government Code, 2007.043. The purpose of this rulemaking is to eliminate redundancy in the rules and to clarify, correct, and add procedures for awarding grants and distributing grant money. Therefore, these revisions will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The Council has determined that the proposed rulemaking does not relate to an action subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.).

SUBMITTAL OF COMMENTS

Written comments may be submitted to the Executive Secretary of the Council, Warren Samuelson, P.E., Texas Natural Resource Conservation Commission, Installer Certification Section, MC-178, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-6390. All comments should reference Chapter 286, On-Site Wastewater Treatment Research Council. Comments must be submitted no later than 5:00 p.m. on February 27, 2000. For further information, please contact Warren Samuelson at (512) 239- 4799.

Subchapter A. COUNCIL PROCEDURES

31 TAC §§286.1, 286.2, 286.9, 286.14

STATUTORY AUTHORITY

These new sections are proposed under the authority and effect the provisions of Texas Health and Safety Code, §367.008, which authorizes the Council to establish procedures for awarding competitive grants and disbursing grant money. The new proposed chapter has been reviewed by legal counsel from the Office of the Attorney General and has been found to be within the Council's authority to adopt.

No other codes, statutes, or rules will be affected by this proposal.

§286.1. Purpose and Scope.

(a) The purpose of this subchapter is to implement the provisions of Texas Health and Safety Code, Chapter 367, concerning the On-site Wastewater Treatment Research Council.

(b) The scope of this subchapter covers the organization, administration, and other general procedures and policies concerning the council's operation.

§286.2. Definitions.

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

(1) Commission - The Texas Natural Resource Conservation Commission.

(2) Council - The On-site Wastewater Treatment Research Council.

(3) Demonstrate - To make a display of, to show outwardly, hence, to show or prove publicly as by the actual operation, the special value or merits of an article or product with a view to its introduction or sale, also to teach by demonstration, to explain, or illustrate.

(4) Donor - One or more individuals or organizations that offer to give financial assistance to the council.

(5) Executive Secretary - An employee of the commission who acts as a liaison between the council and the commission.

(6) Officer or member - Any one of the eleven members of the council that has duly been appointed by the governor.

(7) Other council representative - An employee of the council, an employee of the commission acting on behalf of the council, and any other person(s) acting on behalf of the council.

(8) Research - Studious inquiry or examination and usually critical and exhaustive investigation or experimentation having for its aim the discovery of new facts and their correct interpretation, the revision of accepted conclusions, theories or laws in the light of newly discovered facts or the practiced application of such new or revised conclusions.

(9) UGMS - The Uniform Grant Management Standards issued by the Governor's Office of Budget and Planning pursuant to the Uniform Grant Management Act, Texas Government Code, Chapter 783, and the rules promulgated thereunder in 1 TAC §§5.141-5.167.

§286.9. Officers.

(a) Chairperson.

(1) The chairperson shall preside at all council meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter.

(2) The chairperson is authorized by the council to make day-to-day operational decisions regarding council activities in order to facilitate the responsiveness and effectiveness of the council.

(3) The chairperson is authorized to make expenditures on a monthly basis as approved by the Council in its annual operating budget. In the event of any non-budgeted items, the chairperson is authorized to make expenditures of no more than $1500 per quarter.

(b) Vice-chairperson.

(1) The vice-chairperson shall perform the duties of the chairperson in case of the absence or disability of the chairperson.

(2) In case the office of the chairperson becomes vacant, the vice-chairperson shall serve until a successor is elected.

§286.14. Impartiality and Non-discrimination.

(a) The council shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, sex, or national origin.

(b) Any council member who is unable to be impartial in the determination of an applicant's eligibility for a grant shall declare this to the council in an open meeting and shall not participate in any council proceedings involving that applicant. This disclosure shall be entered in the minutes of the meeting.

(c) Any council member who has or has had any interest, including any pecuniary interest, in any grant proposal or grant applicant shall so inform the council in an open meeting and shall not participate in any council proceedings involving that grant proposal. This disclosure shall be entered in the minutes of the meeting.

(d) A council member is not eligible to submit a grant proposal, or be engaged as subcontractor or paid consultant for any applicant or any awarded project.

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 January 12, 2000.

TRD-200000161

Warren Samuelson

Executive Secretary

Texas On-Site Wastewater Treatment Research Council
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 239-4799

Subchapter B. GRANTS

31 TAC §§286.31, 286.32, 286.34, 286.51 - 286.53, 286.74, 286.91 - 286.98

STATUTORY AUTHORITY

These new sections are proposed under the authority and effect the provisions of Texas Health and Safety Code, §367.008, which authorizes the Council to establish procedures for awarding competitive grants and disbursing grant money. The new proposed chapter has been reviewed by legal counsel from the Office of the Attorney General and has been found to be within the Council's authority to adopt.

No other codes, statutes, or rules will be affected by this proposal.

§286.31. Purpose.

(a) The purpose of the On-site Wastewater Treatment Research Council competitive grants is to enhance the development of on-site treatment systems which will improve the quality of and/or reduce the cost of on-site wastewater treatment.

(b) On-site wastewater treatment is a system of treatment devices or disposal facilities that is used for the disposal of domestic sewage, excluding liquid waste resulting from the processes used in industrial and commercial establishments, and is located on the site where the sewage is produced, and produces not more than 5,000 gallons of waste a day.

(c) Grant applications received in response to council solicitation will have highest priority.

§286.32. Council Objectives.

The objectives of the council in considering projects are:

(1) To determine the regional suitability and effectiveness of on-site wastewater treatment alternatives; and

(2) To demonstrate and evaluate appropriate on-site wastewater treatment technology in the various geographic and climatic areas of Texas.

§286.34. Indemnification.

A grantee shall be required to execute an indemnification and hold harmless agreement in favor of the council and the state. Neither the council nor the state shall in any way be liable for any damage, infringement, cause of action, or any other action resulting from grantee's performance under the grant award.

§286.51. Applied Research Grants.

(a) Eligibility for applied research grants. The following are the criteria which identify an applicant's eligibility for an applied research grant.

(1) The applicant must show that the specific application of the proposed research is for the improvement of the quality of wastewater treatment and/or reducing the cost of providing wastewater treatment to consumers.

(2) The research project must be conducted in Texas, and must concern technology or systems applicable in Texas.

(3) Corporations organized under the Texas Business Corporations Act must not be delinquent in taxes owed the state under the Texas Tax Code, Chapter 171.

(b) Information required for applied research grants. The following information must be submitted in writing for each applied research grant proposal:

(1) if the proposal is in response to the council's solicitation or request, the applicant shall include the proposal title and the method of improving the quality of wastewater treatment and/or reducing the cost of providing wastewater treatment to consumers; or

(2) if the proposal is submitted on an unsolicited basis and does not address a specific project identified by the council, the applicant shall include the method of improving the quality of wastewater treatment and/or reducing the cost of providing wastewater treatment to consumers;

(3) for applicants who are affiliated with an accredited college or university in Texas, a verified statement from the college or university's president, or dean of the appropriate program, describing the affiliation in detail;

(4) a discussion of how the applicant intends to fulfill the requirements of the proposal, including an identification of the potentials for, or plans to incorporate and use, proprietary information;

(5) resumes of principals, potential subcontractors, and principal investigators (including names, addresses, and phone numbers), and a summary of pertinent experience of each entity;

(6) site(s) of proposed project;

(7) a list of tasks and a time schedule for tasks to be completed by principals and subcontractors;

(8) recommendations for implementing research results, including identification, and involvement of potential users;

(9) the total project cost, the amount(s) and source(s) of the local matching funds and services, and the total amount requested from the council;

(10) a detailed project budget and timetable, and a detailed task budget for all aspects of the project;

(11) all information required to satisfy the criteria for eligibility as set out in this section;

(12) all information necessary to evaluate the application under the selection criteria as set out in this section;

(13) a list of reports, plans, products and other deliverables the applicant will provide to the council;

(14) information of other sources of funding, matching funds and like-kind funding or matching grants, if applicable;

(15) suggested progress monitoring procedures;

(16) any other pertinent data as deemed necessary by the council; and

(17) evidence that the applicant is insured or can become insured for the tasks undertaken as a result of receiving a grant.

(c) Criteria for selection of applied research grants. The council will review the grant proposals. Grants may be awarded based upon the following criteria:

(1) the availability of matching funds and other sources of funding for the proposal;

(2) the urgency of need for the research;

(3) the degree to which the proposal is responsive to the overall council objectives listed in these rules;

(4) the qualifications of project staff and directly-related project and staff experience;

(5) the reasonableness of the proposed budget and time schedules;

(6) project organization and management, including project monitoring procedures;

(7) statewide or regional application of research results;

(8) technical, economic and environmental merit of the proposal;

(9) relevance to and probability that the research will result in the improvement of the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers; and

(10) any other information as may be required for the specific project.

§286.52. Demonstration and Monitoring Grants.

(a) The following are the criteria which identify an applicant's eligibility for a demonstration and monitoring grant.

(1) The applicant must show that the proposed project provides a demonstration of the improvement of the treatment and disposal of wastewater and/or reduction of the cost of providing that treatment to consumers. The applicant must provide the protocol for monitoring (testing and calibration) this project to demonstrate the project's effectiveness.

(2) An applicant must be able to provide the following services:

(A) a proper area for outdoor research and demonstration;

(B) a proper area for controlled research and demonstration;

(C) basic laboratory facilities;

(D) testing and calibration equipment;

(E) untreated domestic sewage for demonstrations;

(F) a permitted area for land disposal application or a license specifically for alternative/special applications;

(G) adequate assistance personnel; and

(H) other facilities for instruction and seminars.

(3) An applicant must show that all calibration, testing, and demonstration will be conducted so that groundwater and surface water is protected and the health and welfare of the public will be protected.

(4) The applicant must conduct the testing and calibration in Texas.

(5) Corporations organized under the Texas Business Corporations Act must not be delinquent in taxes owed the state under the Texas Tax Code, Chapter 171.

(b) Information required for demonstration and monitoring grants. The following information must be submitted in writing for each demonstration and monitoring grant:

(1) If the proposal is in response to the council's solicitation or request, the applicant shall include the proposal title and the method of improving the quality of wastewater treatment and/or reducing the cost of providing wastewater treatment to consumers through the demonstration project.

(2) If the proposal is submitted on an unsolicited basis and does not address a specific project identified by the council, the applicant shall include the method of improving the quality of wastewater treatment and/or reducing the cost of providing wastewater treatment to consumers through the demonstration project.

(3) a discussion of how the applicant intends to fulfill the requirements of the proposal;

(4) resumes of principals, potential subcontractors, and principal investigators (including names, addresses, and telephone numbers), and a summary of pertinent experience of each entity;

(5) site(s) of proposed project;

(6) a detailed description of the facilities to be provided including land area, laboratories, classroom space, auditoriums, and other applicable facilities proposed;

(7) a description of how the applicant intends to provide the raw, untreated sewage to the units being tested, the amount of flow available to the units, and emergency plans for failed units;

(8) a description of how the applicant intends to protect groundwater and surface water, as well as the protection of public health and welfare during demonstration;

(9) a detailed description of the testing equipment to be provided, including any equipment to be purchased through the awarding of the grant;

(10) an explanation of the proposed calibration and testing techniques;

(11) the total project cost, the amount(s) and source(s) of the local matching funds and services, and the total amount requested from the council;

(12) a detailed project budget;

(13) a commitment date for work to begin and a progress time schedule;

(14) the designation of a contact person for additional information;

(15) all information required to satisfy the criteria for eligibility as specified in this section;

(16) any other information as deemed necessary by the council; and

(17) evidence that the applicant is insured or can become insured for the tasks undertaken as a result of receiving a grant.

(c) Criteria for selection for demonstration and monitoring grants. The council will review the grant proposals. Grants may be awarded based upon the following criteria:

(1) the availability of matching funds and other sources of funding for the proposal;

(2) the degree to which the proposal is responsive to the overall objectives listed in this section;

(3) the qualifications of project staff and directly-related project and staff experience;

(4) the reasonableness of the proposed budget and time schedules;

(5) project organization and management, including project monitoring procedures;

(6) technical and environmental merit of the proposal;

(7) the method of assuring the protection of groundwater, surface water, as well as the protection of public health and welfare; and

(8) any other information as may be required for the specific project.

§286.53. Technology Transfer Grants.

(a) The following are the criteria which identify an applicant's eligibility for a technology transfer grant:

(1) an applicant must be able to provide the technology transfer within the State of Texas.

(2) corporations organized under the Texas Business Corporations Act must not be delinquent in taxes owed the state under the Texas Tax Code, Chapter 171.

(b) Information required for technology transfer grants. The following information must be submitted in writing for each technology transfer grant proposal:

(1) if the proposal is in response to the council's solicitation or request, the specific proposal title shall be included in the proposals; or

(2) if the proposal is submitted on an unsolicited basis and does not address a specific project identified by the council, the applicant shall identify the category of technology transfer the applicant proposes, using one of the categories listed under subsection (b)(3) of this section;

(3) a technology transfer must be from one or more of the following categories:

(A) educational courses;

(B) seminars;

(C) symposia;

(D) publications (by printed word or video tape); or

(E) other forms of information dissemination.

(4) a discussion of how the applicant intends to fulfill the requirements of the proposal, including distribution of materials at the end of the grant period;

(5) resumes of principals, potential subcontractors and principal investigators (including names, addresses, and phone numbers), and a summary of pertinent experience of each entity;

(6) a list of the types of information dissemination proposed with the estimated budget and timetable for each type;

(7) information of other sources of funding, matching funds and like-kind funds or matching grants, if possible;

(8) all information required to satisfy the criteria for eligibility as specified in this section;

(9) any other pertinent data as deemed necessary by the council; and

(10) evidence that the applicant is insured or can become insured for the tasks undertaken as a result of receiving a grant.

(c) Criteria for selection for technology transfer grants. The council will review the grant proposals. Grants may be awarded based upon the following criteria:

(1) the availability of matching funds and other sources of funding for the proposal;

(2) the degree to which the proposal is responsive to the overall objectives listed in this section;

(3) the qualifications of project staff and directly-related project and staff experience;

(4) the quality of examples submitted to the council, if any;

(5) the reasonableness of the proposed budget and time schedules;

(6) project organization and management, including project monitoring procedures;

(7) technical, economic, and environmental merit of the proposal; and

(8) any other information as may be required for the specific project.

§286.74. Mailing Address.

All grant proposals must be filed in writing with 20 copies attached to the Executive Secretary, On-site Wastewater Treatment Research Council, in care of the Installer Certification Section, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711.

§286.91. Receipt of Proposals.

(a) Upon receipt of a proposal, the executive secretary shall send each council member a copy of the grant proposal and coordinate commission review of the application for eligibility requirements.

(b) The executive secretary will acknowledge receipt of a proposal to the applicant, with notification of the date of the council meeting at which the proposal may be discussed by the council.

§286.92. Council Review.

(a) The council shall affirm or deny eligibility as soon as practicable. The council will only consider those grant proposals that are eligible under these rules.

(b) Once a grant proposal is determined to be eligible for consideration, it may be submitted to a technical review committee who will make recommendations based on applicable statutory requirements, council objectives, rules, guidelines, fiscal constraints, and administrative policies.

(c) The council members shall have no less than 14 calendar days to review the proposal prior to the meeting at which a proposal is to be considered.

(d) The council may decide to award the grant, award the grant with modifications, or to reject the grant proposal. All grant award decisions by the council are final.

§286.93. Discussion of Proposals.

(a) Each eligible proposal which will be discussed at a council meeting shall be listed as an agenda item on the open meeting notice posted by the Secretary of State. Proposals submitted within 21 days of a council meeting may not be considered at that meeting.

(b) The council may elect to refer the application to a committee for review of technical merits. The chairman may request commission assistance with the technical review.

(c) For proposals deemed meritorious by the council, the applicant shall be given a designated time at the next meeting for an oral presentation of the proposal.

§286.94. Status of Proposals.

The executive secretary shall report to the council at each meeting the status of all grant proposals.

§286.95. Decision Making.

The council will evaluate and discuss each eligible proposal and will decide to award, deny, or table a grant based upon the funding available and the selection criteria. All council decisions are final.

§286.96. Awards.

(a) All applicants awarded a grant will be notified of the award in writing by the executive secretary.

(b) All grantees will be required to execute a written contract with the council prior to receiving grant funds.

(c) Grantees/applicants shall comply with all applicable state and federal statutes, rules, regulations, and guidelines, including the Uniform Grant Management Standards (UGMS) adopted by the Governor's Office of Budget and Planning, and with the terms and conditions of the contract.

(d) The council shall not be liable for any expenses incurred by an applicant prior to award of the grant.

(e) All grant awards are subject to continuation of state appropriations.

(f) The Council shall not reimburse indirect costs, except as required by law.

§286.97. Denials.

(a) All applicants denied an award will be notified of the denial and the reason(s) therefor in writing by the executive secretary.

(b) Any applicants denied funding will have the right to request one reconsideration of the project by the council. The request shall be made in writing and shall be reviewed at the next quarterly meeting.

(c) The council shall not be liable for any expense incurred by an applicant if funding for the grant application is denied.

§286.98. Tabling Decision.

The council may table a decision on a proposal in order to gather more information or to await confirmation from the state comptroller of the availability of funds. Any project so tabled shall be given priority for discussion at the next scheduled meeting of the council.

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 January 12, 2000.

TRD-200000162
Warren Samuelson
Executive Secretary
Texas On-Site Wastewater Treatment Research Council
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 239-4799

Subchapter C. GRANTS AND DONATIONS TO THE COUNCIL

31 TAC §286.131

STATUTORY AUTHORITY

The new section is proposed under the authority and effect the provisions of Texas Health and Safety Code, §367.008, which authorizes the Council to establish procedures for awarding competitive grants and disbursing grant money. The new proposed chapter has been reviewed by legal counsel from the Office of the Attorney General and has been found to be within the Council's authority to adopt.

No other codes, statutes, or rules will be affected by this proposal.

§286.131. Grants and Donations.

(a) General provisions.

(1) Purpose. The purpose of this section is to establish procedures for the acceptance of grants and donations made to the council and to create standards of conduct to govern the relationship between the council and the donor.

(2) General authority to accept grants and donations. The Texas Health and Safety Code, Chapter 367, authorizes the On-Site Wastewater Treatment Research Council to accept grants and donations from other sources to supplement the on-site wastewater treatment permit fee account. The council may accept grants and donations from private and public sources.

(b) Acceptance of donations.

(1) It shall be the policy of the council to accept only those donations that advance the statutory purposes of the council as set forth in Texas Health and Safety Code, Chapter 367.

(2) All donations will be accepted on behalf of the council. No officer or other council representative can accept donations in their individual capacity.

(3) The donor and the council shall execute a donation agreement which includes the following information:

(A) a description of the donation, including a statement of the value;

(B) a statement by the donor attesting to its ownership rights in the donation and its authority to make the donation;

(C) the signature of the donor or its official representative;

(D) the signature of the council chairperson or other person which the council has authorized to execute the donation agreement;

(E) any conditions restricting the use of the donations if the donor imposes restrictions agreed to by the council;

(F) the mailing address of the donor and principal place of business if the donor is a business entity;

(G) a statement identifying any official relationship between the donor and the authority; and

(H) a statement advising the donor to seek legal and/or tax advise from its own legal counsel.

(4) The chairperson shall report all donations received at the next regular meeting of the council.

(c) Administration of funds.

(1) Grants and donations shall be deposited to the credit of the on-site wastewater research account of the general revenue fund and may be disbursed as the council directs and consistent with Texas Health and Safety Code, Chapter 367. All gifts of money are automatically appropriated to the council in accordance with the General Appropriations Act.

(2) Donations will be used for the purpose specified by the donor, as nearly as practicable, and in accordance with state, federal, and local law. In no event shall donations be used for purposes not within the council's statutory authority.

(d) Donations from individuals and/or entities receiving grant funds. The council shall adhere to all state ethics laws, regulations and policies relating to the acceptance of gifts from persons appearing before and receiving funds from state agencies.

(e) Standards of conduct between the council and private donors.

(1) Standards of conduct of officers, members, and other council representatives are governed by the Texas Government Code, Title 5, Chapter 572;

(2) A council member or other council representative shall not accept or solicit any gift, favor, or service from a donor that might reasonably tend to influence his official conduct or that the council member or other council representative knows is being offered with the intent to influence official conduct;

(3) A council member or other council representative shall not accept employment or engage in any business or professional activity with a donor which the council member or other council representative might reasonably expect would require or induce him to disclose confidential information acquired by reason of his position, or which could reasonably be expected to impair the council member's independence of judgement in the performance of his/her official position;

(4) A member or other representative of the council shall not authorize a donor to use property of the council, unless the property is used in accordance with a specific provision of a contract between the council and the donor;

(5) A council member or representative shall not make personal investments in association with a donor which could reasonably be expected to create a substantial conflict between the representative's private interests and the interests of the council;

(6) A council member or representative shall not solicit, accept, or agree to accept any benefit for having exercised his or her official powers on behalf of a private donor or performed his or her official duties in favor of a donor;

(7) A council member or representative who serves as an officer, director or otherwise has policy direction over a donor shall not vote on or otherwise participate in any measure, proposal, or decision before the donor if the council might reasonably be expected to have an interest in such measure, proposal, or decision.

(8) Any person or entity seeking to contract with the council on a competitive bid basis or otherwise shall disclose all previous donations occurring within the previous two years to the council or any other state agency. The disclosure shall include the name of the recipient, the nature and value of the donation, and the date the donation was made. If the donation is on-going or periodic in nature, the last date the donation was available to the agency shall be used to determine the date of the donation.

(f) Public records. Documents and other information pertaining to the official business of the council is public information and may be subject to the Texas Public Information Act, Texas Government Code, Chapter 5520. The council may seek a determination from the attorney general regarding the confidentiality of information relating to a donation before releasing the requested information if the council determines an exception to the Texas Public Information Act is applicable.

(g) Conflict of laws. These rules and guidelines shall not conflict with a requirement of a statute regulating the conduct of an officer or employee of a state agency or the procedures of the council and the commission. In the event that there appears to be a conflict between these rules and a state statute, the state statute controls.

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 January 12, 2000.

TRD-200000163
Warren Samuelson
Executive Secretary
Texas On-Site Wastewater Treatment Research Council
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 239-4799

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TITLE 34. PUBLIC FINANCE

Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

Chapter 3. TAX ADMINISTRATION

Subchapter V. FRANCHISE TAX

34 TAC §3.544

The Comptroller of Public Accounts proposes an amendment to §3.544, concerning reports and payments. A new subsection, (a)(4), has been added to the rule. This provision concerns corporations that will not owe franchise tax because their gross receipts from the entire business are less than $150,000. This amendment is in accordance with Senate Bill 441, 76th Legislature, 1999. Subsection (b)(1) has been amended to provide for a variable annual interest rate on delinquent taxes for reports originally due on or after January 1, 2000. This amendment is in accordance with Senate Bill 1321, 76th Legislature, 1999.

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

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

This amendment is proposed under 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, §171.002 and §111.060.

§3.544. Reports and Payments.

(a) Reports and due dates.

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

(4) For reports originally due on or after January 1, 2000, a corporation will not owe any tax if the gross receipts from its entire business for both taxable capital and taxable earned surplus are each less than $150,000 during the accounting period upon which the report is based. A corporation that does not owe any tax under this subsection must file an information report as authorized by subsection (a)(3) of this section.

(A) For purposes of computing gross receipts from its entire business for taxable earned surplus under this subsection, a corporation must include any gross receipts that would otherwise be excluded from the apportionment factor under the Tax Code, §171.1061, concerning the allocation of certain taxable earned surplus to this state.

(B) A corporation whose gross receipts from its entire business for taxable capital are $150,000 or greater will be required to compute its tax on both tax base components as provided for under the Tax Code, §171.002(b), even though its gross receipts from its entire business for taxable earned surplus are less than $150,000. For example, if a corporation's gross receipts from its entire business for taxable capital are $175,000 and its gross receipts from its entire business for taxable earned surplus are $125,000, the corporation must compute its tax on both taxable capital and taxable earned surplus.

(C) A corporation whose gross receipts from its entire business for taxable earned surplus are $150,000 or greater will be required to compute its tax on both tax base components as provided for under the Tax Code, §171.002(b), even though its gross receipts from its entire business for taxable capital are less than $150,000. For example, if a corporation's gross receipts from its entire business for taxable earned surplus are $175,000 and its gross receipts from its entire business for taxable capital are $125,000, the corporation must compute its tax on both taxable capital and taxable earned surplus.

(b) Penalty and interest on delinquent taxes.

(1) The Tax Code, §171.362, imposes a 5.0% penalty on the amount of franchise tax due by a corporation which fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of $1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due.

(A) For reports originally due on or before December 31, 1999, the following rates of interest are in effect as indicated. Simple interest accrues at an annual rate of 6.0% through March 31, 1980; at an annual rate of 7.0% from April 1, 1980-December 31, 1981; and, beginning January 1, 1982, at 10% per annum, for taxes due before September 1, 1991. For taxes due on or after September 1, 1991, simple interest accrues at an annual rate of 12% on all delinquent taxes.

(B) For reports originally due on or after January 1, 2000, the annual rate of interest on delinquent taxes is the prime rate plus one percent, as published in *The Wall Street Journal* on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(2)-(6) (No change.)

(c)-(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 January 14, 2000.

TRD-200000300
Martin Cherry
Special Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 463-4062

34 TAC §3.560

The Comptroller of Public Accounts proposes an amendment to §3.560, concerning banking corporations. The amendment is in accordance with House Bill 2067, 76th Legislature, 1999, including a revised definition of "banking corporation" in subsection (b)(1), a new apportionment requirement for dividends and interest in subsection (f), and new enforcement guidelines in subsection (h). The bill repealed §171.1031 which apportioned dividends and interest to the bank's commercial domicile. A definition of "legal domicile" has been added to subsection (b) because of the new apportionment requirement for dividends and interest. The legislation states that these new provisions apply to reports originally due on or after January 1, 2000.

Mike Reissig, Director of Estimates, 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. Reissig 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 clarification of Comptroller policy related to banking corporations. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

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

This amendment is proposed under 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, §§171.001, 171.259, and 171.316.

§3.560. Banking Corporations.

(a) (No change.)

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

(1) Banking corporation (bank)–Each state, national, domestic, or foreign bank, whether organized under the laws of this state, another state, or another country, or under federal law, including a limited banking association organized under Finance Code, Title 3, Subtitle A, [as defined by the Banking Act, §1.002(a),] and each bank organized under the Federal Reserve Act, §25(a), (12 United States Code, §§611-631) (edge corporations), but does not include a bank holding company as that term is defined by the Bank Holding Company Act of 1956 (12 United States Code, § 1841).

(2) (No change.)

(3) Legal domicile-The legal domicile of a corporation is its state of incorporation. The legal domicile of a partnership or trust is the principal place of business of the partnership or trust. The principal place of business of a partnership or trust is the location of its day-to-day operations. Where the day-to-day operations are conducted equally or fairly evenly in more than one state, the principal place of business is the commercial domicile.

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

(f) Apportionment of dividends and interest.

(1) This paragraph applies to franchise tax reports originally due before January 1, 2000. If a banking corporation has its commercial domicile in Texas, all dividends and interest received, including interest from the federal government unless otherwise excluded by §3.555(k) of this title (relating to Earned Surplus: Computation), are considered to be Texas gross receipts and gross receipts everywhere. If a banking corporation's commercial domicile is not in Texas, no dividends or interest received are considered to be Texas gross receipts but all are considered to be gross receipts everywhere, unless otherwise specifically excluded from the receipts factor.

(2) For reports originally due on or after January 1, 2000, a banking corporation's dividends and/or interest are apportioned to the legal domicile of the payor. See §3.549(e)(13) of this title (relating to Taxable Capital: Apportionment) and §3.557(e)(13) of this title (relating to Earned Surplus: Apportionment) for additional information on apportioning dividends and interest. [If a banking corporation's commercial domicile is not in Texas, no dividends or interest received are considered to be Texas gross receipts but all are considered to be gross receipts everywhere.]

(g) (No change.)

(h) Enforcement.

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

(3) The banking commissioner shall appoint a conservator under the Finance Code, Title 3, Subtitle A, to pay the franchise tax of a banking corporation that is organized under the laws of Texas and that the commissioner certifies as being delinquent in the payment of the corporation's franchise tax. [The comptroller may ask that the Banking Department of Texas issue a cease and desist order requiring a bank to pay all taxes, penalties, and interest. To the extent not preempted by federal law, the Texas Department of Banking is required to appoint a conservator under the Banking Act, Chapter 6, Subchapter B, to pay the franchise tax of any banking corporation certified by the comptroller as being delinquent in the payment of its franchise tax.]

(4) Except as provided in paragraph (3) of this subsection, a [no] banking corporation that is organized under the laws of Texas or under federal law and has its main office in Texaswill not have its corporate privileges [or charter] forfeited by the comptroller for not paying its franchise tax.

(5) A banking corporation that is organized under the laws of Texas or under federal law and has its main office in Texas will not have its charter forfeited for not paying its franchise tax.

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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Martin Cherry
Special Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 463-4062

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34 TAC §3.563

The Comptroller of Public Accounts proposes an amendment to §3.563, concerning savings and loan associations. The amendment is in accordance with House Bill 2067, 76th Legislature, 1999, including a revised definition of "savings and loan association" in subsection (b)(4), a new apportionment requirement for dividends and interest in subsection (e), and new enforcement guidelines in subsection (g). The bill repealed §171.1031 which apportioned dividends and interest to the saving and loan association's commercial domicile. A definition of "legal domicile" has been added to subsection (b) because of the new apportionment requirement for dividends and interest. The legislation states that these new provisions apply to reports originally due on or after January 1, 2000.

Mike Reissig, Director of Estimates, 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. Reissig 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 clarification of Comptroller policy related to savings and loan associations. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

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

This amendment is proposed under 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, §§171.001, 171.260, and 171.317.

§3.563. Savings and Loan Associations.

(a) (No change.)

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

(1) Commercial domicile–The principal place from which the trade or business of the entity is directed.

(2) Legal domicile–The legal domicile of a corporation is its state of incorporation. The legal domicile of a partnership or trust is the principal place of business of the partnership or trust. The principal place of business of a partnership or trust is the location of its day-to-day operations. Where the day-to-day operations are conducted equally or fairly evenly in more than one state, the principal place of business is the commercial domicile.

(3) [~~(2)~~] Net worth–

(A) Net worth for a savings and loan association shall include the amount of issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the association's net worth under generally accepted accounting principles) plus any retained earnings and paid in surplus as well as such other items as the Texas savings and loan commissioner may approve in writing for inclusion in the association's net worth.

(B) Net worth for a mutual association shall include its pledged savings liability and expense fund plus any retained earnings and such other items as the Texas savings and loan commissioner may approve in writing for inclusion in its net worth.

(4) [~~(3)~~] Savings and loan association–A savings and loan association or savings bank, whether organized under the laws of Texas, another state, another country, or under federal law. [~~An entity that qualifies as a savings and loan association under the Internal Revenue Code, §7701(a)19. This includes, but is not limited to:~~]

[~~(A) state savings and loan association–any savings and loan association organized under the laws of this state;~~]

[~~(B) federal savings and loan association–any savings and loan association organized under the laws of the United States of America;~~]

[~~(C) state-chartered savings bank–any savings bank organized under or subject to the Texas Civil Statutes, Article 489e, Savings Bank Act;~~]

[~~(D) federal savings bank–any savings bank organized under the laws of the United States of America; and~~]

[~~(E) mutual savings bank–a savings bank not authorized to issue capital stock.~~]

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

(e) Apportionment of dividends and interest.

(1) This paragraph applies to franchise tax reports originally due before January 1, 2000. If a savings and loan association or a savings bank has its commercial domicile in Texas, all dividends and interest received, including interest from the federal government unless otherwise excluded by §3.555(k) of this title (relating to Earned Surplus: Computation), are considered to be Texas gross receipts and gross receipts everywhere.

[~~(2)~~] If a savings and loan association or a savings bank does not have its commercial domicile in Texas, dividends and interest received are not considered to be Texas gross receipts but all are considered to be gross receipts everywhere unless otherwise excluded by §3.555(k) of this title (relating to Earned Surplus: Computation).

[~~(3)~~] Interest received by a savings and loan association for mortgages owned by the savings and loan association are considered Texas receipts if the savings and loan association's commercial domicile is in Texas.

(2) For reports originally due on or after January 1, 2000, a savings and loan association's dividends and/or interest are apportioned to the legal domicile of the payor. See §3.549(e)(13) of this title (relating to Taxable Capital: Apportionment) and §3.557(e)(13) of this title (relating to Earned Surplus: Apportionment) for additional information on apportioning dividends and interest.

(f) (No change.)

(g) Enforcement.

(1) The Texas Savings and Loan Commissioner shall appoint a conservator under Finance Code, Title 3, Subtitle B or C, to pay the franchise tax of a savings and loan association that is organized under the laws of Texas and that the commissioner certifies as being delinquent in the payment of the savings and loan association's franchise tax. [~~revoke the charter of a savings and loan association or a savings bank certified by the comptroller as delinquent in the payment of its franchise tax.~~]

(2) Except as provided in paragraph (1) of this subsection, no savings and loan association that is organized under the laws of Texas or under federal law and has its main office in Texas [~~or savings bank~~] will have its corporate privileges [~~or charter~~] forfeited by the comptroller for not paying its franchise tax.

(3) A savings and loan association that is organized under the laws of Texas or under federal law and has its main office in Texas will not have its charter forfeited for not paying its franchise tax.

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 January 14, 2000.

TRD-200000302
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 463-4062

Chapter 9. PROPERTY TAX ADMINISTRATION

Subchapter A. PRACTICE AND PROCEDURE

34 TAC §9.102

The Comptroller of Public Accounts proposes a new §9.102, concerning certification of property value reduction. The new rule is proposed to implement Senate Bill 7, 76th Legislature, 1999, effective September 1, 1999, which requires the comptroller to adopt rules governing the certification to the Texas Education Agency of the reduction in a school district's property value caused by electric utility restructuring.

Mike Reissig, Director of Estimates, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or units of local government.

Mr. Reissig 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 in providing the public with new information regarding the effect of electric utility restructuring on school district property values. There is no anticipated significant cost to the public. The new rule will have no fiscal impact on small business. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas, 78711-3528.

This new section is proposed under Utilities Code, Chapter 39, Subchapter Z, §39.901(g) which requires the comptroller to adopt rules governing the March 1 certification to the Texas Education Agency of the reduction in a school district's property value caused by electric utility restructuring.

The new section implements Utilities Code, Chapter 39, Subchapter Z, §39.901(g).

§9.102. Certification of Property Value Reduction.

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

(1) Current year–The most recent year of the property value study for which preliminary findings have been published as required by Government Code, §403.302(f).

(2) Electric utility–A person who owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state.

(3) Prior year–The year before the most recent year of the property value study for which preliminary findings have been published under Government Code, §403.302(f).

(4) Property value–The value of electric utility property.

(5) Property value study–The Comptroller of Public Accounts' annual estimation of school district total taxable value, conducted and certified to the Commissioner of Education as required by Government Code, §403.302.

(b) Not later than March 1 of each year, beginning in 2000 and ending in 2007, the comptroller shall certify to the Texas Education Agency each school district 's property value reduction caused by electric utility restructuring. The comptroller will determine the property value loss attributable to electric utility restructuring, if any, for each Texas school district using generally accepted appraisal and economic analysis procedures.

(c) In making the property value loss determination, the comptroller will give primary weight to the difference between the current and prior year property values. The comptroller may make an independent determination of the current and prior year property values or may accept the local appraisal district's estimate of the current and prior year property values after reviewing and adjusting the local appraisal district's property value estimates as necessary to ensure their accuracy.

(d) The comptroller may also consider and reduce the property value loss under subsection (c) of this section for property value increases or decreases caused by general increases or decreases in consumer demand, operating costs, or other economic factors not directly attributable to electric utility restructuring.

(e) The public may provide information or input to the comptroller at any time by writing the Manager, Property Tax Division or the manager's designee at Comptroller of Public Accounts, Property Tax Division, Post Office Box 13528 Austin, Texas 78711-3528 or by calling 1-800-252-9121.

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 January 14, 2000.

TRD-200000265
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 463-3699

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 15. MEDICAID ELIGIBILITY

Subchapter E. INCOME

40 TAC §15.450

The Texas Department of Human Services (DHS) proposes to amend §15.450, concerning general principles concerning income, in its Medicaid Eligibility chapter. The purpose of the amendment is to comply with House Bill 143 (HB), in which the 76th Texas Legislature, 1999, approved an increase of the personal needs allowance (PNA). The Appropriations Bill allowed the PNA to be $45 per month. The increase is retroactive to September 1, 1999. For SSI clients who receive the $30 federal benefit rate, the state will supplement their incomes by $15 per month so they also have $45 for personal use.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section will be in effect is an estimated additional cost increase in revenue of $6,904,706 in fiscal year (FY) 2000; $6,750,780 in FY 2001; $6,750,780 in FY 2002; $6,750,780 in FY 2003; and $6,750,780 in FY 2004.

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 will be that clients will have additional money for personal needs. The amendment to Chapter 15 will not have an adverse economic effect on large, small, or micro-businesses.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long-Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-065, 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.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.450. General Principles Concerning Income.

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

(h) A personal needs allowance (PNA) is an amount of a client's income that a client in an institutional setting may retain for his personal use. It will not be applied against the costs of medical assistance furnished in the facility. Clients in institutional settings may retain $45 per month for their personal use. In couple cases, each spouse may retain $45. For SSI clients who receive the $30 reduced federal benefit, the state supplements their incomes by $15 per month to allow a total of $45 for personal needs. The effective date of the $45 PNA is September 1, 1999; prior to that date, the PNA was $30.

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 January 13, 2000.

TRD-200000212
Paul Leche
General Counsel
Texas Department of Human Services
Earliest possible date of adoption: February 27, 2000
For further information, please call: (512) 438-3108

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WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

Part 4. OFFICE OF THE SECRETARY OF STATE

Chapter 71. OFFICE OF THE SECRETARY OF STATE

Subchapter C. PURCHASING PROCEDURES

1 TAC §71.61

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the Office of the Secretary of State has been automatically withdrawn. The new section as proposed appeared in the July 16, 1999 issue of the *Texas Register* (24 TexReg 5282).

Filed with the Office of the Secretary of State on January 19, 2000.

TRD-200000349

TITLE 7. BANKING AND SECURITIES

Part 1. FINANCE COMMISSION OF TEXAS

Chapter 1. CONSUMER CREDIT COMMISSIONER

Subchapter A. REGULATED LOAN LICENSE

Division 1. GENERAL PROVISIONS

7 TAC §1.4, §1.11

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repealed sections, submitted by the Finance Commission of Texas have been automatically withdrawn. The repealed sections as proposed appeared in the July 16, 1999 issue of the *Texas Register* (24 TexReg 5284).

Filed with the Office of the Secretary of State on January 19, 2000.

TRD-200000350

Subchapter K. PROHIBITIONS ON AUTHORIZED LENDERS

7 TAC §1.854, §1.859

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new sections, submitted by the Finance Commission of Texas have been automatically withdrawn. The new sections as proposed appeared in the July 16, 1999 issue of the *Texas Register* (24 TexReg 5285).

Filed with the Office of the Secretary of State on January 19, 2000.

TRD-200000351

TITLE 25. HEALTH SERVICES

Part 16. TEXAS HEALTH CARE INFORMATION COUNCIL

Chapter 1301. HEALTH CARE INFORMATION

Subchapter A. HOSPITAL DISCHARGE DATA RULES

25 TAC §1301.18

The Texas Health Care Information Council has withdrawn from consideration for permanent adoption the amendment to §1301.18, which appeared in the October 18, 1999, issue of the *Texas Register* (24 TexReg 8708).

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

TRD-200000143
Jim Loyd
Executive Director
Texas Health Care Information Council
Effective date: January 10, 2000
For further information, please call: (512) 424-6492

TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

Subchapter B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §321.48

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the Texas Natural Resource Conservation Commission has been automatically withdrawn. The new section as proposed appeared in the July 16, 1999 issue of the *Texas Register* (24 TexReg 5455).

Filed with the Office of the Secretary of State on January 19, 2000.

TRD-200000352

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 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion 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 4. OFFICE OF THE SECRETARY OF STATE

Chapter 91. TEXAS REGISTER

The Office of the Secretary of State, Texas Register, adopts amendments to §§91.23, 91.61, and 91.65, concerning Texas Register filing procedures and adopts the repeal and new §91.77, concerning how to file graphic material electronically. Sections 91.23, 91.65, and new §91.77 are adopted with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10633). Section 91.61 and the repeal of §91.77 are adopted without changes and will not be republished.

The purpose of the amendments and new section is to establish guidelines on how to submit graphic and tabular material in electronic format. This process will allow the Texas Register to include graphics in the *Texas Administrative Code* and in the electronic *Texas Register* in a timely manner.

We received the following comments from the Railroad Commission of Texas.

Comment.

The Railroad Commission noted that subsections (f)-(h) were not accounted for in the proposed amendments to §91.23 and that subsection (b)(6) and (7) and subsections (c)-(g) are not accounted for in §91.65.

Response.

We agree and adopt §91.23 and §91.65 with changes to account for the existing subdivisions.

Comment.

The Railroad Commission commented that it would be helpful to add language to §91.77(c) explaining that leading zeroes may be necessary to complete the graphic file name scheme "aa_bbbb_cccc".

Response.

We agree. The section is adopted with changes to incorporate the suggestion.

Comment.

The Railroad Commission noted that §91.77(g) fails to explain how to label graphics that are part of miscellaneous documents published in the In Addition section of the *Texas Register*.

Response.

We disagree. We do not feel that graphics included in miscellaneous documents need an internal label since they are published as part of the submitted document and not in the Tables and Graphics section of the *Texas Register*.

Comment.

The Railroad Commission suggested that language should be added to §91.77(k) explaining that an agency must bracket out a figure label when it is being moved within a rule.

Response.

We disagree with this comment. We do require that an agency resubmit a graphic with its new label when it moves within a rule, but we feel that showing a bracketed figure line at the old location is misleading. If an agency would like to show that a figure is moving in a proposed rule, they can indicate it in the new figure line. For example: Figure: 1 TAC §91.61(c) [~~(a)~~]. Otherwise, the graphic label moves with existing text. The entire label should be in brackets only if the graphic is being deleted or replaced.

Comment.

The Railroad Commission asked if Excel files (.xls) will be accepted by the Texas Register.

Response.

While we will accept Excel files for graphic submissions, we are not adding that file type to the list of approved formats in §91.77(d). As we state in §91.77(e), we are requesting that an agency contact us before submitting a file in an electronic format not listed in subsection (d).

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.

§91.23. Structure; Terminology.

(a) Follow the structure and order outlined in paragraphs (1)-(7) of this subsection when subdividing a rule.

(1) The highest subdivision within a rule is a "subsection." You need not subdivide below this level.

(A) When there are two or more subsections, designate them with a lower-cased letter in parenthesis, e.g., (a), (b), etc.

(B) When there is only one subsection in a section, omit the "(a)." This is referred to as an "implied (a)."

(2) The rule subdivision below a subsection is called a "paragraph" and is designated by an Arabic number in parenthesis, e.g., (1), (2), etc.

(3) The rule subdivision below the paragraph is called a "subparagraph" and is designated by an upper-cased letter in parenthesis, e.g., (A), (B), etc.

(4) The rule subdivision below the subparagraph is called a "clause" and is designated by a lower-cased Roman numeral in parenthesis, e.g., (i), (ii), etc.

(5) The rule subdivision below the clause is called a "subclause" and is designated by an upper-cased Roman numeral in parenthesis, e.g., (I), (II), etc.

(6) The rule subdivision below the subclause level is called an "item" and is designated by a lower-cased letter with a dash on both sides in parenthesis, e.g., (-a-), (-b-), etc.

(7) The rule subdivision below the item is called a "subitem" and is designated by an Arabic numeral with a dash on both sides in parenthesis, e.g., (-1-), (-2-), etc.

(b) When subdividing a rule, follow a parallel outline format, i.e., no (a) without (b), no (1) without (2), etc., with the exception of the implied (a) described in subsection (a)(1)(B) of this section.

(c) When proposing to amend an existing rule, you must account for all existing language. Within the rule structure, put new language before obsolete language. Use the codes as described in §91.61(c)(5), (6), and (9) of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents).
Figure: 1 TAC §91.23(c) (No change.)

(d) When you propose to amend a subdivision within a rule, follow the "No change" policy outlined in paragraphs (1)-(3) of this subsection.

(1) When you amend only part of an existing rule, we print only the text of the affected subdivisions. Same-level subdivisions are labeled (No change.)
Figure: 1 TAC §91.23(d)(1) (No change.)

(2) When you amend a subdivision of a rule below the subsection level, show the text of all the higher-level subdivisions which contain the amended subdivision.
Figure: 1 TAC §91.23(d)(2) (No change.)

(3) When you renumber a subdivision that contains lower-level subdivisions, show the language contained in the lower-level subdivisions for clarification.
Figure: 1 TAC §91.23(d)(3) (No change.)

(e) When you adopt new and amended rules submit the entire text. Do not use the "No change" designation, with the exception of graphic labels as described in §91.77(l) of this title (relating to Graphics). Submit adopted repealed rules with only the section number and title.

(f) Do not reserve subdivisions within a rule for future expansion.

(g) Follow any reference to another section or chapter in the same title with the phrase "of this title (relating to...)" with the title of the section or chapter inserted in the parenthesis. Follow a reference to a different subchapter in the same chapter with the phrase "of this chapter (relating to...)" with the title of the subchapter inserted in the parenthesis. It is not necessary to reference the same section, subchapter, or chapter name twice within a rule.

(h) Cite any reference to a rule in another title with the title and section number(s) in accordance with §91.25(b) of this title (relating to Form of Citation). For example: 1 TAC §91.21.

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 January 19, 2000.

TRD-200000378
Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: February 8, 2000
Proposal publication date: December 3, 1999
For further information, please call: (512) 463-5561

Subchapter B. FILING PROCEDURES

1 TAC §§91.61, 91.65, 91.77

The amendments and new section are 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.

§91.65. Procedures for Filing Rules.

(a) Proposed rules. The APA requires an agency to propose rules at least 30 days prior to adoption. When proposing rules, comply with the following procedures.

(1) Notice of a proposed action follows rulemaking procedures as specified in §91.61 and §91.67 of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents and Rule Submission Preambles).

(2) Propose only one version of a new rule.

(3) A rule will have only one pending amendment at a time with the exception of rules containing only definitions.

(b) Adopted rules. The APA states that a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State unless a later date is required by statute, specified in the rule, or required by federal mandate. When adopting rules, comply with the following procedures.

(1) Notice of an adopted action follows rulemaking procedures as specified in §91.61 and §91.67 of this title.

(2) When filing a rule adoption, incorporate any formatting changes made by the Texas Register staff to the proposal as published. If you submit the final version of the rules without accounting for these changes, we will reject the submission.

(3) If you submit the final version of the adopted rules without eliminating old and new language coding, we will reject the submission.

(4) Submit the text of new and amended rules even when they are adopted without changes and will not be republished in the Texas Register.

(5) Do not use the "No change" designation in adopted rule submissions, with the exception of graphic labels as described

in §91.77(l) of the title (relating to Graphics). If you submit the final version of adopted rules with any level designation as "No change", we will reject the submission.

(6) The proposed and adopted version of a rule must have the same rule number.

(7) Do not withdraw an adopted rule.

(c) Withdrawn rules. When withdrawing rules, comply with the following procedures.

(1) Withdrawal of proposed rules.

(A) You may withdraw a proposed rule action prior to its adoption or before the effective date of the automatic withdrawal (see paragraph (2) of this subsection) by submitting a submission form in accordance with §91.63 of this title (relating to Submission Forms).

(B) The withdrawal takes effect immediately upon filing or on a stated date not later than 20 days after filing. The effective date may not be before the date of filing.

(C) You may take no further action on a proposal which you have withdrawn; however, this does not preclude a new proposal of an identical or similar rule following rulemaking procedures for proposed rules as specified in subsection (a) of this section.

(2) Automatic withdrawals.

(A) We automatically withdraw a proposed rule six months after the date of publication in the Texas Register if the agency neither adopts nor withdraws it.

(B) We publish the notice of the automatic withdrawal. The effective date of the automatic withdrawal is the day after the last day of the six-month period.

(C) You may take no further action on the proposal after the expiration of the six-month period; however, this does not preclude a new proposal of an identical or similar rule following rulemaking procedures for proposed rules as specified in subsection (a) of this section.

(d) Emergency rules.

(1) Under the APA, §2001.034, you may promulgate emergency rulemaking action on less than 30 days' notice.

(2) Notice of adoption of emergency action follows rulemaking procedures as specified in §91.61 and §91.67 of this title.

(3) Emergency rulemaking action does not preclude proposed and final rulemaking action in accordance with the Government Code, Chapters 2001 and 2002.

(4) Emergency action becomes effective immediately upon filing or on a stated date less than 20 days after filing. The effective date cannot be earlier than the filing date. The APA limits the effectiveness of emergency action to 120 days, renewable for no more than 60 days, for a maximum of 180 days. Calculate the period of effectiveness by counting the effective date as day one. File the renewal notice during the last 20 days of the original period of effectiveness. You may not renew the effective period after the expiration date. The expiration date is the day after the final full calendar day in the count.

(5) After the original filing of an emergency rule, emergency amendments may be made to the original action as many times as needed during the 180-day period of effectiveness (120 days original period of effectiveness plus 60 days renewal of effectiveness). All such amendments expire on the original expiration date. Do not withdraw an emergency rule and file it a second time in order to extend the 180-day effective period.

(e) Multiple rule filing. You may file more than one rule number in a submission, if the rules share the same chapter and, if applicable, the same subchapter or division. Do not submit repeals on a submission form containing new or amended rules.

(f) Invalid rules. You must formally revise or repeal rules rendered invalid by legislation, constitutional amendment, or court decision in accordance with rulemaking procedures in this chapter.

(g) Rule transfers. If legislation transfers rulemaking authority from one agency to another, the transferring and/or receiving agency requests that we administratively transfer the affected rules. The agency should send a written request to the director of the Texas Register. The written request will cite the legislation that requires this transfer and include a copy of the legislation, the effective date of the transfer, and a conversion chart containing the old and new chapters, subchapters (if applicable), and rule numbers affected by the transfer. We will notify the agencies of the transfer notice publication date.

§91.77. Graphics.

(a) Graphic material accompanying a rule appears in the Tables and Graphics section of the Texas Register and as part of our on-line publications.

(b) Submit graphics in electronic format using one of the following methods.

(1) File transfer protocol (FTP). Submit graphic documents via FTP in binary mode. For the FTP address, login and password, contact us. Each file must contain only one graphic.

(2) E-mail. Attach graphic files to an e-mail, separate from rule or miscellaneous submissions. More than one graphic file may be attached to an e-mail, but each file must contain only one graphic. The subject line should be the name of the graphic file or files.

(3) 3-1/2 inch diskettes. Submit a diskette containing graphics separately from rule or miscellaneous text files. A diskette may contain more than one graphic file, but each file should contain only one graphic. Label the diskette with the graphic file names and agency name.

(c) Name rule graphics according to the following formula: aa_bbbb_cccc-1."file extension." In this scheme, aa represents the title number, bbbb represents the chapter number, cccc represents the rule number, and 1 indicates that this is the first graphic file submitted for this rule filing. Example: 01_0091_0001-3.htm indicates this is the third file submitted for Title 1, Chapter 91, rule 1 (1 TAC §91.1) and it is an html file. Add leading zeroes to complete the aa_bbbb_cccc fields, if necessary. Files containing graphic material for miscellaneous documents will be named in accordance to the following: "date of submission"_"Texas Register agency code"-1."file extension." Example: 1019_004-1.pdf indicates it is the first file submitted on October 19 from the Secretary of State and it is an Adobe Acrobat file.

(d) We accept the following types of graphic files:

(1) Word documents (.doc extension);

(2) Word Perfect documents (.wpd extension);

(3) Hypertext Markup Language (.htm or .html extension);

(4) image files with the extension .jpg or .gif; and

(5) Adobe Acrobat files (.pdf extension).

(e) If you cannot create electronic graphic files or have files in an electronic format other than those listed in subsection (d)(1)-(5) of this section, contact us for assistance.

(f) Indicate on the submission form the graphic file name and whether the file was submitted by FTP, e-mail, or diskette. For rule graphics, mark whether or not the graphic is new or amended.

(g) Include in each electronic graphic file a label comprised of the word "Figure," the TAC citation, and the level of the rule that references the graphic. Example: "Figure: 34 TAC §3.334(a)(1)" will appear at the top of the printed or on-line version of the graphic. The rule text must reference the same label at the appropriate level. Label a table or graphic within a preamble with the word "Figure," TAC citation, and the word "preamble." Example: "Figure: 34 TAC Chapter 3 - Preamble."

(h) Do not refer to the Tables and Graphics section of the Texas Register in rule text. Place graphic labels at the end of the appropriate subdivision and not within the text of the subdivision. The graphic label should not be the only text in a subdivision.

(i) When proposing a new graphic, submit it in its entirety. When proposing to amend a rule graphic, send only the portion that is being changed. Example: If only two pages of a ten-page graphic are changed, submit only the two changed pages.

(j) When adopting new or amended rules, submit a complete version of any graphics that were published as part of the proposed rulemaking. Example: If only two pages of a ten-page graphic are changed, submit all ten pages.

(k) If the body of a graphic is not being amended, but it is moving within a rule, resubmit it with its new label in both the proposed and adopted rule filings.

(l) If a graphic attached to an amended subdivision is not changed or deleted, mark it as "No change." Example: "Figure: 34 TAC §3.334(a)(1) (No change.)" If a subdivision with a graphic was marked "No change" in the proposed rulemaking, submit the complete text of the adopted rule with its graphic label designated "No change." Since we require adopted rules to be submitted with full text, graphic lines labeled "No change" are the only portions of final rules that you do not submit.

(m) When proposing to delete a graphic from a rule, bracket the figure label within the rule text. Example: [Figure: 34 TAC §3.334(a)(1)]. Do not submit the deleted graphic with the filing.

(n) Explain in the preamble changes made to amended graphic material. Do not use the <etb>, [ ], <*>, or *n codes in graphic material. Do not use the "tab" function to create tables and equations in Word or Word Perfect because the tab formatting will be lost in the conversion to html.

(o) Submit graphics on the same day as the text file that includes the graphic label.

(p) If we are unable to access a graphic file, if the file does not match the submission form or if the file does not convert to web ready, we will contact the liaison promptly. If time permits us to process the graphic without delaying production of the issue, we will ask the liaison to resubmit the file. If there is not sufficient time, we will reject the submission.

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 January 19, 2000.

TRD-200000379
Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: February 8, 2000
Proposal publication date: December 3, 1999
For further information, please call: (512) 463-5561

1 TAC §91.77

The repeal 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 January 19, 2000.

TRD-200000380
Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
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Proposal publication date: December 3, 1999
For further information, please call: (512) 463-5562

TITLE 19. EDUCATION

Part 7. STATE BOARD FOR EDUCATOR CERTIFICATION

Chapter 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) adopts the following changes to Chapter 230, concerning Professional Educator Preparation and Certification, without changes to the proposed text as published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 8862) and will not be republished: the repeal of Subchapter D, §230.91, concerning Local Cooperative Teacher Education Centers; an amendment to Subchapter E, §230.121, concerning Center for Professional Development of Teachers; the repeal of Subchapter F, §§230.151 - 230.161, concerning Professional Educator Preparation; amendments to Subchapter G, §§230.191 - 130.193 and 230.195 - 130.199, concerning Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements; the repeal of Subchapter H, §230.231, concerning Alternative Certification of Teachers and the repeal of Subchapter I, §§230.261 - 230.271, concerning Standards for Approval of Institutions Offering Graduate Education Programs for Professional Certification. The SBEC also adopts changes to Subchapter J, which

include the following: an amendment to §230.301, the repeal of §230.302 and §230.303 and amendments to §§230.304 - 230.308, 230.310, 230.311 and 230.316, concerning Certification Requirements for Educators Other than Classroom Teachers and Educational Aides. The SBEC adopts the repeal of Subchapter K, §230.361, concerning Alternative Certification of Administrators; the repeal of Subchapter L, §230.391, concerning Postbaccalaureate Requirements for Persons Seeking Initial Teacher Certification Through Approved Texas Colleges and Universities; an amendment to Subchapter M, §230.413, concerning Certificate of Educators in General and the repeal of Subchapter R, §230.531 and §230.532, concerning Record of Certificates.

The adopted changes repeal and amend various provisions of current rules that conflict with 19 TAC Chapter 227, concerning Admission to an Educator Preparation Program and Chapter 228, concerning Requirements for Educator Preparation Programs, which were adopted by the SBEC at its May 7, 1999 meeting.

The repeal of Subchapter R, Record of Certificates, will remove conflicts with recently enacted legislation. The adopted repeals remove rules requiring parent notification when their child is taught for more than 30 consecutive instructional days by an individual serving on an emergency permit or an uncertified individual. Also, current rules requiring an individual seeking employment to work as a teacher to present their certificate for filing with the employing district is duplicative of current statute and is not necessary. House Bill 618 which takes effect with the 1999 - 2000 school year, supercedes these rules.

Elsewhere in this issue of the *Texas Register*, the SBEC is contemporaneously adopting amendments and repeals to Chapter 232, Subchapter M, concerning Types and Classes of Certificates Issued. The SBEC also adopts a new Chapter 245, concerning Certification of Educators from Other Countries.

In its proposed *Framework for Educator Preparation and Certification* the SBEC states as an underlying assumption that "Board rules must identify a single set of standards applicable to all educator preparation programs to enhance flexibility in program delivery and to accommodate multiple routes." Consistent with that assumption, the SBEC has adopted new rules to govern admission to an educator preparation program (Chapter 227) and the operation of educator preparation programs (Chapter 228). The purpose of these new rules is to enhance flexibility and accommodate multiple approaches for the design and delivery of programs leading to certification. The rules reflect the SBEC's belief that its role is to clearly define what the candidate for certification must know and be able to do upon completing a preparation program, and to then assess the success of the program in delivering the required knowledge and skills. Who programs admit and how the expected knowledge and skills are delivered should largely be left to the discretion of each program. This approach is possible because all educator preparation programs are held accountable for their performance through the Accountability System for Educator Preparation (ASEP), which reflects the performance of their students on the examinations required for certification.

As reflected in Chapter 227, the Board has established the minimum components of admissions policies, but does not prescribe the content of the policies. Programs must:

identify procedures to screen applications to determine appropriateness for the certificate sought;

verify college-level skills in reading, oral and written communication, critical thinking, and mathematics (note that neither an assessment nor test is mentioned);

establish academic criteria that are consistently applied to all applicants; and

develop procedures that allow admitted individuals to substitute relevant experience and training for part of the preparation requirements. (For example, a retired chemist seeking certification should be allowed to skip required coursework in chemistry.)

Under the new rules governing educator preparation programs (Chapter 228), all programs will operate under the same set of rules that accommodate different ways of delivering educator preparation to the different types of prospective educators. The elements described below are widely recognized as critical components of successful educator preparation programs and will be required of all SBEC-approved programs. The program must:

design, deliver, and evaluate educator preparation through a collaborative effort involving institutions of higher education, public and private schools, regional education service centers, and business and community interests;

base preparation on the relevant Texas Essential Knowledge and Skills (TEKS) for each certificate;

provide on-going and relevant field-based experiences throughout the entire program in a variety of settings with diverse student populations;

require all students to complete at least 12 weeks of a full-day teaching practicum prior to recommending students for certification;

establish benchmarks and structured assessments to measure throughout the program the progress of candidates for certification; and

continuously evaluate the design and delivery of the program's curriculum based on performance data, research-based promising practices, and internal and external assessments.

It is important to note that the new rule does not explicitly define "on-going and relevant field-based experiences" because the SBEC recognizes that field-based experiences will be provided differently by the various preparation programs. It will be up to each program to determine what this term means for the students being served, and it is entirely possible and appropriate that "ongoing" for a college junior will be different than "ongoing" for a mid-career individual seeking certification. Further, please note that the 12-week full-day teaching practicum can be interpreted in a variety of ways and should not be thought of exclusively as the "traditional" student teaching block that occurs in the final semester of college.

By deliberately not setting explicit standards for field-based experiences, the SBEC is encouraging flexibility and creativity to allow programs to attract and serve all of the people that might be interested in seeking certification.

The specific repeals and amendments adopted in this item are as follows:

1. All requirements that prescribe a specific amount of collaboration, field-based preparation, or student teaching are proposed for repeal.

2. All provisions that reference the operation of university baccalaureate and post-baccalaureate programs, alternative certification programs (ACP), and Centers for the Professional Development of Teachers (CPDT) are proposed for repeal, except that:

the probationary certificate available to post-baccalaureate and ACP students is moved to Chapter 232, Subchapter M;

the unique teaching certificates available through ACPs are moved to Chapter 230, Subchapter G; and until September 1, 2001, institutions of higher education may apply to the Board for designation as a CPDT. (Funds were not appropriated to support the creation of additional CPDTs, however funds are available to complete the three-year funding cycle for institutions that are eligible for 2nd- and 3rd-year funding).

By repealing and amending current rules, all educator preparation programs will follow the same set of quality program standards that will assure consistency in educator preparation as well as the accountability of those programs through the Accountability System for Educator Preparation (ASEP). While entities are held accountable, the new rules provide for much flexibility and creativity in the design and delivery of educator preparation.

No comments were received regarding adoption of the rules.

Texas Education Code (TEC) §21.044, requires the Board to establish training requirements a person must accomplish to obtain a certificate; TEC §21.045, requires the Board to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs; TEC §21.047 requires the Board to provide for Centers for the Professional Development of Teachers; and TEC §21.049 directs the Board to provide alternative routes to certification.

Subchapter D. LOCAL COOPERATIVE TEACHER EDUCATION CENTERS

19 TAC §230.91

This repeal is adopted under the Texas Education Code (TEC), §21.051, which requires the State Board for Educator Certification to propose rules providing flexible options for field experience or internships required for certification.

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 January 14, 2000.

TRD-200000235
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

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Subchapter E. CENTERS FOR PROFESSIONAL DEVELOPMENT OF TEACHERS

19 TAC §230.121

The amendments are adopted under the Texas Education Code (TEC), §21.047, which allows the State Board for Educator Certification to propose rules that create a process to establish centers for professional development of teachers.

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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Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

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Subchapter F. PROFESSIONAL EDUCATOR PREPARATION

19 TAC §§230.151 - 230.161

The repeals are adopted under the Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the approval of all educator preparation programs.

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

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3011

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Subchapter G. CERTIFICATION REQUIREMENTS FOR CLASSROOM TEACHERS

19 TAC §§230.191 - 230.193, 230.195 - 230.199

The amendments are adopted under the Texas Education Code (TEC), §§21.041(b)(2) and (4), 21.044, 21.048, 21.050 and 29.902, which require the State Board for Educator Certification to propose rules that establish the academic, internship, and examination requirements for all candidates for certification as well as the classes of certificates offered, including establishment of standards for professional and paraprofessional personnel who conduct driver education courses.

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 January 14, 2000.

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3011

Subchapter H. ALTERNATIVE CERTIFICATION OF TEACHERS

19 TAC §230.231

The repeal is adopted under the Texas Education Code (TEC), §21.049, which requires the State Board for Educator Certification to propose rules providing for alternative certification programs

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

Filed with the Office of the Secretary of State on January 14, 2000.

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3011

Subchapter I. STANDARDS FOR APPROVAL OF INSTITUTIONS OFFERING GRADUATE EDUCATION PROGRAMS FOR PROFESSIONAL CERTIFICATION

19 TAC §§230.261 - 230.271

The repeals are adopted under the Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the approval of all educator preparation programs.

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

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TRD-200000240
Pamela B. Tackett
Executive Director
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For further information, please call: (512) 469-3011

Subchapter J. CERTIFICATION REQUIREMENTS FOR EDUCATORS OTHER THAN CLASSROOM TEACHERS AND EDUCATIONAL AIDES

19 TAC §230.301

The amendment is adopted under the Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the approval of all educator preparation programs.

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

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TRD-200000241
Pamela B. Tackett
Executive Director
State Board for Educator Certification
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For further information, please call: (512) 469-3011

19 TAC §230.302, §230.303

The repeals are adopted under the Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the approval of all educator preparation programs.

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

Filed with the Office of the Secretary of State on January 14, 2000.

TRD-200000242
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

19 TAC §§230.304 - 230.308, 230.310, 230.311, 230.316

The amendments are adopted under the Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the approval of all educator preparation programs.

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

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TRD-200000243
Pamela B. Tackett
Executive Director

State Board for Educator Certification
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Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

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Subchapter K. ALTERNATIVE CERTIFICATION OF ADMINISTRATORS

19 TAC §230.361

The repeal is adopted under the Texas Education Code (TEC), §21.049, which requires the State Board for Educator Certification to propose rules providing for alternative certification programs.

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

Filed with the Office of the Secretary of State on January 14, 2000.

TRD-200000244
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

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Subchapter L. POSTBACCALAUREATE REQUIREMENTS FOR PERSONS SEEKING INITIAL TEACHER CERTIFICATION THROUGH APPROVED TEXAS COLLEGES AND UNIVERSITIES

19 TAC §230.391

The repeal is adopted under the Texas Education Code (TEC), §§21.041(b)(2) and (4), 21.044, 21.048, and 21.050 which require the State Board for Educator Certification to propose rules that establish the academic, internship, and examination requirements for all candidates for certification as well as the classes of certificates offered.

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 January 14, 2000.

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Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

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Subchapter M. CERTIFICATION OF EDUCATORS IN GENERAL

19 TAC §230.413

The amendment is adopted under Texas Education Code (TEC), §21.041(b)(4), which requires the Board to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

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 January 14, 2000.

TRD-200000246
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

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Subchapter R. RECORD OF CERTIFICATES

19 TAC §230.531, §230.532

The repeals are adopted under Texas Education Code (TEC), Chapter 21, Subchapter B, §21.031, which requires the State Board for Educator Certification to regulate and oversee all aspects of certification; §21.041(b)(1) which requires the State Board for Educator Certification to provide for general administration of the subchapter; §21.041(b)(2), which requires the State Board for Educator Certification to propose rules that specify the classes of certificates to be issued, including emergency certificates; and §21.041(b)(4), which requires the State Board for Educator Certification to specify the requirements for the issuance and renewal of an educator certificate.

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 January 14, 2000.

TRD-200000247
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

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Chapter 232. GENERAL REQUIREMENTS APPLICABLE TO ALL CERTIFICATES ISSUED

Subchapter M. TYPES AND CLASSES OF CERTIFICATES ISSUED

The State Board for Educator Certification (SBEC) adopts amendments to §232.500 and §232.510, concerning the types

and classes of educator certificates the Board issues, and adopts new §232.515, concerning standards for the issuance of classroom teaching certificates, without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10703) and will not be republished. The SBEC also adopts the repeal of §232.520, concerning effective date, without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10703) and will not be republished.

The amendments and new rules are adopted to refine the definitions of types and classes of certificates as required by statute and to establish the principles under which the Board will adopt standards for the issuance of classroom teaching certificates, including master teacher certificates.

The amendments to §232.500 and the repeal of §232.520, amend various provisions of current rules that conflict with 19 TAC Chapter 227, concerning Admission to an Educator Preparation Program and Chapter 228, concerning Requirements for Educator Preparation Programs, which were adopted by the SBEC at its May 7, 1999, meeting.

The SBEC is contemporaneously adopting amendments to Chapter 230, concerning Professional Educator Preparation and Certification, elsewhere in this issue of the *Texas Register*. The following information pertains to the amendment of Chapter 230 as well as the amendment to §232.500 and the repeal of §232.520:

In its proposed *Framework for Educator Preparation and Certification* the SBEC states as an underlying assumption that "Board rules must identify a single set of standards applicable to all educator preparation programs to enhance flexibility in program delivery and to accommodate multiple routes." Consistent with that assumption, the SBEC has adopted new rules to govern admission to an educator preparation program (Chapter 227) and the operation of educator preparation programs (Chapter 228). The purpose of these new rules is to enhance flexibility and accommodate multiple approaches for the design and delivery of programs leading to certification. The rules reflect the SBEC's belief that its role is to clearly define what the candidate for certification must know and be able to do upon completing a preparation program, and to then assess the success of the program in delivering the required knowledge and skills. Who programs admit and how the expected knowledge and skills are delivered should largely be left to the discretion of each program. This approach is possible because all educator preparation programs are held accountable for their performance through the Accountability System for Educator Preparation (ASEP), which reflects the performance of their students on the examinations required for certification.

As reflected in Chapter 227, the Board has established the minimum components of admissions policies, but does not prescribe the content of the policies. Programs must:

identify procedures to screen applications to determine appropriateness for the certificate sought;

verify college-level skills in reading, oral and written communication, critical thinking, and mathematics (note that neither an assessment nor test is mentioned);

establish academic criteria that are consistently applied to all applicants; and

develop procedures that allow admitted individuals to substitute relevant experience and training for part of the preparation requirements. (For example, a retired chemist seeking certification should be allowed to skip required coursework in chemistry.)

Under the new rules governing educator preparation programs (Chapter 228), all programs will operate under the same set of rules that accommodate different ways of delivering educator preparation to the different types of prospective educators. The elements described below are widely recognized as critical components of successful educator preparation programs and will be required of all SBEC-approved programs. The program must:

design, deliver, and evaluate educator preparation through a collaborative effort involving institutions of higher education, public and private schools, regional education service centers, and business and community interests;

base preparation on the relevant Texas Essential Knowledge and Skills (TEKS) for each certificate;

provide ongoing and relevant field-based experiences throughout the entire program in a variety of settings with diverse student populations;

require all students to complete at least 12 weeks of a full-day teaching practicum prior to recommending students for certification;

establish benchmarks and structured assessments to measure throughout the program the progress of candidates for certification; and

continuously evaluate the design and delivery of the program's curriculum based on performance data, research-based promising practices, and internal and external assessments.

It is important to note that the new rule does not explicitly define "ongoing and relevant field-based experiences" because the SBEC recognizes that field-based experiences will be provided differently by the various preparation programs. It will be up to each program to determine what this term means for the students being served, and it is entirely possible and appropriate that "ongoing" for a college junior will be different than "ongoing" for a mid-career individual seeking certification. Further, please note that the 12-week full-day teaching practicum can be interpreted in a variety of ways and should not be thought of exclusively as the "traditional" student teaching block that occurs in the final semester of college.

By deliberately not setting explicit standards for field-based experiences, the SBEC is encouraging flexibility and creativity to allow programs to attract and serve all of the people that might be interested in seeking certification.

The specific repeals and amendments adopted in this item are as follows:

1. All requirements that prescribe a specific amount of collaboration, field-based preparation, or student teaching are proposed for repeal.

2. All provisions that reference the operation of university baccalaureate and post-baccalaureate programs, alternative certification programs (ACP), and Centers for the Professional Development of Teachers (CPDT) are proposed for repeal, except that:

the probationary certificate available to post-baccalaureate and ACP students is moved to Chapter 232, Subchapter M;

the unique teaching certificates available through ACPs are moved to Chapter 230, Subchapter G; and until September 1, 2001, institutions of higher education may apply to the Board for designation as a CPDT. (Funds were not appropriated to support the creation of additional CPDTs, however funds are available to complete the three-year funding cycle for institutions that are eligible for 2nd- and 3rd-year funding).

By repealing and amending current rules, all educator preparation programs will follow the same set of quality program standards that will assure consistency in educator preparation as well as the accountability of those programs through the Accountability System for Educator Preparation (ASEP). While entities are held accountable, the new rules provide for much flexibility and creativity in the design and delivery of educator preparation.

No comments were received regarding adoption of the rules.

19 TAC §§232.500, 232.510, 232.515

The amendments and new rule are adopted under Texas Education Code §21.041(2) and (3), which requires the State Board for Educator Certification to propose rules specifying the classes of certificates and their periods of validity, and §21.048(a), which requires the Board to prescribe comprehensive examinations for each class of certificate.

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 January 14, 2000.

TRD-200000248
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: December 3, 1999
For further information, please call: (512) 469-3011

19 TAC §232.520

The repeal is adopted under the Texas Education Code (TEC), §21.041(b)(2) and (3) which require the State Board for Educator Certification to specify the classes of educator certificates to be issued and the period of validity for each class of certificate.

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 January 14, 2000.

TRD-200000249
Pamela B. Tackett
Executive Director
State Board for Educator Certification
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Proposal publication date: December 3, 1999
For further information, please call: (512) 469-3011

Chapter 245. CERTIFICATION OF EDUCATORS FROM OTHER COUNTRIES

19 TAC §§245.1, 245.5, 245.10, 245.15

The State Board for Educator Certification (SBEC) adopts a new Chapter 245, Certification of Educators from Other Countries, §§245.1, 245.5, 245.10 and 245.15, concerning General Provisions, Requirements for Issuance of a Texas Certificate Based on a Certification from Another Country, Application Procedures and Evaluation of College Credentials, without changes to the proposed text as published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 8887) and will not be republished. The new rules establish requirements for educators from other countries and give the degree and educator credential issued by another country the same standing as credentials issued by another state within the United States or a territory of the United States.

Elsewhere in this issue of the *Texas Register*, the SBEC contemporaneously adopts an amendment to Chapter 230, Subchapter M, concerning Certification of Educators in General.

Under current rules, individuals who complete degrees and educator preparation programs outside of the United States and who do not hold acceptable certificates issued by another state must complete a Texas educator preparation program to qualify for Texas educator certification. There are several issues relating to applicants from other countries;

Verification of English Language Proficiency for Applicants from Other Countries

Currently, Chapter 230, Subchapter M, relating to Certification of Educators in General, stipulates that all applicants for Texas certificates must be able to speak and understand the English language sufficiently to use it easily and readily in conversation and teaching. Individuals completing approved Texas educator preparation programs are assessed for English language proficiency as part of their preparation programs. At its May 1999 meeting, the SBEC adopted rules establishing requirements for admission to a Texas educator preparation program that include a determination of college-level skills in oral and written communication. In many cases, graduates of colleges and universities in other states are assessed for oral English language proficiency as part of their educator preparation programs. However, Chapter 230, Subchapter O, Texas Educator Certificates Based on College Credentials from Other States, does not explicitly require applicants seeking Texas certification based on credentials from other states or territories of the United States to provide evidence of English language proficiency. SBEC's recommends the proposed amendments to Chapter 230, Subchapter M, §230.413(b)(5) relating to General Requirements, that would specify options for satisfying the English language proficiency requirement. These amendments would apply to all applicants for Texas educator certificates, including educators from Texas, other states, and other countries. Both Chapter 230, Subchapter O, and the adopted new Chapter 245, Certification of Educators from Other Countries require applicants to comply with the requirements in Chapter 230, Subchapter M, General Requirements.

Criminal Background Checks for Applicants from Other Countries

Currently, SBEC conducts state criminal background checks through the Texas Department of Public Safety on all applicants

for Texas educator certificates. In addition, SBEC also receives monthly reports from the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse that identifies individuals who have had their professional educator credentials annulled, denied, revoked, suspended, or otherwise invalidated in other states, U.S. Department of Defense Schools, or U.S. territories.

While most states conduct some type of criminal background check on all applicants for educator certification, many check records at the state level only. States such as Louisiana and Oklahoma require that the employing school district conduct a background check for employment purposes, not for certification. California, Arkansas and Nevada conduct national fingerprint-based criminal background checks on applicants for certification.

Because SBEC is not designated as a criminal justice or law enforcement agency, SBEC is not eligible to access international clearinghouse information regarding criminal histories. INTERPOL, the international organization that coordinates cooperation between police forces in member countries, can only provide criminal information and investigative assistance to national police forces and other law enforcement agencies.

Individuals who apply for immigrant or non-immigrant visas may or may not be required by the United States Immigration and Naturalization Service (INS) to be fingerprinted. There are many circumstances under which fingerprinting may be waived by INS. INS does require applicants for naturalization to be fingerprinted. INS submits the fingerprint cards to the Federal Bureau of Investigation (FBI) to conduct a criminal background check.

According to Background Check International (BCI), a company that conducts worldwide employment screening and criminal background checks for large companies, developed countries will provide some type of criminal clearance or background check upon request from the individual. Under-developed countries will not provide this service. However, individuals may contact their embassy or consulate and request background checks.

Applicants for certification in the Canadian province of Ontario are required to obtain a foreign criminal record check report from any country or jurisdiction in which they have spent more than two years since they turned 18 years of age. Criminal records check reports must not be older than six months. Information obtained from the Ontario College of Teachers, the licensing and regulatory agency for the teaching profession in the province of Ontario, indicates that they have found it impossible for applicants to obtain criminal records reports or police clearances from many countries. The College's research also indicates that in many countries, non-residents of that country cannot obtain reports. According to the College, it can take as long as twelve months to obtain a foreign criminal records report. Applicants who are unable to obtain a foreign report must enclose details with their application, including the original letter from the embassy, consulate or authorities in the country or jurisdiction refusing to provide the report.

SBEC recommends that individuals who are applying for Texas certification based on credentials from other countries to provide evidence that their educator credentials are in good standing and have not been revoked, suspended, or sanctioned and are not currently pending disciplinary or adverse action. In addition, SBEC staff will also conduct its normal criminal history checks with DPS on each applicant.

United States and Texas Governments and Constitutions

Graduates of Texas universities and colleges are required to complete a study of the U.S. and Texas Constitutions as part of the general education requirements for the baccalaureate degree. Only eight states have a requirement for U.S and state government as a condition for initial teacher certification.

Prior to 1986, applicants certified in other states were required to complete coursework or examinations in U.S. and Texas government to qualify for permanent Texas certification. A one-year certificate was available to allow individuals to teach in Texas while completing the government requirement. In June 1986, the State Board of Education (SBOE) discontinued the government requirement for out-of-state applicants. At that time, the ExCET exams became the only requirements for permanent certification.

SBEC adopts that the current practice of not requiring courses in U.S. and Texas Constitutions for certification be applied to out of country applicants as well.

Equivalency of Credentials from Other Countries

Because SBEC does not currently have the resources to evaluate foreign credentials, the proposed rule would require foreign applicants to use a credential evaluation service recognized by the Executive Director. Since there is no governmental agency within the United States that monitors the establishment of foreign credential evaluation services, many state departments of education and licensing agencies accept reviews of foreign credentials from evaluation services that are members of national organizations such as the National Association of Credential Evaluation Services (NACES) or the American Association of Collegiate Registrars and Admissions Officers (AACRAO). Others require that the evaluation services follow the standards of evaluation approved by the National Council on the Evaluation of Foreign Educational Credentials (NCEFEC).

SBEC adopts that the Executive Director recognize foreign credential evaluation services that are affiliated with one of these national organizations. The cost for detailed or course-by-course evaluations ranges from $90 to $150. Additional fees are assessed for rush service. SBEC staff will use the credential evaluation in lieu of transcripts and a certificate as the basis for determining eligibility for a Texas certificate. Applicants from countries that have signed a reciprocity agreement with Texas through their membership with NASDTEC may submit transcripts and teaching credentials directly to SBEC for review.

No comments were received regarding adoption of the rules.

Texas Education Code (TEC), §21.041(b)(4) and (5) and §21.052 require the Board to adopt rules that specify the requirements for the issuance and renewal of an educator certificate and provide for the issuance of an educator certificate to a person holding a degree and a similar certificate or other credential issued by another country.

The new sections are adopted under the Texas Education Code (TEC), §21.041(b)(5) and §21.052 which require the State Board for Educator Certification to propose rules that provide for the issuance of an educator certificate to a person holding a degree and a similar certificate or other credential issued by another country.

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 January 14, 2000.

TRD-200000250
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

Chapter 250. AGENCY ADMINISTRATION

Subchapter A. PURCHASING

19 TAC §250.2, §250.3

The State Board for Educator Certification adopts new §250.2 and §250.3, concerning Ethical Standards and Vendor Protest Procedures, without changes to the proposed text as published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 8890) and will not be republished. The rules authorize prospective vendors to protest a purchase made in violation of the ethical standards.

The new rules place the primary responsibility for overseeing compliance with purchasing procedures and addressing violations of the ethical standards with the agency's Staff Services Officer. The state employee classification scheme designates SBEC's Staff Services Officer as the staff member primarily responsible for purchasing functions in the agency. If the Staff Services Officer is the person alleged to have violated the purchasing standards, then the Executive Director assumes responsibility for having an investigation conducted and determining whether a violation has occurred. The proposed rules further provides for corrective action against those found to have breached the ethics in purchasing standards, including termination of a current employee and debarment of a former employee or a vendor from participating in future board purchases.

The rules also provide standards for maintaining documentation about the purchasing process to be used in the event of a protest or appeal. The subsections of recommended new §250.3 define general terms used in the section, provide where and when a protest must be filed, establish the minimum contents of a protest, and identify who must receive copies of a protest. The section authorizes the SBEC to continue with the purchase process if the Executive Director makes a written determination that the purchase must go forward without delay to protect substantial interests of the State of Texas.

The new rules authorize for the Staff Services Officer to review a properly filed protest and to informally resolve the dispute by agreement of the parties. If resolution by mutual agreement is not achieved, the Staff Services Officer must issue a written decision, setting forth any corrective action to be taken. The rule establishes a process to appeal the Staff Services Officer's decision, provides where and when such appeal must be filed, and identifies who must be notified of an appeal. The section provides for review of the Staff Services Officer's determination by the Executive Director, who could ask at least one other member of the executive staff to review the appeal and to recommend a disposition. The Executive Director could decide the appeal or refer it to the Board for decision. Only the Executive Director could send the appeal to the Board for consideration: the vendor could not require the Board to hear an appeal.

Standards of conduct for board employees and vendor protest procedures are incorporated into the formal administrative rules of the board, thereby making those standards and procedures more accessible and enforceable.

Under the staff recommendation for the vendor protest rules, documentation about a protest must be maintained in accordance with the SBEC's approved records retention schedule.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Government Code §§572.001, 572.051, and 572.054, which establish standards of conduct for state employees and provide a basis for discipline; Texas Government Code §2155.076 (relating to vendor protest procedures) and Texas Education Code §21.040(5), which requires the Board to provide its members and employees information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees; §21.040(6), which requires the Board to develop and implement policies that clearly define the respective responsibilities of the Board and the Board's staff; and §21.041(b)(1), which requires the Board to propose rules for the general administration of Texas Education Code Chapter 21, Subchapter B.

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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Pamela B. Tackett
Executive Director
State Board for Educator Certification
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Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

Subchapter B. RULEMAKING PROCEDURES

19 TAC §250.20

The State Board for Educator Certification (SBEC) adopts a new Subchapter B, Rulemaking Procedures, §250.20, concerning Petition for Adoption of Rules, without changes to the proposed text as published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 8893) and will not be republished. The rule establishes a method for members of the public to petition the SBEC to propose a new or amended rule.

The Administrative Procedure Act (APA) requires the SBEC to prescribe the form of a petition for the adoption or amendment (including repeal) of a rule and the procedure for its submission, consideration, and disposition. New §250.20 establishes requirements for the basic form and content of a rulemaking petition. The Executive Director may deny a petition that does not meet these essential requirements, and the rejected petition would not reach the Board for consideration. The rule tracks

provisions in the APA setting forth what must be contained in notices of proposed and adopted rules that are published in the *Texas Register* (Government Code §2001.024, §2001.033). After a petition is filed with the Executive Director, the SBEC will have 60 days to either deny the petition or initiate rulemaking procedures. The SBEC recommendation for new 19 TAC §250.20 provides both the Executive Director and the Board grounds for denying a petition.

Subsection (g) of adopted §250.20 sets out grounds upon which the SBEC may deny a petition that has passed the Executive Director's review for form and content:

1. the board lacks jurisdiction or authority to propose the rule;

2. the proposed rule conflicts with law, like the SBEC's enabling statutes or another board rule;

3. a better way to achieve the same end exists; or

4. the petitioner is improperly using the rulemaking petition in one of the following ways:

by filing a petition after having participated in the rulemaking process for a similar rule but not objecting to its proposal or adoption at the time;

by filing a petition within four years after the board considered and rejected a similar rule on the same subject matter;

by filing a petition to amend a rule proposed or adopted by the board that has not yet become effective; or

by filing a petition to amend an existing rule that is undergoing sunset review or has just undergone review within the last year.

The above mentioned list is not an exhaustive one, so the SBEC may deny a rulemaking petition for other reasons that are not arbitrary or capricious.

No comments were received regarding adoption of the new rule.

The new section is adopted under Texas Government Code §2001.021, which requires the Board to adopt a rule providing for the form and submission of petitions for adoption of rules; and Texas Education Code (TEC) §21.041(b)(1), which requires the Board to propose rules for the general administration of TEC, Chapter 21, Subchapter B.

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 January 14, 2000.

TRD-200000252
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 469-3011

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Subchapter C. TRAINING AND EDUCATION FOR EMPLOYEES

19 TAC §§250.30-250.34

The State Board for Educator Certification (SBEC) adopts new §§250.30-250.34, concerning training for agency staff, without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register*(24 TexReg 10705) and will not be republished. The new rules are made to implement Senate Bill 223, passed during the 76th session of the Texas Legislature, which requires the State Board for Educator Certification and other state agencies to adopt rules governing staff training paid for by the agency. The new rules will be used by the executive director and managers of the State Board for Educator Certification to determine appropriate training for agency employees, payment for any such training, and obligations of employees who receive training paid for by the agency.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Government Code, Chapter 656, Subchapters C and D, which require the Board to adopt rules governing training and education of employees.

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

Filed with the Office of the Secretary of State on January 14, 2000.

TRD-200000253
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: February 3, 2000
Proposal publication date: December 3, 1999
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

Part 7. STATE COMMITTEE OF EXAMINERS IN THE FITTING DISPENSING OF HEARING INSTRUMENTS

Chapter 141. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §141.16

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) with the approval of the Texas Board of Health and by a majority vote of the committee on October 16, 1999, enters this order finally adopting §141.16 concerning the regulation of fitters and dispensers of hearing instruments, without changes to the proposed text as published in the August 6, 1999 issue of the *Texas Register* (24 TexReg 5989), and therefore will not be republished.

The amendment requires that the ambient noise level of the test environment be recorded on the hearing test, specify the maximum allowable ambient noise level of the test environment, and to differentiate when testing is done outside of a stationary acoustical enclosure and when it is done in a stationary acoustical enclosure by requiring a notation of such.

The following comments were received on the proposal during the comment period. The first commentor from Timothy Mashburn of Felts, Mashburn and Contreras, P.C. representing the Texas Hearing Aid Association (THAA).

COMMENT: The THAA opposes the amendment to §141.16 in its entirety, as this organization states that current provisions for audiometric testing not conducted in a stationary acoustical enclosure is done at an acceptable level. Next, THAA is unaware of a sound level meter that would be required to comply with the amendment at a cost of $250. Further, if a sound level meter is available at this cost, THAA requests that the manufacturer, make and model number be made available to its membership. This comment is in regards to cost analysis in the proposed preamble.

RESPONSE: The committee is of the opinion that the public would be better served if when an audiometric test is not conducted in a stationary acoustical enclosure, the test environment shall have a maximum allowable ambient noise level of 42 dBA. This opinion is based on information and research submitted in an article published in the Journal of The Acoustical Society of America, May 1978, entitled "A- weighted equivalents of permissible ambient noise during audiometric testing" by M.C. Killion, Ph.D. and G.A. Studebaker, Ph.D. In addition, the ambient noise level must be recorded on the hearing test with the equipment used to gather this data, the model and serial number of the equipment and the date of the last calibration of the equipment. Further, the committee is of the opinion that a notation be required on the hearing test to differentiate when an audiometric test is done outside of a stationary acoustical enclosure and when it is done in a stationary acoustical enclosure. Starkey Texas, Inc. has informed the committee that a TENMA, Model # 72-860 is available at $295. If 5 - 9 units are purchased, the cost would be $275 and if 10 or more units are purchased the cost would be $250. No change was made as a result of the comment.

The second commentor was Chester C. Timbs of Chester C. Timbs, P.C. representing Phillips Hearing Aid Service, Inc. In Tyler, Texas.

COMMENT: Phillips Hearing Aid Service states that in the proposed preamble the cost of the $250 for a sound level meter needed to comply with the amendment in §141.16 is not accurate. Further, Phillips Hearing Aid Service states that in §141.16(g)(3) the wording of "maximum allowable ambient noise level of 42 dBA", should be reworded for clarity to read "ambient noise level not to exceed 42 dBA when testing to thresholds to 20 dB HL".

RESPONSE: The cost analysis for the sound level meter stated in the proposed preamble is explained in the response to the previous comment from THAA. The committee is of the opinion that "maximum allowable" and "not to exceed" are interpreted as the same meaning. The committee refers to the lawsuit filed by Audiology Practices, Inc., page 7, 4.19, the ANSI standards do not speak to, recognize, or sanction the use of a dBA equivalent to the discrete "ears covered" octave band standards. The reasons for this omission are inherent in the definition and purpose of an A-weighted (or dBA) measurement of sound pressure level. An A-weighted sound pressure level measurement was designed to adjust for or "weight" the noise or sound in a given environment to better correspond to human hearing. Further, the committee refers to the study ("A-weighted equivalents of permissible ambient noise during audiometric testing" - Journal of the Acoustical Society of America, May 1978) by M.C. Killion and G.A. Studebaker that states, sound level meters of at least type 2 quality (ANSI S1.4 1971) may be used instead of octave or one-third octave band analyzers to quickly and routinely check the acceptability of an office, classroom, or closet for threshold determinations at the time of use. No change was made as a result of the comment.

The amendment is adopted under the Occupation Code, §402 which provides the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, subject to the Texas Board of Health approval, with the authority to adopt rules concerning the regulation of licensed fitters and dispensers of hearing instruments. This amendment affects Texas Occupations Code, Chapter 402.

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 January 14, 2000.

TRD-200000283

Larry Farris

President

State Committee of Examiners in the Fitting and Dispensing of Hearing Instrument

Effective date: February 3, 2000

Proposal publication date: August 6, 1999

For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 85. HEALTH AUTHORITIES

The Texas Department of Health (department) adopts the repeal of §§85.11 - 85.14 and new §85.1 concerning health authorities. Section 85.1 is adopted with changes to the proposed text as published in the November 5, 1999, issue of the *Texas Register* (24 TexReg 9747). The repeals, §§85.11 - 85.14 are adopted without change, and therefore will not be republished. The Local Public Health Reorganization Act, Health and Safety Code, Chapter 121 governs health authorities.

The repeal of existing sections removes obsolete language. The adopted new section defines situations when a health authority is required, describes when a regional director may perform the duties of a health authority, states the duties of a health authority, and describes the documentation process for taking the oath of office.

Chapter 121 and the new section state that if the governing body of a municipality or county has established a local health department or public health district, the director, if a physician, of the local health department or public health district will serve as the health authority in the local health department's or public health district's jurisdiction. If the director is not a physician, the director is required to appoint a physician as the health authority for the jurisdiction in which he or she serves. Governing bodies of municipalities or counties that have not established a local health department or public health district

may appoint a physician to serve as the health authority within its jurisdiction, but are not mandated to do so unless the city or county receives a grant from the department for essential public health services. Newly appointed health authorities serve for a term of two years and may be appointed for successive terms, must perform each duty that is necessary to implement and enforce a law to protect the public health, and must take the oath of office and file the oath and appointment with the department. In addition, Chapter 121 and the new section authorize a health authority to delegate a power or duty to a properly qualified physician to act if the health authority is absent or incapacitated, and requires the designee to follow the same procedure regarding the oath of office as a newly appointed health authority. Regional directors shall perform the duties of a health authority within their jurisdiction in which there is no health authority, or may perform some or all of the duties of a health authority if the appointed health authority fails to perform the duties prescribed by the Board of Health or if the appointed health authority is absent or incapacitated.

The department published a Notice of Intent to Review §§85.11 - 85.14 as required by Rider 167 (§167 (section 167)) of the 1998-1999 General Appropriations Act in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9078). The comments received requested that the obsolete language be deleted from the sections proposed for repeal. After receiving these comments, the department decided to postpone amending the rules to see if additional changes would be needed based on proposed recommendations relating to House Concurrent Resolution (HCR) 44. HCR 44, passed during the 75th legislative session, 1997, directed the department and four other organizations to conduct an interim study on local public health. The recommendations from the interim study resulted in the introduction of House Bill (HB) 1444 which subsequently passed and amends Chapter 121 by defining essential public health services, authorizing the department to establish a grant program to local political subdivisions for providing the essential public health services, and requiring the appointment of a health authority by the local political subdivisions if they are awarded a grant under this program.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning proposed §85.1(d), the department deleted this statement because the requirement for essential public health services grants are better addressed in the department Innovative Grant rules, (25 TAC, §83.1 - §83.13). The subsequent subsections were relettered.

Change: Concerning relettered §85.1(h)and (i), the department has revised the language to clarify who in the department should be notified of the appointment of a health authority. The rule further specifies that a copy of the official oath and statement of appointed officer should be submitted to the appropriate regional office.

Subchapter A. LOCAL PUBLIC HEALTH

25 TAC §85.1

The new section is adopted under the Health and Safety Code, Chapter 121, which allows the Texas Board of Health (board) to prescribe requirements relating to health authorities and §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§85.1. Health Authorities.

(a) A health authority is a physician appointed under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121 by the governing body of a city, county, or public health district to administer the state and local laws relating to public health.

(b) A health authority must be appointed in a municipality or county that has established a local health department or public health district.

(1) The director of a local health department or public health district, if the director is a physician, shall be the health authority within the jurisdiction of the local health department or district.

(2) If a non-physician serves as the director of a local health department or public health district, the director shall appoint a physician to serve as the health authority within the jurisdiction of such local health department or district subject to the approval of the governing body of the local health department or public health district. No action is required by the Board of Health (board) to further approve the appointment.

(c) A health authority may be appointed, but is not required to be appointed, in a municipality or county that has not established a local health department or public health district unless it falls under subsection (d) of this section. The governing body of the municipality or the commissioners court of the county may appoint the health authority within its jurisdiction.

(d) A health authority serves for a term of two years and may be appointed to successive terms.

(e) A regional director of the department shall perform the duties of a health authority for a municipality, county, public health district, or entity authorized to appoint a health authority in a jurisdiction in the regional director's region in which there is no health authority. A regional director is a physician who is employed by the department and serves as the chief administrative officer of a region. A region is a geographic area of the State of Texas designated by the department.

(f) A regional director of the department may perform some or all of the duties of a health authority if an appointed health authority fails to perform duties prescribed by the board in this section. At the request of the appointing authority, a regional director may serve as a health authority because of the absence or incapacity of the appointed health authority. No action by the board is necessary to further approve a regional director's performance or service.

(g) A health authority shall perform each duty that is necessary to implement and enforce a law to protect the public health as stated in the Health and Safety Code, §121.024.

(h) An appointed health authority shall take the official oath required by the Texas Constitution, Article 16, §1, including the statement of appointed officer and file a copy of the oath and appointment with the appropriate regional office within ten working days of the date of taking the oath.

(i) If a health authority ceases to hold office for any reason, the appointing authority shall immediately notify the department and appropriate regional director. When a new health authority has been appointed, the person will take the action outlined in subsection (i) of this section and notify the appropriate regional office of the 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.

Filed with the Office of the Secretary of State on January 14, 2000.

TRD-200000276
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 3, 2000
Proposal publication date: November 5, 1999
For further information, please call: (512) 458-7236

25 TAC §§85.11 - 85.14

The repeals are adopted under the Health and Safety Code, Chapter 121, which allows the Texas Board of Health (board) to prescribe requirements relating to health authorities and §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on 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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TRD-200000277
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 3, 2000
Proposal publication date: November 5, 1999
For further information, please call: (512) 458-7236

Chapter 101. TOBACCO

The Texas Department of Health (department) adopts the repeal of existing §101.5, and adopts new §101.5 concerning the reporting of nicotine content of cigarettes. Section 101.5 is adopted without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8705) and therefore the sections will not be republished.

The new section, §101.5 substantially rewrote the repealed section, §101.5. This change was in response to a petition for rulemaking submitted to the department by Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Phillip Morris Incorporated, and R.J. Reynolds Tobacco Company through their attorneys, Covington and Burling. The change will more effectively implement Health and Safety Code Chapter 161, Subchapter P. The new section will allow the tobacco companies to provide information to the department less expensively by using a mathematical model to determine the nicotine yield of their products, with no diminution in the accuracy of the information. The information on nicotine yield will allow increased access by the public to information about cigarettes, which will make their decision to use cigarettes better informed.

The new section details the methods used to obtain the information on nicotine yield to be submitted to the department to comply with Health and Safety Code Chapter 161, Subchapter P.

The following comment was received concerning the proposed section. Following the comment is the department's response.

Comment: Concerning new §101.5, the department received one comment. The comment was generally favorable, but noted that the due date for reporting nicotine yield contained in another section of Chapter 101 occured before this new rule could be made final. They requested that the due date for reporting under these rules be delayed until February 1, 2000.

Response: The department agrees with the concerns. Although the due date cannot be changed because this was not part of the proposed new rule, the department agrees that it will pursue no action against any company until the effective date of this rule. Because this rule will be approved by the Board of Health on January 14, 2000, and becomes effective 20 days after submission to the Texas Register, the effective date of these rules can be no sooner than February 3, 2000.

The commenter was Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Phillip Morris Incorporated, and R.J. Reynolds Tobacco Company through their attorneys, Covington and Burling.

25 TAC §101.5

The repeal is adopted under Texas Health and Safety Code Chapter 161, §161.353 which requires the Texas Board of Health to adopt standards on the nicotine yield rating of cigarettes and tobacco products, and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on 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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Proposal publication date: October 8, 1999
For further information, please call: (512) 458-7236

The new section is adopted under Texas Health and Safety Code Chapter 161, §161.353 which requires the Texas Board of Health to adopt standards on the nicotine yield rating of cigarettes and tobacco products, and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on 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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General Counsel
Texas Department of Health
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Chapter 102. DISTRIBUTION OF TOBACCO SETTLEMENT PROCEEDS TO POLITICAL SUBDIVISIONS

25 TAC §§102.1 - 102.5

The Texas Department of Health (department) adopts new §§102.1 - 102.5 relating to the distribution of tobacco settlement proceeds to political subdivisions. Sections 102.3 and 102.5 are adopted with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10721). Sections 102.1 - 102.2 and 102.4 are adopted without changes and therefore will not be republished.

The sections are adopted to implement a part of Acts 1999, 76th Legislature, Chapter 753, Article 2 (House Bill (HB) 1161), which designates the department's responsibilities under the Agreement Regarding Disposition of Tobacco Settlement Proceeds (agreement) filed on July 24, 1998, in United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91. The department will collect information and certify amounts of the tobacco settlement proceeds for annual distribution to political subdivisions. The term "political subdivision" means a hospital district, another local political subdivision owning or maintaining a public hospital, or a county of the State of Texas responsible for providing indigent health care to the general public. The Texas Health and Safety Code, Chapter 61 defines which entities are responsible for providing indigent health care to the general public.

The sections accomplish the following: state the purpose of the legislation and define terms, provide the distribution schedule and amounts, describe the annual claims process, describe regular audits, and describe the dispute process.

Based on staff comments and consideration by the Tobacco Settlement Permanent Trust Account Administration Advisory Committee concerning certain sections of the rules, the department is making the following minor changes to clarify the intent and improve the accuracy of these sections.

Change: Concerning §102.3(a), clarification is needed regarding the term "unreimbursed expenditures." Therefore, the following sentence was added to §102.3(a): The term "unreimbursed expenditures" does not include contractual allowances or discounts for health care services required under a third party payor agreement.

Change: Concerning §102.3(b)(1)(J), counties may not count unreimbursed expenditures for first responder services, since these are not within the scope of services that hospital districts are authorized by law to provide. Therefore, §102.3(b)(1)(J) has been deleted and the subsequent subparagraphs were relettered. The purchase of automated external defibrillators (AEDs), used in emergency medical services and also in first responder services, is a countable expenditure.

Change: Concerning §102.3(b)(1)(M), now relettered as §102.3(b)(1)(L), clarification was needed regarding medical supplies or equipment that could be claimed for reimbursement by a political subdivision. Therefore, the phrase "used for the provision of health care services to the general public" was added to the end of §102.3(b)(1)(M).

Change: Concerning §102.3(b)(2)(C), clarification is needed to indicate that counties not wholly within a hospital district may not count amounts not actually expended for health care services from a trust or reserve account. Therefore, the clause "but not actually expended for such services" has been added to the end of this provision.

Change: Concerning §102.3(b)(2)(I), since unreimbursed expenditures for first responder services may not be claimed for reimbursement by a political subdivision, the phrase "not provided under medical direction" is not needed. Therefore, this phrase has been deleted.

Change: Concerning §102.3(e)(1), clarification is needed regarding political subdivisions that have sold or leased a public health care facility, as indicated in bold type below:

"When a political subdivision has sold or leased its public health care facility(s) and accepted an agreement from the new owner or lessee of the facility(s) to provide indigent health care services, the political subdivision is receiving contracted services in lieu of cash as consideration for the sale or lease of the facility(s)."

Change: Concerning proposed §102.3(e)(1)(B), the agreement does not allow political subdivisions that have sold or leased a health care facility to claim the unreimbursed expenditures provided by the new owner or lessee under the sale or lease agreement for individuals who are not residents of the political subdivision. Therefore, §102.3(e)(1)(B) has been deleted.

Change: Concerning §102.3(e)(2), the words "received by a hospital district" were added since tax collections cannot be counted by other political subdivisions under the tobacco settlement agreement.

Change: Concerning §102.5(f), clarification was needed on the monetary penalty the department may impose on a political subdivision for which an audit indicates an overstatement. Therefore, the previous wording, "may be in the amount of ten%," was changed to "may not exceed ten%."

The following public comments were received concerning the proposed rules. Following each comment is the department's response and any resulting changes.

Comment: Concerning §102.1(b), one commenter asked that "hospital authority" be included as a category entitled to receive tobacco settlement proceeds.

Response: The department disagrees. Hospital authorities are not addressed in the agreement. To include a new category under the term "political subdivision" would require a modification of the tobacco settlement agreement, necessitating a reconvening of the parties to the lawsuit and a return to federal court. The department has no authority to expand the coverage of the agreement. No change was made as a result of this comment.

Comment: Concerning §102.3(e)(2), a political subdivision should be allowed to count expenditures of the interest or

investment proceeds from profits or payments received through its sale of lease of a health care facility.

Response: The department agrees. Therefore, the clause "including the interest or investment proceeds from such profits or payments" has been added to the end of §102.3(e)(2).

Comment: Concerning §102.5(f), the department should not impose a monetary penalty against a political subdivision that submits an incorrect expenditure statement if the political subdivision made a good faith effort to comply with the applicable requirements.

Response: The department agrees. Additional language has been inserted in §102.(f) stating that a monetary penalty may be imposed if the political subdivision failed to exercise reasonable diligence to comply with the applicable requirements.

Comment: Concerning §102.5(g), if the department elects to impose a monetary penalty on a political subdivision, the hearings officer should issue findings of fact and conclusions of law about whether the political subdivision made a good faith effort to comply with the applicable requirements.

Response: The department agrees. Additional language has been inserted in §102.5(g) requiring the hearings officer to issue findings of fact and conclusions of law before imposing a monetary penalty.

The comments on the proposed rules received by the department during the comment period were submitted by Uvalde Memorial Hospital, the American Heart Association, and Amarillo Hospital District. The commenters were generally neither for nor against the rules in their entirety. However, they raised questions and suggested clarifying language concerning specific provisions in the rules, as discussed in the summary of comments.

The Tobacco Settlement Permanent Trust Account Administration Advisory Committee (committee), created by HB 1161, collaborated with the department in the development of these rules. The final rules were approved by the committee on January 7, 2000, as required by the Health and Safety Code, §12.138.

The new sections are adopted under the Health and Safety Code, Chapter 12, Subchapter J, which provides the Texas Board of Health (board) with the authority to adopt rules concerning the tobacco settlement proceeds; HB 1161, §2.04, which provides the board with the authority to adopt rules relating to the tobacco settlement proceeds in the lump sum trust account; and Health and Safety Code §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§102.3. Annual Claims.

(a) General. Beginning in calendar year 2000, a political subdivision may claim a pro rata share of the annual distribution based on its "unreimbursed health care expenditures" in the previous calendar year. These expenditures are defined in the agreement as "those actual expenditures made by a Political Subdivision which are directly attributable to the provision of health care services to the general public, either directly or by contract or agreement with a third party provider, and for which no reimbursement is made by or expected from any third party source or fund. (Lump Sum Trust Account or Permanent Trust Account payments shall not count as reimbursement.)" The term "unreimbursed expenditures" does not include contractual allowances or discounts for health care services required under a third party payor agreement.

(b) Counties not wholly within a hospital district. For a county not wholly within a hospital district, the agreement further states that unreimbursed expenditures are to be calculated as "all unreimbursed amounts, including unreimbursed jail health care, expended by such county for health care services to the general public during that year, plus 15% of that total."

(1) The following are examples for which expenditures, if unreimbursed, may be counted:

(A) services within the scope of services that hospital districts are authorized by law to provide. These will typically be diagnostic and treatment services for individuals;

(B) health care screening, laboratory, and health care case management services;

(C) oral health care services;

(D) expenditures made from funds in a trust or reserve account for the provision of health care services;

(E) health care outreach and prevention efforts, including but not limited to media campaigns, education, counseling, and production and distribution of promotional literature. Typical target areas for these efforts include teenage smoking, child safety, and health hazards affecting the general public;

(F) medical transportation, including transportation to and from medical appointments;

(G) behavioral health care services;

(H) capital expenditures for direct health care services, such as construction of ambulance facilities or clinics;

(I) overhead costs for a health care facility;

(J) employee salary and benefits to the extent the employee is engaged in patient health care or other health care services such as the activities described in subparagraph (E) of this paragraph;

(K) emergency medical services; and

(L) medical supplies or equipment used for the provision of health care services to the general public.

(2) The following are examples for which expenditures may not be counted:

(A) general administrative or overhead costs of the county not directly related to the provision of health care services such as costs of the county auditor, the county attorney or county commissioner meetings. These general administrative costs are considered to be included within the 15% added to the unreimbursed expenditures;

(B) administrative supplies such as computer paper;

(C) amounts deposited in a trust or reserve account for the provision of health care services but not actually expended for such services;

(D) environmental services such as mosquito control, water testing, and septic tank inspection;

(E) rental assistance for mental health patients;

(F) the amount of a tax abatement given in exchange for an agreement to provide health care services;

(G) regulatory activities such as restaurant inspection;

(H) 911 services;

(I) first responder services; and

(J) services to the extent to which the county has received reimbursement or funds through federal or state programs including, but not limited to, county indigent health care, tertiary medical care, emergency medical services grants, permanent fund for children and public health grants, public health block grants, Title XVIII of the Social Security Act (Medicare), Title XIX of the Social Security Act (Medicaid), or crime victims compensation fund.

(3) If the county expects to receive reimbursement or funds through federal or state programs, such as those listed in paragraph (2)(J) of this subsection, but has not received reimbursement or funds at the time the county files its annual expenditure statement with the department:

(A) the county may include those expenditures which qualify as unreimbursed expenditures under this subsection in its annual expenditure statement filed with the department; and

(B) once the county receives reimbursement or funds for the expenditures or any portion of the expenditures described in subparagraph (A) of this paragraph, the county shall subtract the amount of the reimbursement or funds from the amount of unreimbursed expenditures claimable on its next expenditure statement filed with the department.

(c) Hospital districts. For a hospital district, the agreement further states that unreimbursed expenditures are to be calculated as "the total amount of taxes collected by the hospital district, together with the unreimbursed amounts expended by a county coterminous with such hospital district for jail health care."

(1) The expenditures are the amount of taxes collected in the year for which the annual expenditure statement is filed, not the amount of taxes assessed. A hospital district may count taxes that are owed from previous years if those taxes are collected in the year for which the annual expenditure statement is filed.

(2) A hospital district is entitled to claim the amount of its tax collections as unreimbursed expenditures, even if it does not own or operate a hospital.

(d) Non-hospital district public hospitals. For a non-hospital district public hospital owned by a political subdivision, the agreement further states that unreimbursed expenditures are to be calculated as "the total unreimbursed amount of political subdivision funds paid to such public hospital by any political subdivision during that year."

(1) A payment for unreimbursed expenditures of a non-hospital district public hospital shall be made to the political subdivision(s) which owns the hospital, not to the hospital itself.

(2) A county eligible for a pro rata share of the annual distribution under both subsection (b) and this subsection shall file an expenditure statement for each. Such a county may receive a single warrant from the comptroller.

(3) If a county or city handles the financial transactions of its public hospital, rather than the public hospital handling those transactions directly, the county or city may count the unreimbursed expenditures it makes on behalf of the public hospital as funds paid to that hospital.

(e) Political subdivisions that have sold or leased a public health care facility.

(1) When a political subdivision has sold or leased its public health care facility(s) and accepted an agreement from the new owner or lessee of the facility(s) to provide indigent health care services, the political subdivision is receiving contracted services in lieu of cash as consideration for the sale or lease of the facility(s). In submitting its expenditure statement for the distribution, the political subdivision may claim the value of the health care services for indigent residents of the political subdivision performed by the purchaser or lessee of the facility as if they had been reimbursed using either the Medicaid Diagnosis Related Group (DRG) for the individual patients or the Medicaid interim rate for the facility.

(2) When a political subdivision has sold or leased its public health care facility(s) and accepted profits or payments in consideration of the sale or lease, additional non-tax operating funds may result from the profits or payments attributable to the sale or lease. These profits or payments may be used to fund ongoing operations, indigent care obligations, or other statutorily authorized expenditures not otherwise funded by taxes. The profits or payments from the sale or lease that are expended on operations, indigent care, or other statutorily authorized expenditures in any given calendar year are countable, in addition to tax collections received by a hospital district, as unreimbursed expenditures under the agreement. As a result, the expenditures claimable by a political subdivision are increased by the amount of non-tax funding the political subdivision has spent from its accounts containing the profits or payments attributable to the sale or lease of the political subdivision's public health care facility(s), including the interest or investment proceeds from such profits or payments.

(f) Procedures.

(1) A political subdivision must deliver an annual expenditure statement to the department by March 31 of each year, documenting its eligible expenditures for the preceding calendar year. A political subdivision may deliver a copy of the statement by fax or electronic mail with the original mailed and postmarked by March 31.

(2) If a statement is not delivered to the department by March 31, the political subdivision shall not receive a pro rata share of the annual distribution.

(3) The department will designate the required format for the documentation. There will be a separate format for hospital districts, counties not wholly in a hospital district, and public hospitals not in a hospital district.

(4) To calculate the percentage of the annual distribution to be paid to each political subdivision, the department will combine the eligible expenditures from all statements received, thus obtaining a statewide total. The department will then divide the statewide total into the amount in the expenditure statement submitted by each political subdivision.

(5) By April 15 of each year, the department will certify to the comptroller the percentage of the annual distribution to be paid to each eligible political subdivision, based on the expenditure statements.

§102.5. Disputes.

(a) A political subdivision or agency of this state may dispute information submitted by another political subdivision. A dispute shall be initiated by filing written notice with the department of the issue(s) disputed.

(b) A dispute may concern a political subdivision's calculation of unreimbursed expenditures, not whether a political subdivision is entitled to a share of the annual distribution.

(c) A dispute must be filed by December 31 of the year in which the disputed information was submitted.

(d) An audit of the political subdivision that submitted the disputed information may be performed.

(1) The audit shall be initiated by the department or the comptroller. The department or the comptroller shall choose the auditor which may be the department, the comptroller, an outside auditor, or another state agency.

(2) The political subdivision shall fully cooperate in the audit. The audit may include a review of any audit of the political subdivision.

(e) The filing of a dispute will not affect the percentage of the annual distribution to be paid to the political subdivision for the year for which the information that is the subject of the dispute was submitted.

(f) A political subdivision for which an audit indicates an overstatement may request in writing a hearing on the matter within 20 days of receiving written notice from the department of the audit findings. The notice shall state whether a monetary penalty is proposed. A monetary penalty may not exceed ten% of the overstated unreimbursed health care costs. A monetary penalty may be imposed if the political subdivision failed to exercise reasonable diligence to comply with the requirements of these rules.

(g) If a hearing is requested, the hearing shall be a contested case under the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing rules in Chapter 1 of this title (relating to the Texas Board of Health). If the department elects to impose a monetary penalty, the hearings officer shall consider from the parties evidence regarding, and issue findings of fact and conclusions of law about, whether the political subdivision failed to exercise reasonable diligence to comply with the requirements of these rules.

(h) If a political subdivision fails to timely request a hearing or to appear at a scheduled hearing, the findings of the audit and any penalty amount shall be considered final and reported to the comptroller.

(i) If after a hearing the department's hearing examiner, on behalf of the Board of Health, finds an overstatement, the findings shall be considered final and reported to the comptroller.

(j) The costs of the audit shall be paid by the party to the dispute (the entity which originally invoked the dispute process or the political subdivision on which the audit was performed) which does not prevail in the dispute.

(k) After a final decision following an audit and the opportunity for a hearing, if a political subdivision has overstated unreimbursed health care expenditures in the information submitted for any year, the department shall report that fact to the comptroller and shall reduce that political subdivision's percentage of the subsequent annual distribution appropriately.

(l) If a monetary penalty is applied, the department shall also reduce the political subdivision's percentage of the subsequent annual distribution appropriately.

(m) If a political subdivision is assessed the cost of an audit, the department shall report the amount assessed to the comptroller, and the comptroller may withhold that amount from the political subdivision's subsequent annual distribution. The comptroller may use the amount withheld to reimburse the general revenue fund for the cost of the audit.

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

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Chapter 217. MILK AND DAIRY

The Texas Department of Health (department) adopts the repeal of existing §§217.1 - 217.7, 217.21 - 217.25, 217.31 - 217.34, 217.41 - 217.56, 217.61 - 217.76, and 217.81 - 217.82, and adopts new §§217.1 - 217.3, 217.21 - 217.33, 217.61 - 217.71, 217.81 - 217.85, and 217.91 - 217.93 concerning the regulation of milk and dairy products. Sections 217.1, 217.65, and 217.82 are adopted with changes to the proposed text as published in the November 5, 1999, issue of the *Texas Register* (24 TexReg 9749). The repeal of §§217.1 - 217.7, 217.21 - 217.25, 217.31 - 217.34, 217.41 - 217.56, 217.61 - 217.76, and 217.81 - 217.82, and new §§217.2 - 217.3, 217.21 - 217.33, 217.61 - 217.64, 217.66 - 217.71, 217.81, 217.83 - 217.85, and 217.91 - 217.93 are adopted without changes, and therefore the sections will not be republished.

The new sections cover grade specifications and requirements for milk, Grade A raw for retail milk and milk products, requirements for the production and sale of frozen desserts, bulk milk hauling regulations, and fees. Some former sections were found to be redundant, others were preempted by changes in federal regulations, and some definitions and references to other laws and rules were no longer accurate. The new sections correct these deficiencies and arrange the sections in a logical order. No new regulations are imposed upon the regulated industry.

Pursuant to the Government Code, §2001.039, each state agency is required to review and consider for readoption each rule adopted by that agency. Existing §§217.1 - 217.7, 217.21 - 217.25, 217.31 - 217.34, 217.41 - 217.56, 217.61 - 217.76, and 217.81 - 217.82 have been reviewed and the department has determined that reasons for adopting the sections continue to exist. However, numerous changes were needed and were presented in the proposed rules.

No comments were received concerning the proposed sections during the public comment period.

The department is making the following changes as corrections to the proposed text as printed in the *Texas Register*.

Change: Concerning adopted §217.1(85), the word "ans" was spelled incorrectly and changed to "and".

Change: Concerning §217.65(f)(1), the word "and" was added.

Change: Concerning Subchapter D, the title was changed from "Bulk Miler Haulers" to "Bulk Milk Regulations".

Change: Concerning adopted §217.82, the words "milk holding tanks" in the section title were capitalized to be consistent with the other sections.

Subchapter A. GRADE SPECIFICATIONS AND REQUIREMENTS FOR MILK

25 TAC §§217.1-217.7

The repeals are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on 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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25 TAC §§217.1-217.3

The new sections are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§217.1. Definitions.

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

(1) Acidified milk - The food produced by souring cream, milk, partially skimmed milk, or skim milk or any combination, with acetic acid, adipic acid, citric acid, fumaric acid, glucono-delta-lactone, hydrochloric acid, lactic acid, malic acid, phosphoric acid, succinic acid, or tartaric acid, with or without the addition of characterizing microbial organisms. Acidified milk is further defined in Title 21, Code of Federal Regulations (CFR), §131.111.

(2) Acidified sour cream - The product resulting from the souring of pasteurized cream with safe and suitable acidifiers, with or without addition of lactic acid producing bacteria, and as further defined in 21 CFR, §131.162.

(3) Adulterated milk and milk products - Any milk or milk product shall be deemed to be adulterated if:

(A) it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;

(B) it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by State or Federal regulation, or in excess of such tolerance if one has been established;

(C) it consists, in whole or in part, of any substance unfit for human consumption;

(D) it has been produced, prepared, packed, or held under insanitary conditions;

(E) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(F) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is; or

(G) any milk or milk product shall be deemed to be adulterated if one or more of the conditions described in the Federal Food, Drug and Cosmetic Act, §402, as amended (21 U.S.C. 342) exist.

(4) Aseptic processing - The term "aseptic processing", when used to describe a milk product, means that the product has been subjected to sufficient heat processing, and packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR 113 and maintain the commercial sterility of the product under normal non-refrigerated conditions.

(5) Aseptically processed milk and milk products - Products hermetically sealed in a container and so thermally processed in conformance with 21 CFR 113 and the provisions of The Grade A Pasteurized Milk Ordinance so as to render the product free of microorganisms capable of reproducing in the product under normal nonrefrigeration conditions of storage and distribution. The product shall be free of viable microorganisms (including spores) of public health significance.

(6) Bulk milk hauler - A bulk milk hauler/sampler is any person who collects official samples and may transport raw milk from a farm and/or raw milk products to or from a milk plant, receiving station or transfer station and has in their possession a certification from the department.

(7) Bulk milk pickup tanker - A vehicle, including the truck, tank and those appurtenances necessary for its use, used by a milk hauler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.

(8) Certified milk sampler/collector - Any industry personnel, other than the milk hauler, or dairy plant sampler who collects more or stores an official milk sample.

(9) C-I-P or cleaned-in-place - The procedure by which sanitary pipelines or pieces of equipment are mechanically cleaned-in-place by circulation.

(10) Concentrated milk - A fluid product, unsterilized and unsweetened, resulting from the removal of considerable portion of the water from the milk, which, when combined with potable water in accordance with instructions printed on the container, results in a product conforming with the milkfat and milk solids not fat levels of milk as defined in this section.

(11) Concentrated milk products - Homogenized concentrated milk, concentrated skim milk, concentrated low-fat milk, and similar concentrated products made from concentrated milk or concentrated skim milk, and which, when combined with potable water in accordance with instructions printed on the container, conform with the definitions of the corresponding milk products in this section.

(12) Cream - The liquid milk product, high in milkfat, separated from milk, which may have been adjusted by adding thereto: milk, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk, and contains not less than 18% milkfat.

(13) Cultured milk - The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with characterizing microbial organisms. Cultured milk is further defined in 21 CFR, §131.112.

(14) Dairy farm - Any place or premises where one or more cows, goats or sheep are kept, and from which a part or all of the milk or milk product(s) is provided, sold or offered for sale to a milk plant, receiving station or transfer station.

(15) Dairy plant or plant - Any place, premise, or establishment where milk or milk products are received or handled for processing or manufacturing.

(16) Dairy plant sampler - A department employee responsible for the collection of official samples for regulatory purposes outlined in Section 6 of the Pasteurized Milk Ordinance.

(17) Dairy product - Butter, cream (fluid, dry, or plastic), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, whey protein concentrates, evaporated milk (whole or skim), condensed whole milk and condenses skim milk (plain or unsweetened), and such other products derived from milk, as may be specified under the Federal Standards of Identity for Frozen Desserts (21 CFR, Part 135).

(18) Department - The Texas Department of Health, the Commissioner of Health, or his authorized representative.

(19) Distributor - Any person who offers for sale or sells to another any milk, milk products, or frozen dessert product.

(20) Drug - The term "drug" includes:

(A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States or official National Formulary or any supplement to any of them;

(B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) articles intended for use as a component of any articles specified in subparagraphs (A), (B) or (C) of this definition, but does not include devices or their components, parts or accessories.

(21) Eggnog - The food containing cream, milk, partially skimmed milk, or skim milk, used alone or in combination, liquid egg yolk, frozen egg yolk, dried egg yolk, liquid whole eggs, frozen whole eggs, dried whole eggs, or any one or more of the forgoing egg yolk containing products with liquid egg white or frozen egg white, and a nutritive carbohydrate sweetener. Eggnog is further defined in 21 CFR, §131.170.

(22) Freezer - A piece of equipment which converts mix and/or other ingredients to a hardened or semi-hardened state using the technique of freezing during processing or manufacturing of those products commonly known as ice cream, ice cream mix, frozen dessert, frozen dessert mix, nondairy frozen dessert mix, imitation frozen dessert, and imitation frozen dessert mix.

(23) Frozen desserts - Any of the following: ice cream, light ice cream, ice milk, frozen custard, fruit sherbert, non-fruit water ice, frozen dietary dairy dessert, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, or non-dairy frozen dessert. The term includes mix used in the freezing of one of those frozen desserts.

(24) Frozen dessert manufacturer or plant - A person who manufactures, processes, converts, partially freezes or freezes any mix, be it dairy, nondairy frozen desserts for distribution or sale at wholesale; provided, however, that this definition shall not include a frozen dessert retail establishment or any place, premise, or establishment where manufacturing, processing, conversion, freezing and mix, either dairy or non dairy freezer desserts for distribution or sale at wholesale.

(25) Frozen dietary dairy dessert and frozen dietary dessert - A food for any special dietary use, prepared by freezing, with or without agitation, composed of a pasteurized mix which may contain fat, protein, carbohydrates, flavoring, stabilizers, emulsifiers, vitamins and minerals.

(26) Frozen low fat yogurt (also called low-fat frozen yogurt) - Complies with the provisions of frozen yogurt, except that:

(A) the milk fat content of the finished food is not less than 0.5%, but not more than 2.0%; and

(B) the name of the food is "frozen low-fat yogurt".

(27) Frozen low fat yogurt mix - The unfrozen dry powdered combination of ingredients which, when combined with potable water and when frozen while stirring, will produce a product conforming to the definition of frozen low-fat yogurt. No pasteurization is required for dry frozen low-fat yogurt mix.

(28) Frozen milk concentrate - A frozen milk product with a composition of milkfat and milk solids not fat in such proportions that when a given volume of concentrate is mixed with a given volume of water the reconstituted product conforms to the milkfat and milk solids not fat requirements of whole milk. In the manufacturing process, water may be used to adjust the primary concentrate to the final desired concentration. The adjusted primary concentrate is pasteurized, packaged and immediately frozen. This product is stored, transported and sold in the frozen state.

(29) Frozen skim milk yogurt - Complies with the provision of frozen yogurt, except that:

(A) the milkfat content of the finished food is less than 0.5%; and

(B) the name of the food is either "frozen skim milk yogurt" or "frozen nonfat yogurt".

(30) Frozen yogurt -

(A) Frozen yogurt is the food which is prepared by freezing, while stirring, a mix composed of one or more of the optional dairy ingredients provided for in ice cream and frozen custard and which may contain other safe and suitable ingredients.

(B) The dairy ingredient(s), with or without other ingredients, is (are) pasteurized and subsequently cultured with bacterial cultures acceptable to the state health authority.

(C) The titratable acidity of the cultured frozen yogurt is not less than 0.5%, calculated as lactic acid, except if the frozen yogurt is flavored by the addition of a non-fruit characterizing ingredient(s).

(D) The milkfat content of frozen yogurt is not less than 3.25% by weight, except that when bulky characterizing ingredients are used the percentage milkfat is not less than 2.5%.

(E) The finished frozen yogurt shall weigh not less than five pounds per gallon.

(F) The name of the food is "frozen yogurt".

(31) Goats milk ice cream - The food defined in 21 CFR, §35.110(a)-(f).

(32) Goat milk - The normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5% milkfat and not less than 7.5% milk solids not fat. The word "milk" shall be interpreted to include goat milk.

(33) Grade A Condensed and Dry Milk Ordinance - The document published by the United States Department of Health and Human Services, Public Health Service/Food and Drug Administration. Copies are on file in the Milk and Dairy Products Division, Texas Department of Health, 1100 W. 49th Street, Austin, Texas, and are available for review during normal business hours.

(34) Grade A dry milk and whey products - Products which have been produced for use in Grade A pasteurized or aseptically processed milk products and which have been manufactured under the provisions of the most current revision of the Grade A Condensed and Dry Milk Products and Condensed and Dry Whey Supplement I to the Grade A Pasteurized Milk Ordinance.

(35) Grade A Pasteurized Milk Ordinance - The document published by the United States Department of Health and Human Services, Public Health Service/Food and Drug Administration. The document consists of the following parts: The Grade A Pasteurized Milk Ordinance with Administrative Procedures; illustrations, tables, supplements, appendices; and an index. Copies are on file in the Milk and Dairy Products Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, and are available for review during normal business hours.

(36) Grade A retail raw milk - Milk as defined in paragraph (49) of this section, that is produced under the provisions of Subchapter B of this Chapter, §§217.21 - 217.25, 217.31 (relating to Grade A Raw for Retail Milk and Milk Products), and is offered for sale to the public without benefit of pasteurization.

(37) Grade A retail raw milk products - Milk products that are manufactured under the provisions of Subchapter B of this Chapter, §§217.21 - 217.25, 217.31 (relating to Grade A Raw for Retail Milk and Milk Products), and are offered for sale to the public without benefit of pasteurization. These products include: cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and -half, acidified sour half-and-half, cultured sour half-and-half, skim milk, low-fat milk, eggnog, buttermilk, cultured milk, cultured low-fat milk, cultured skim milk, yogurt, low-fat yogurt, and nonfat yogurt.

(38) Half-and-half - The food consisting of a mixture of milk and cream which contains not less than 10.5% but less than 18% milkfat. Half-and-half is further defined in 21 CFR, §131.180.

(39) Heavy cream or heavy whipping cream - Cream which contains not less than 36% milkfat and as further defined in 21 CFR, §131.150.

(40) Hermetically sealed container - A container that is designed and intended to be secure against the entry of microorganisms and thereby maintain the commercial sterility of its contents after processing.

(41) Homogenized - The term "homogenized" means that milk or a milk product has been treated to insure breakup of the fat globules to such an extent that, after 48 hours of quiescent storage at 4.4 degrees Celsius (40 degrees Fahrenheit), no visible cream separation occurs on the milk; and the fat percentage of the top 100 milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than 10% from the fat percentage of the remaining milk as determined after thorough mixing.

(42) Ice cream and frozen custard - The foods defined in 21 CFR, §135.110(a)-(f).

(43) Imitation frozen dessert mix - The unfrozen dry powdered combination of ingredients which, when combined with potable water and when frozen while stirring, will produce a product conforming to the definition of imitation frozen dessert. No pasteurization is required for dry powdered imitation frozen dessert mix.

(44) Light cream - Cream which contains not less than 18% but less than 30% milkfat and as further defined in 21 CFR, §131.155.

(45) Light whipping cream - Cream which contains not less than 30% but less than 36% milkfat and as further defined in 21 CFR, §131.157.

(46) Lorine - The food prepared from the same ingredients and in the same manner prescribed for mellorine and complies with all the provisions for mellorine except that:

(A) its content of fat is at least 2% but less than 6%;

(B) its content of milk solids not fat is not less than 10%;

(C) caseinates may be added when the content of total milk solids is not less than 10%;

(D) the provision for reduction in fat and milk solids not fat from the addition of bulky ingredients in mellorine does not apply;

(E) the quantity of food solids per gallon is not less than 1.2 pounds; and

(F) the name of the food is "Lorine".

(47) Low-fat yogurt - The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Low-fat yogurt is further defined in 21 CFR, §131.203.

(48) Mellorine - The food defined in 21 CFR, §135.130(a)-(d).

(49) Milk - The lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, sheep or goats and as further defined in 21 CFR, §131.110.

(50) Milk distributors - Any person who offers for sale or sells to another any milk or milk products.

(51) Milk hauler - Any person who transports raw milk and/or raw milk products to or from a milk plant, receiving station or transfer station.

(52) Milk plant - Any place, premises or establishment where milk or milk products are collected, handled, processed, dried, stored, pasteurized, ultrapasteurized aseptically processed, bottled, or prepared for distribution. This term also means a processing plant, manufacturing plant, or bottling plant in these sections.

(53) Milk producer - Any person who operates a dairy farm and provides, sells or offers milk for sale to a milk plant, receiving station or transfer station.

(54) Milk products -

(A) Milk products include cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half- and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, reduced fat milk, skim milk, low-fat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured low-fat milk, cultured skim milk, yogurt, low-fat yogurt, nonfat yogurt, acidified milk, acidified low-fat milk, acidified skim milk, low-sodium milk, low-sodium low-fat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced low-fat milk, lactose-reduced skim milk, aseptically processed and packaged milk and milk products as defined in this section, milk, low- fat milk, or skim milk with added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined herein.

(B) Milk products also include those dairy foods made by modifying the federally standardized products listed in this Section in accordance with 21 CFR, §130.10 - Requirements for foods named by use of nutrient content claim and standardized term.

(C) This definition shall include those milk and milk products, as defined herein, which have been aseptically processed and then packaged.

(D) Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein or if they are labeled as Grade A.

(E) This definition is not intended to include dietary products (except as defined herein), infant formula, ice cream or other desserts, butter or cheese.

(55) Milk for manufacturing purposes - Milk produced for processing and manufacturing into products for human consumption, but not subject to Grade A or comparable requirements.

(56) Milk tank truck - The term used to describe both a bulk milk pickup tanker and a milk transport tank.

(57) Milk tank truck driver - A milk tank truck driver is any person who transports raw or pasteuerized milk products to or from a milk plant, receiving station or transfer station. Any transportation of a direct farm pickup requires the milk tank truck driver to have responsibility for accompanying official samples.

(58) Milk transport tank or tanker - A vehicle, including the truck and tank, used by a milk hauler to transport bulk shipments of milk from a milk plant, receiving station or transfer station to another milk plant, receiving station or transfer station.

(59) Misbranded milk and milk products - Milk and milk products are misbranded if:

(A) its container(s) bear or accompany any false or misleading written, printed or graphic matter;

(B) milk does not conform to the definitions as contained in these rules;

(C) milk is not labeled in accordance with §217.25 of this title (relating to Labeling); or

(D) one or more of the conditions described in Section 403 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 343) exist.

(60) Milk transportation company - A milk transportation company is the person responsible for a milk tank truck(s).

(61) Multi-use container - Any container having a frozen dessert product contact surface and used in the packaging, handling, storing, or serving of frozen desserts and/or mix, which, if it remains in good repair and is properly washed and sanitized, may be utilized for multiple usage.

(62) Nondairy frozen dessert -

(A) Nondairy frozen dessert is the food which is prepared by freezing, while stirring, a nondairy frozen dessert mix composed of one or more of the optional characterizing ingredients specified in subparagraph (B) of this paragraph, sweetened with one or more of the optional sweetening ingredients specified in subparagraph (C) of this paragraph. The nondairy product, with or without water added, may be seasoned with salt. One or more of the ingredients specified in subparagraph (D) of this paragraph may be used. Pasteurization is not required. The optional caseinates specified in subparagraph (D)(i) of this paragraph are deemed not to be dairy products.

(B) The optional flavoring ingredients referred to in subparagraph (A) are natural and artificial flavoring and characterizing food ingredients.

(C) The optional sweetening ingredients referred to in subparagraph (A) of this paragraph are sugar (sucrose), dextrose, invert sugar (paste or syrup), glucose syrup, dried glucose syrup, corn sweetener, dried corn sweetener, malt syrup, malt extract, dried malt syrup, dried malt extract, maltose syrup and dried maltose syrup.

(D) Other optional ingredients referred to in subparagraph (A) of this paragraph are:

(i) casein prepared by precipitation with gums, ammonium, caseinate, calcium caseinate, potassium caseinate or sodium caseinate;

(ii) hydrogenated and partially hydrogenated vegetable oil;

(iii) dipotassium phosphate;

(iv) coloring, including artificial coloring;

(v) monoglycerides, diglycerides or polysorbates; and

(vi) thickening ingredients such as agar-agar, algin (sodium alginate), egg white, gelatin, gum acacia, guar seed

gum, gum karaya, locus bean gum, oat gum, gum tragacanth, hydroxypropyl, cethyl cellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, propulene glycol alginate, pectin, psyllium seed husk, sodium carvoxymethylcellulose.

(E) Such nondairy frozen desserts are deemed "processed" when manufactured as a dry powdered mix. The addition of water is merely the manner in which such nondairy frozen desserts are served.

(F) The label shall comply with labeling requirements for frozen desserts with the additional clear and concise statement that the product is nondairy.

(63) Nonfat yogurt - The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Nonfat yogurt is further defined in 21 CFR, §131.206.

(64) Novelties - Frozen desserts, either alone or in combination with other foods such as cookies, wafers, cones, coating, confections, etc., which are packaged in single-serving units.

(65) Official laboratory - A biological, chemical or physical laboratory which is under the direct supervision of the State or a local regulatory agency.

(66) Overrun - The trade expression used to reference the increase in volume of frozen product over the volume of the mix. This increase in volume is due to air being whipped into the product during the freezing process. It is expressed as percent of the volume of the mix.

(67) Officially designated laboratory - A commercial laboratory authorized to do official work by the regulatory or supervision agency, or a milk industry laboratory officially designated by the regulatory agency for the examination of milk, milk products, or frozen desserts.

(68) Pasteurization -

(A) The terms "pasteurization", "pasteurized" and similar terms shall mean the process of heating every particle of milk or milk product, in properly designed and operated equipment, and held continuously at or above a certain temperature for at least the corresponding specified time as shown in the following chart.
Figure: 25 TAC §217.1(68)(A)

(B) Provided, that eggnog shall be heated to at least the temperature and time specifications in the following chart.
Figure: 25 TAC §217.1(68)(B)

(C) Provided further, that nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the United States Food and Drug Administration to be equally efficient and which is approved by the regulatory agency.

(69) Permit - A license or certification to engage in the activity listed on the permit, license or certificate.

(70) Person - The word "person" shall include any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.

(71) Producer dairy farm - Any place or premises where one or more cows, sheep or goats are kept, and from which a part or all of the milk or milk product(s) is provided, sold, or offered for sale to a milk plant, transfer station, or receiving station.

(72) Quiescently frozen confection - A clean and wholesome frozen, sweetened, flavored product in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). This confection may be acidulated with food grade acid, may contain water, may be made with or without added natural or artificial flavoring, with or without harmless coloring. The finished product shall contain not less than 17% by weight of total food solids. In the production of this food, no processing or mixing shall be used that develops in the finished food mix any physical expansion in excess of 10%.

(73) Quiescently frozen dairy confection - A clean and wholesome frozen product made from water, milk products and sugar, with added harmless natural or artificial flavoring, with or without added coloring, with or without added stabilizer and with or without added emulsifier; and in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). It contains not less than 13% by weight of total milk solids, and not less than 33% by weight of total food solids. In the production of quiescently frozen dairy confections, no processing or mixing prior to quiescently freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10%.

(74) Receiving station - Any place, premises or establishment where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting.

(75) Reconstituted or recombined milk and milk products - Milk or milk products defined in this section which result from reconstituting or recombining of milk constituents with potable water when appropriate.

(76) Regulatory agency - The Texas Department of Health.

(77) Safe and suitable - Ingredients which perform an appropriate function in the food in which they are used, and are used at a level no higher than necessary to achieve their intended purpose in the food.

(78) Sale - Shall mean any of the following:

(A) the manufacture, production, processing, packing, exposure, offer, or holding of any milk, milk product or frozen dessert product.

(B) the sale, dispensing, or giving of any milk, milk product or frozen dessert product; or

(C) the supplying of any milk, milk product, or frozen dessert to a retail establishment or to a consumer.

(79) Sanitization - The application of any effective method or substance to a clean surface for the destruction of pathogens and other organisms as fat as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product or the health of consumers, and shall be acceptable to the regulatory agency.

(80) Sherbet - The food defined in 21 CFR, §135.140(a)-(i).

(81) Single service container - Any container having a milk product or frozen dessert, in contact with the containers surface and used in the packaging, handling, storing, or serving frozen desserts and/or milk products, which is intended for one usage only.

(82) Sour cream or cultured sour cream - The product resulting from the souring, by lactic acid producing bacteria, of pasteurized cream and as further defined in 21 CFR, §131.160.

(83) Standard methods - Reference to the latest edition of "Standard Methods for the Examination of Dairy Products", a publication of the American Public Health Association, Washington, D.C.

(84) Sterilized - The term sterilized when applied to piping, equipment and containers used for milk and milk products shall mean the condition achieved by the application of heat, chemical sterilant(s) or other appropriate treatment that renders the piping, equipment and containers free of viable microorganisms.

(85) 3-A Sanitary Standards amp; Accepted Practices - Reference to the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards committees representing the International Association of Milk, Food and Environmental Sanitarians, the U.S. Public Health Service, and the Dairy Industry Committee that are published by the International Association of Milk, Food and Environmental Sanitarians, 6200 Aurora Avenue, #200W, Des Moines, Iowa 50322.

(86) 3-A Sanitary Committee - The committee composed of appointees from the International Association of Milk, Food and Environmental Sanitarians and the Food and Drug Administration/ Public Health Service that reviews and establishes standards for production and processing equipment intended for use in this country.

(87) Milk tank truck cleaning facility - Any place, premise, or establishment, separate from a milk plant, receiving or transfer station, where a milk tank truck is cleaned and sanitized.

(88) Transfer station - Any place, premises or establishment where milk or milk products are transferred directly from one milk tank truck to another.

(89) Ultra-pasteurized - The term "ultra-pasteurized", when used to describe a dairy product, means that such product shall have been thermally processed at or above 138 degrees Celsius (280 degrees Fahrenheit) for at least two seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

(90) Unloading station - Any receiving station, transfer station, or milk processing plant where milk or milk products are unloaded from milk tank trucks.

(91) Water ices - The foods defined in 21 CFR, §135.160.

(92) Whipped cream - Cream or light whipping cream, into which air or gas has been incorporated.

(93) Whipped light cream - Light cream into which air or gas has been incorporated.

(94) Yogurt - The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid- producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Yogurt is further defined in 21 CFR, §131.200.

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
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Subchapter B. BULK MILK HAULERS

25 TAC §§217.21-217.25

The repeals are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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Subchapter B. GRADE A RAW FOR RETAIL MILK AND MILK PRODUCTS

25 TAC §§217.21-217.33

The new rules are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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Subchapter C. DEFINITIONS AND STANDARDS OF IDENTITY FOR YOGURT AND YOGURT PRODUCTS

25 TAC §§217.31-217.34

The repeals are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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Subchapter D. DEFINITIONS AND STANDARDS OF IDENTITY OF FROZEN DESSERTS

25 TAC §§217.41-217.56

The repeals are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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Subchapter E. GRADE A MILK SPECIFICATIONS

25 TAC §§217.61-217.76

The repeals are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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Subchapter C. RULES FOR THE MANUFACTURE OF FROZEN DESSERTS

25 TAC §§217.61-217.71

The new rules are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§217.65. Examination and Standards for Frozen Desserts.

(a) Samples of raw milk, raw cream or raw milk products intended for use in the manufacture of mix shall be taken and examined by the department at a frequency to be established by the department. In addition, the department may collect and examine frozen dessert ingredients, frozen dessert or frozen dessert mix. Samples of frozen desserts or imitation frozen desserts from dairy retail stores, food service establishments, grocery stores, and other places where frozen desserts or imitation frozen desserts are sold may be examined periodically as determined by the department. Proprietors of such establishments shall furnish the department, upon request, with the names of all distributors from whom frozen desserts, frozen desserts mix, imitation frozen dessert, or imitation frozen desserts mix are obtained. The examination of samples of milk, cream, and milk products intended for use in the manufacture of mix shall be performed as directed by the department in an official or officially designated laboratory. The examination of samples of pasteurized mix, frozen desserts, unpasteurized imitation frozen desserts mix and/or imitation frozen desserts, shall be performed in an official laboratory or in an officially designated laboratory.

(b) Bacterial counts, coliform determinations, phosphatase, tests, and other laboratory and screening tests shall conform to the procedures in the latest edition of "Standard Methods for the Examination of Dairy Products", of the American Public Health Association. Examinations and tests shall include such other

biological, chemical, and physical determinations as the department shall deem necessary for the detection of adulteration.

(c) Whenever two of the last four consecutive bacterial counts, coliform determinations, or cooling temperatures taken on separate days exceed the limit of the standard for the milk, cream, milk products, mix or frozen desserts, imitation frozen desserts or imitation frozen desserts mix, the department shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standards. An additional sample shall be taken within 21 days of the sending of such notice, but not before the lapse of three days. Immediate product suspension or other appropriate department or court action shall be instituted whenever the standard is violated by three of the last five bacterial counts, coliform determinations or cooling temperatures of samples collected within the six-month period.

(d) The department shall establish the frequency of sampling pasteurized mix or frozen desserts during each six month period for adequate pasteurization as determined by a phosphatase test. In the case of a confirmed positive result, the probable cause shall be determined and corrected to the satisfaction of the department before the mix is frozen or the frozen dessert is sold.

(e) No process or manipulation other than pasteurization, processing methods integral therewith, and appropriate refrigeration shall be applied to milk and milk products for the purpose of removing or deactivating organisms.

(f) Frozen desserts and mix shall comply with the following standards:

(1) bacterial, coliform and temperature standards for pasteurized mix and frozen desserts as shown in the following chart; and
Figure: 25 TAC §217.65(f)(1)

(2) bacterial, coliform and temperature standards for unpasteurized imitation frozen desserts, imitation frozen desserts, imitation frozen desserts mix, nondairy frozen desserts and nondairy frozen desserts mix as shown in the following chart.
Figure: 25 TAC §217.65(f)(2)

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 F. FEES

25 TAC §217.81, §217.82

The repeals are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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Subchapter D. BULK MILK REGULATIONS

25 TAC §§217.81-217.85

The new rules are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§217.82. Bulk Milk Holding Tanks.

(a) Farm bulk milk tanks shall have a capacity adequate for production between routine pick-ups. The time between pick-ups shall not exceed every other day. Milk must be of sufficient quantity for adequate mechanical agitation at the completion of the first milking.

(b) Farm bulk milk tanks shall be equipped with an indicating thermometer, the sensor of which shall be located to permit the registering of the temperature of the contents when the tank contains no more than 20% of its calibrated capacity.

(c) Farm bulk milk tanks will be equipped with easily accessible sampling ports or a sample cock.

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Subchapter E. PERMITS, FEES AND ENFORCEMENT

25 TAC §§217.91-217.93

The new rules are adopted under the Health and Safety Code, §§435.001 - 435.009 and §§440.001 - 440.032, which provide the department with the authority to adopt rules for the regulation of milk, dairy products and frozen desserts; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on 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.

Filed with the Office of the Secretary of State on January 14, 2000.

TRD-200000293
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 3, 2000
Proposal publication date: November 5, 1999
For further information, please call: (512) 458-7236

Chapter 229. FOOD AND DRUG

Subchapter B. SPECIAL DIETARY FOODS

25 TAC §§229.11 - 229.18

The Texas Department of Health (department) adopts the repeal of §§229.11 - 229.18, concerning special dietary foods. The repealed sections are adopted without changes to the proposed repeal as published in the September 24, 1999, issue of the *Texas Register* (24 TexReg 8091), and therefore the sections will not be republished.

The repeal of these rules is necessary because the rules have become obsolete by new federal laws and regulations.

Pursuant to the Government Code, §2001.039, each state agency is required to review and consider for readoption each rule adopted by that agency. The sections have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

No comments were received concerning the proposed repeal of the rules during the comment period.

The repeals are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on 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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Proposal publication date: September 24, 1999
For further information, please call: (512) 458-7236

Subchapter D. SANITARY RULES FOR FOOD AND DRUG ESTABLISHMENTS

25 TAC §§229.41 - 229.51

The Texas Department of Health (department) adopts the repeal of §§229.41 - 229.51, concerning sanitary rules for food and drug establishments. The repealed sections are adopted without changes to the proposed repeal as published in the September 24, 1999, issue of the *Texas Register* (24 TexReg 8091), and therefore the sections will not be republished.

The repeal of these rules is necessary because the rules have become obsolete by proposed Good Manufacturing Practices and Good Warehousing Practices, Chapter 229, Food and Drug, §§229.211 - 229.222.

Pursuant to the Government Code, §2001.039, each state agency is required to review and consider for readoption each rule adopted by that agency. The sections have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

No comments were received concerning the proposed repeal of the rules during the comment period.

The repeals are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on 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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Proposal publication date: September 24, 1999
For further information, please call: (512) 458-7236

Chapter 337. WATER HYGIENE

Subchapter C. CERTIFICATION OF BOTTLED WATER PLANT OPERATORS

25 TAC §§337.111 - 337.118

The Texas Department of Health (department) adopts the repeal of §§337.111 - 337.118, concerning certification of bottled water plant operators. The repealed sections are adopted without changes to the proposed repeal as published in the September

24, 1999, issue of the *Texas Register* (24 TexReg 8108), and therefore the sections will not be republished.

The repeal of these rules is necessary because the rules are obsolete and are being replaced by Chapter 229, Title 25, Texas Administrative Code, §§229.81 - 229.91, based upon enactment of new enabling legislation in House Bill 2013, 76th Legislature, 1999.

Pursuant to the Government Code, §2001.039, each state agency is required to review and consider for readoption each rule adopted by that agency. The sections have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

No comments were received concerning the proposed repeal of the rules during the comment period.

The repeals are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on 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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Proposal publication date: September 24, 1999
For further information, please call: (512) 458-7236

TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 1. PURPOSE OF RULES, GENERAL PROVISIONS

30 TAC §1.7, §1.11

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §1.7, concerning Computation of Time; and §1.11, concerning Service on the Judge, Parties, and Interested Persons. The amendments are adopted without changes to the proposed text as published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 8907) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these amendments to Chapter 1, concerning Purpose of Rules, General Provisions, in order to conform to the provisions of Senate Bill (SB) 211, 76th Legislature (1999), which adds three days to the period in which a party is presumed to have been notified of a decision that may become final in a contested case hearing when notice is sent by first class mail.

Texas Government Code, §2001.142, requires notification by first class mail to parties in a contested case hearing of a decision or order that may become final. The deadline for a number of subsequent actions is based on the date that a party is notified of the decision. For example, a motion for rehearing must be filed within 20 days after notification, a reply to a motion for rehearing must be filed within 30 days after the date of notification, agency action on the motion for rehearing must occur no later than 45 days after the date of notification, etc.

Section 2001.142(c) previously provided that the date of notification was presumed to be the date on which the notice was mailed.

The 76th Legislature (1999) amended §2001.142, effective September 1, 1999, to provide that a party is presumed to have been notified on the third day after notice is mailed by first class mail.

The legislation is self-implementing. However, several of the commission's rules are inconsistent with the new statute. These rule amendments are needed to conform to the new statute and make the commission's rules consistent with it.

Other corresponding changes to 30 TAC Chapters 50, 55, and 80 have already been addressed in Rule Log No. 99030-039-AD, the rulemaking to implement House Bill 801, 76th Legislature (1999).

SECTION BY SECTION DESCRIPTION

Section 1.7 is amended to provide that a specified time period under commission rules supercedes the general computation of time provision.

Section 1.11(d) is amended to provide that service by mail is complete three days after depositing a document in an official United States Postal Service depository.

FINAL REGULATORY IMPACT ANALYSIS

These adopted rules are not subject to the requirements of Texas Government Code, §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that section. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure. The specific intent of these rules is to implement a state statute on timelines in contested case hearings. They do not have the specific intent to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rulemaking is to conform the commission rules to the provisions of SB 211, which adds three days to the notification period when notice is sent by first class mail. They are procedural rules which apply equally to parties in contested and uncontested proceedings. They do not specifically affect private real property. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The adopted rules are not subject to the Texas Coastal Management Program (CMP). The adopted actions concern only procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; and 30 TAC §§281.40, et seq.).

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on November 8, 1999. No one testified at the hearing. The comment period on these rules ended on November 15, 1999. No comments were received.

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

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-200000259
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 239-6087

Chapter 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §50.19, concerning Notice of Commission Action, Motion for Rehearing; §50.39, concerning Motion for Reconsideration; §50.119, concerning Notice of Commission Action, Motion for Rehearing; and §50.139, concerning Motion to Overturn Executive Director's Decision. Section 50.39 is adopted with changes. Sections 50.19, 50.119 and 50.139 are adopted without changes to the proposed text as published in the October 15, 1999 issue of the *Texas Register* (24 TexReg 8909) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these amendments to Chapter 50, concerning Action on Applications and Other Authorizations, in order to conform to the provisions of Senate Bill (SB) 211, which adds three days to the period in which a party is presumed to have been notified of a decision that may become final in a contested case hearing when notice is sent by first class mail.

Texas Government Code, §2001.142, requires notification by first class mail to parties in a contested case hearing of a decision or order that may become final. The deadline for a number of subsequent actions is based on the date that a party is notified of the decision. For example, a motion for rehearing must be filed within 20 days after notification, a reply to a motion for rehearing must be filed within 30 days after the date of notification, agency action on the motion for rehearing must occur no later than 45 days after the date of notification, etc.

Section 2001.142(c) previously provided that the date of notification was presumed to be the date on which the notice was mailed.

The 76th Legislature (1999) amended §2001.142, effective September 1, 1999, to provide that a party is presumed to have been notified on the third day after notice is mailed by first class mail.

The legislation is self-implementing. However, several of the commission's rules are inconsistent with the new statute. These rule amendments are needed to conform to the new statute and make the commission's rules consistent with it.

Upon additional review by staff, changes to §50.39(e)(1) and (e)(2) have been made to add further consistency with SB 211.

Other corresponding changes to 30 TAC Chapters 50, 55, and 80 have already been addressed in Rule Log No. 99030-039-AD, the rulemaking to implement House Bill 801, 76th Legislature (1999).

SECTION BY SECTION DESCRIPTION

Section 50.19, concerning Notice of Commission Action, Motion for Rehearing, is amended to reword subsection (b) to specify that notice of a final decision or order shall be in writing and that the motion for rehearing procedures apply to the applicant, the executive director, the public interest counsel, and other persons who timely filed public comment or hearing requests.

Section 50.39, relating to Motion for Reconsideration, is amended to specify that the deadline for filing a motion for reconsideration and extending the time limit runs from the date the party is notified of the executive director's action.

Section 50.119, relating to Notice of Commission Action, Motion for Rehearing, is amended to specify that the notice of a final decision or order shall be in writing. In addition, §50.119 is also amended to substitute §80.272 references for references to §80.271, concerning Motion for Rehearing.

Section 50.139, relating to Motion to Overturn Executive Director's Decision, is amended to specify that the deadline for a motion to overturn the executive director's decision on an application runs from the date the applicant is notified in writing of the executive director's action. In addition, §50.139 is also amended to substitute §80.272 references for §80.271, concerning Motion for Rehearing.

FINAL REGULATORY IMPACT ANALYSIS

These adopted rules are not subject to the requirements of Texas Government Code, §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that section. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure. The specific intent of these rules is to implement a state statute on timelines in contested and uncontested proceedings. They do not have the specific intent to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rulemaking is to conform the commission rules to the provisions of SB 211, which adds three days to the notification period when notice is sent by first class mail. They are procedural rules which apply equally to parties in contested and uncontested proceedings. They do not specifically affect private real property. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The adopted rules are not subject to the Texas Coastal Management Program (CMP). The adopted actions concern only procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; and 30 TAC §§281.40, et seq.).

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on November 8, 1999. No one testified at the hearing. The comment period on these rules ended on November 15, 1999. No comments were received.

Subchapter B. ACTION BY THE COMMISSION

30 TAC §50.19

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

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-200000260

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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Proposal publication date: October 15, 1999

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

Subchapter C. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.39

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

§50.39. Motion for Reconsideration.

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion for reconsideration of the executive director's action on an application.

(b) A motion for reconsideration must be filed no later than 20 days after the date the applicant is notified in writing of the signed permit, approval, or other action of the executive director. A person is presumed to have been notified on the third day after the date the notice of the executive director's action is mailed by first class mail.

(c) An action by the executive director under this subchapter is not affected by a motion for reconsideration filed under this section unless expressly ordered by the commission.

(d) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for reconsideration and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the applicant is notified of the signed permit, approval, or other written notice of the executive director's action.

(e) Disposition of motion.

(1) Unless an extension of time is granted, if a motion for reconsideration is not acted on by the commission within 45 days after the date the applicant is notified of the signed permit, approval, or other action of the executive director, the motion is denied.

(2) In the event of an extension, the motion for reconsideration is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the applicant is notified of the signed permit, approval, or other action of the executive director.

(f) Section 80.271 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion for reconsideration is denied by commission action or under subsection (e) of this section and no motions for rehearing shall be filed. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or the Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

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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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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

Subchapter F. ACTION BY THE COMMISSION

30 TAC §50.119

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.139

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 239-6087

Chapter 80. CONTESTED CASE HEARINGS

Subchapter F. POST HEARING PROCEDURES

30 TAC §80.271, §80.272

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §80.271 and §80.272, concerning Motion for Rehearing. The amendments are adopted with changes to the proposed text of §80.271 and §80.272 as published in the October 15, 1999 issue of the *Texas Register* (24 TexReg 8912).

The commission adopts these amendments to Chapter 80, concerning Contested Case Hearings, in order to conform to the provisions of Senate Bill (SB) 211, which adds three days to the period in which a party is presumed to have been notified of a decision that may become final in a contested case hearing when notice is sent by first class mail.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Texas Government Code, §2001.142, requires notification by first class mail to parties in a contested case hearing of a decision or order that may become final. The deadline for a number of subsequent actions is based on the date that a party is notified of the decision. For example, a motion for rehearing must be filed within 20 days after notification, a reply to a motion for rehearing must be filed within 30 days after the date of notification, agency action on the motion for rehearing must occur no later than 45 days after the date of notification, etc.

Section 2001.142(c) previously provided that the date of notification was presumed to be the date on which the notice was mailed.

The 76th Legislature (1999) amended §2001.142, effective September 1, 1999, to provide that a party is presumed to have been notified on the third day after notice is mailed by first class mail.

The legislation is self-implementing. However, several of the commission's rules are inconsistent with the new statute. These rules are needed to conform to the new statute and make the commission's rules consistent with it.

Upon additional review by staff, changes to §80.271 and §80.272 have been made to add further consistency with SB 211.

Other corresponding changes to 30 TAC Chapters 50, 55, and 80 have already been addressed in Rule Log No. 99030-039-AD, the rulemaking to implement House Bill 801, 76th Legislature (1999).

SECTION BY SECTION DESCRIPTION

Section 80.271, concerning Motion for Rehearing, is amended to provide that an extension of time limit for filing a motion for rehearing and the date on which the motion is overruled runs from the date of notice of the decision or order.

Section 80.272, concerning Motion for Rehearing, is amended to provide that an extension of time limit for filing a motion for rehearing and the date on which the motion is overruled runs from the date of notice of the decision or order is received.

FINAL REGULATORY IMPACT ANALYSIS

These adopted rules are not subject to the requirements of Texas Government Code, §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that section. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure. The specific intent of these rules is to implement a state statute on timelines in contested and uncontested proceedings. They do

not have the specific intent to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rulemaking is to conform the commission rules to the provisions of SB 211, which adds three days to the notification period when notice is sent by first class mail. They are procedural rules which apply equally to parties in contested and uncontested proceedings. They do not specifically affect private real property. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The adopted rules are not subject to the Texas Coastal Management Program (CMP). The adopted actions concern only procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; and 30 TAC §§281.40, et seq.).

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on November 8, 1999. No one testified at the hearing. The comment period on these rules ended on November 15, 1999. No comments were received.

STATUTORY AUTHORITY

These rules are adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

§80.271. Motion for Rehearing.

(a) Any decision in an administrative hearing before the commission that occurs before September 1, 1999 is subject to this section.

(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. For purposes of this section, a party or attorney of record is presumed to have been notified on the third day after the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(c) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order.

(d) Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the date the party is notified of the decision or order.

(f) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party is notified of the decision or order.

§80.272. Motion for Rehearing.

(a) Any decision in an administrative hearing before the commission that occurs on or after September 1, 1999 is subject to this section.

(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. For purposes of this section, a party or attorney of record is presumed to have been notified on the third day after the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(c) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order.

(d) Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order

is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the date a party is notified of the decision or order.

(f) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party is notified of the decision or order.

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-200000264
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: February 3, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

Chapter 51. EXECUTIVE

Subchapter B. PRACTICE AND PROCEDURE IN CONTESTED CASES

31 TAC §51.60

The Texas Parks and Wildlife Commission adopts new 31 TAC §51.60, concerning Authority to Contract for Public Works, without changes to the proposed text as published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 8916).

The new section is necessary to implement the provisions of Senate Bill 874, Acts of the 76th Texas Legislature, 1999, which requires the commission to adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts.

The new section will function by codifying the intent of the legislature within the Texas Administrative Code.

The department received no comments concerning adoption of the proposed new section.

The new section is adopted under Parks and Wildlife Code, Chapter 11, Subchapter B, which requires the commission to adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding the contracts.

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 January 11, 2000.

TRD-200000150
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: January 31, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

Chapter 1. CENTRAL ADMINISTRATION

Subchapter A. PRACTICE AND PROCEDURE

Division 1. PRACTICE AND PROCEDURE

34 TAC §1.14

The Comptroller of Public Accounts adopts an amendment to §1.14, concerning notice of setting, without changes to the proposed text as published in the November 19, 1999, issue of the *Texas Register* (24 TexReg 10302).

The amendment conforms the rule to changes to the Tax Code, §§154.114(c), 154.309(d), 155.059(c), and 155.186(d), made by House Bill 3211, §§2.39, 2.42, 2.43, and 2.47, respectively, 76th Legislature, effective October 1, 1999. The amendment clarifies that notices of setting issued pursuant to Tax Code, §§154.114(c), 154.309(d), 155.059(c), and 155.186(d), will be sent by first class mail.

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, §§154.114, 154.309, 155.059, and 155.186.

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 January 14, 2000.

TRD-200000299
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Effective date: February 3, 2000
Proposal publication date: November 19, 1999
For further information, please call: (512) 463-4062

♦ ♦ ♦

Part 3. TEACHER RETIREMENT SYSTEM OF TEXAS

Chapter 25. MEMBERSHIP CREDIT

Subchapter F. VETERAN'S SERVICE CREDIT

34 TAC §25.75

The Teacher Retirement System of Texas (TRS) adopts an amendment to §25.75 concerning application for eligible active military duty under the Veteran's Reemployment Rights Act. The amendment is being adopted without changes to the proposed text as published in the November 12, 1999, issue of the *Texas Register* (24 TexReg 9951) and therefore will not be republished.

The amendment is adopted in order to correct a typographical error in the sixth sentence of the section by amending the word "feeds" to read "fees".

No comments on the proposal were received.

The amendment is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership and for the administration of the funds of the retirement system.

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 January 13, 2000.

TRD-200000216
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: February 2, 2000
Proposal publication date: November 12, 1999
For further information, please call: (512) 391-2115

♦ ♦ ♦

Subchapter L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.161

The Teacher Retirement System of Texas (TRS) adopts a new §25.161 concerning the purchase of service credit for certain work experience required for certification as a career or technology teacher. The section is adopted without changes to the proposed text as published in the October 22, 1999 issue of the *Texas Register* (24 TexReg 9252) and will not be republished.

The adopted section will implement Government Code, §823.404, which was passed by the 76th Legislature, 1999, in House Bill 3660. In accordance with the new law, the section sets forth the cost to purchase one or two years of equivalent membership service credit for applicable work experience. The rule adopts actuarial tables, and language describing their operation, for use in calculating the cost of purchasing this type of service credit. In addition, the rule describes the certification needed to establish that the member is entitled to salary step credit under the Education Code, §21.403(b) and makes clear that the five-year permissive service credit purchase restrictions for non-qualified service under Government Code, §823.006 may be applicable.

No comments on the proposal were received.

The new section is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. It is also adopted under Government Code, Chapter 823, §823.404, which requires the Board of Trustees to adopt the rates and tables recommended by the actuary and Government Code, Chapter 825, §825.506, which authorizes the Board to adopt rules necessary for the retirement system to be a qualified plan.

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 January 13, 2000.

TRD-200000217
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: February 4, 2000
Proposal publication date: October 22, 1999
For further information, please call: (512) 391-2115

♦ ♦ ♦

34 TAC §25.162

The Teacher Retirement System of Texas (TRS) adopts a new §25.162 concerning the purchase of one year of service credit for accumulated state personal or sick leave. The new section is being adopted without changes to the proposed text as published in the November 12, 1999 issue of the *Texas Register* (24 TexReg 9952) and will not be republished.

The new section implements Government Code, Chapter 823, §823.403 as amended by the 74th Legislature, 1995. In accordance with the law, the section sets forth the cost to purchase one year of membership service credit for accumulated state personal or sick leave and the eligibility requirements for a member to purchase this credit. As provided by §823.403(a), the new section reflects that the credit purchased may only be used for the purpose of calculating benefits. It sets forth the procedure for establishing the service credit with the System including the employer certification prescribed by TRS. The rule includes actuarial tables, and language describing their operation, for use in calculating the cost of purchasing this type of service credit. In addition, the rule makes it clear that the purchase of such service credit may be subject to certain restrictions such as plan-qualification limits, which would include the five-year permissive service credit purchase restrictions for non-qualified service under Government Code, §823.006.

No comments were received regarding the proposal.

The new rule is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the eligibility for membership and the administration of the funds of the

retirement system. It is also adopted under Government Code §823.403(b), which requires the Board of Trustees to adopt the rules regarding an employer's certification of a member's accumulated personal or sick leave and under §823.403(d) which authorizes the Board of Trustees to adopt rates and tables recommended by the actuary. In addition, Government Code, §825.506 authorizes the Board to adopt rules necessary for the retirement system to be a qualified plan.

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 January 13, 2000.

TRD-200000215
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: February 4, 2000
Proposal publication date: November 12, 1999
For further information, please call: (512) 391-2115

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Review of Agency Rules

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification proposes to review the following Subchapters from Chapter 230, concerning Professional Educator Preparation and Certification, pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Section 2001.039 of the Texas Government Code:

Subchapter A. Assessment of Educators (formerly Educator Preparation Accountability System): §230.5, §230.6.

Subchapter D. Local Cooperative Teacher Education Centers: §230.91.

Subchapter E. Centers for Professional Development and Technology: §230.121.

Subchapter F. Professional Educator Preparation: §§230.151-230.161.

Subchapter G. Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements: §§230.191-230.199.

Subchapter H. Alternative Certification of Teachers: §§230.231.

Subchapter I. Standards for Approval of Institutions Offering Graduate Education Programs for Professional Certification: §§230.261-230.271.

Subchapter J. Graduate Education Programs for Professional Certification: §§230.301-230.308, 230.310, 230.311, 230.313-230.316, 230.319.

Subchapter K. Alternative Certification of Administrators: §230.361.

Subchapter L. Postbaccalaureate Requirements for Persons Seeking Initial Teacher Certification Through Approved Texas Colleges and Universities: §230.391.

Subchapter M. Certification of Educators in General: §230.411, §230.413.

Subchapter N. Certificate Issuance Procedures: §§230.431-230.437.

Subchapter O. Texas Educator Certificates Based on Certification and College Credentials from Other. States or Territories of the United States (formerly Texas Educator Certificates Based on Certification and College Credentials from Other States): §230.463.

Subchapter P. Requirements for Standard Certificates and Specialized Assignments or Programs (formerly Requirements for Provisional Certificates and Specialized Assignments or Programs): §§230.481-230.484.

Subchapter Q. Permits: §§230.501-230.507, 230.509-230.512.

Subchapter R. Record of Certificates: §230.531, §230.532.

Subchapter S. Paraprofessional Certificates: §§230.551-230.560.

Subchapter U. Assignment of Public School Personnel: §230.601.

Subchapter V. Continuing Education: §230.610.

Subchapter Y. Definitions: §230.801.

Subchapter Z. General Provisions Relating to the Transition of Authority to the State Board for Educator Certification: §230.901 (Subchapter Z was repealed in its entirety in the March 27, 1998, issue of the Texas Register (23 TexReg 3261). Because Subchapter Z existed in September 1997, the State Board for Educator Certification is including it in this review. The section is no longer necessary and was therefore repealed).

The purpose of the review is to determine whether the agency's reasons for adopting the rules contained in this chapter continue to exist.

Comments on the proposed review may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701-2603. Comments must be received not later than June 1, 2000.

Elsewhere in this issue of the *Texas Register*, the State Board for Educator Certification is contemporaneously adopting the following rules:

Subchapter D: §230.91 (repeal).

Subchapter E. §230.121 (amendment).

Subchapter F: §§230.151-230.161 (repeals).

Subchapter G: §§230.191-230.193, 230.195-230.199 (amendments).

Subchapter H: §230.231 (repeal).

Subchapter I: §§230.261-230.271 (repeal)

Subchapter J: §230.301 (amendment); §§230.302-230.303 (repeals); and §§230.304-230.308, 230.310, 230.311, and 230.316 (amendments).

Subchapter K: §230.361 (repeal).

Subchapter L: §230.391 (repeal).

Subchapter M: §230.413 (amendment)

Subchapter R: §230.531 and §230.532 (repeals).

The State Board for Educator Certification has also proposed amendments to the following rules in Chapter 230 (these rules will be published in the *Texas Register* at a later date):

Subchapter A: §230.5 (amendment).

Subchapter J: §§230.304-230.306, 230.308, 230.313-230.314, and 230.319 amendments).

Subchapter M: §230.413 (amendment).

Subchapter P: §230.481 (amendment).

Subchapter Q: §230.506 and §230.507 (amendments).

Subchapter S: §230.561 (new).

TRD-200000254
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 14, 2000

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 37. Maternal and Infant Health Services, Subchapter E. Medicaid Case Management Services for High Risk Pregnant Women and High Risk Infants, §§37.81 - 37.86.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200000377
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 19, 2000

Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the review of Chapter 295, Water Rights Procedural.

The commission proposes to review these rules as required by as required by Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13. Section 9-10.13 requires state agencies to review and consider for readoption each of their rules every four years. The reviews must include an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 295 and determined that the reason for adopting those rules continues to exist. The rules are necessary for the regulation of state waters by the commission.

Chapter 295, concerning Water Rights Procedural, was adopted pursuant to Texas Water Code, Chapter 11, concerning Water Rights. The rules are necessary to provide details of the procedural requirements, including filing and fee requirements, to implement the Texas Water Code, Chapter 11. The rules also include descriptions of the public notices required for each application, information related to public hearings and define special actions that may be taken by the commission related to specific types of water rights.

Chapter 295, Subchapter A, Requirements of Water Use Permit Applications, contains general requirements; additional requirements for the storage of appropriated surface water in aquifers, irrigation, and dams and reservoirs; requirements for applications for permits under the Texas Water Code; additional requirements for applications for temporary permits; requirements for applications for amendments to water use permits and extensions of time, application for diversion for domestic or livestock use from unsponsored and storage limited projects, and applications for emergency water use permit; requirements for filing for water supply contracts and amendments and applications for authorization to convey stored water; and specifications for maps, plats, and drawings accompanying an application for a water use permit. Subchapter B contains the requirements for water use permit fees. Subchapter C contains notice requirements for water use permit applications. Subchapter D contains the requirements for a public hearing. Subchapter E contains requirements on special actions of the commission, and Subchapter F contains requirements on filing of instruments and reports.

A public hearing will not be held on this proposal. The commission is accepting comments on whether the reasons for the rules under Chapter 295 continue to exist. Comments may be submitted to Lisa Martin, TNRCC Office of Environmental Policy, Analysis, and Assessment, MC 205, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 99077-295-WT. Comments must be received by 5:00 p.m., February 28, 2000. For further information or questions concerning this proposal, please contact Ray Pizarro, Policy and Regulations Division, (512) 239-2588.

TRD-200000225
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 14, 2000

Texas Savings and Loan Department

Title 7, Part 4

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 51 (§§51.1-51.15), relating to Charter Applications for Savings and Loan Associations pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 20 days following publication of the notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of the rules review of this chapter is scheduled for the Commission's meeting on February 18, 2000.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 20 day public comment period prior to final adoption or repeal by the commission.

TRD-200000202
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: January 13, 2000

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 53 (§§53.1-53.18), relating to Additional Offices of Savings and Loan Associations pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 20 days following publication of the notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of the rules review of this chapter is scheduled for the Commission's meeting on February 18, 2000.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 20 day public comment period prior to final adoption or repeal by the commission.

TRD-200000203
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: January 13, 2000

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 57 (§§57.1-57.4), relating to Change of Office Location or Name for Savings and Loan Associations pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 20 days following publication of the notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of the rules review of this chapter is scheduled for the Commission's meeting on February 18, 2000.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 20 day public comment period prior to final adoption or repeal by the commission.

TRD-200000204
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: January 13, 2000

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 59 (§59.1), relating to Foreign Building and Loan Associations pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 20 days following publication of the notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of the rules review of this chapter is scheduled for the Commission's meeting on February 18, 2000.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 20 day public comment period prior to final adoption or repeal by the commission.

TRD-200000205
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: January 13, 2000

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 77 (§§77.1-77.115), relating to Loans, Investments, Savings and Deposits of Savings Banks pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 20 days following publication of the notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of the rules review of this chapter is scheduled for the Commission's meeting on February 18, 2000.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 20 day public comment period prior to final adoption or repeal by the commission.

TRD-200000206
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: January 13, 2000

Adopted Rule Review

Texas Historical Commission

Title 13, Part 2

On October 8, 1999 the Texas Historical Commission readopted without changes the review of Chapters 11 (Sections 11.1-11.10) concerning Administrative Department, Chapter 24 (Sections 24.1-24.23) concerning Restricted Cultural Resources Information, Chapter 25 (Sections 25.1-25.7) concerning the Office of the State Archeologist, and Chapter 26 (Sections 26.1-26.27) concerning the Rules of Practice and Procedure for the Antiquities Code of Texas pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 16, as proposed in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6319). Chapter 13 (Sections 13.1 and 13.2) concerning State Cemetery was repealed on September 6, 1999 and therefore, no longer needs to be considered under the rule review process.

No comments were received regarding adoption of these sections.

TRD-200000200
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Filed: January 12, 2000

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.

Figure: 19 TAC §230.601(f)

PARAPROFESSIONAL PERSONNEL

TITLE	RESPONSIBILITIES	CERTIFICATES
EDUCATIONAL AIDE Educational Aide I	Performs routine tasks under the direction and supervision of a certified teacher or other professional personnel.	Educational Aide I, II, III
Educational Aide II	Performs tasks under the general supervision of a certified teacher or other professional personnel.	Educational Aide II, III
Educational Aide III	Performs and assumes responsibilities for tasks under the general guidance of a certified teacher or other professional personnel. Responsibilities may include relieving teacher of selected exercises and instructional drills with students.	Educational Aide III
~~EDUCATIONAL SECRETARY~~ ~~Educational Secretary I~~	~~Performs routine clerical tasks under the direction and supervision of professional staff.~~	~~Educational Secretary I, II, III~~
~~Educational Secretary II~~	~~Performs clerical tasks under the general supervision of professional staff. Responsibilities may include some limited supervisory functions.~~	~~Educational Secretary II, III~~
~~Educational Secretary III~~	~~Performs and assumes clerical/secretarial tasks under the general guidance of professional personnel. Responsibilities may include routine decision making, supervision of office operations, and maintaining fiscal accounts.~~	~~Educational Secretary III~~

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Figure 25 TAC §217.1(68)(A)

TEMPERATURE	TIME
*63°C (145°F)	30 minutes
*72°C (161°F)	15 seconds
89°C (191°F)	1.0 second
90°C (194°F)	0.5 second
94°C (201°F)	0.1 second
96°C (204°F)	0.05 second
100°C (212°F)	0.01 second

* If the fat content of the milk product is 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 3 degrees Celsius (5 degrees Fahrenheit).

Figure 25 TAC §217.1(68)(B)

TEMPERATURE	TIME
69°C (155°F)	30 minutes
80°C (175°F)	25 seconds
83°C (180°F)	15 seconds

Figure 25 TAC §217.65(f)(1)

BACTERIAL, COLIFORM AND TEMPERATURE STANDARDS FOR PASTEURIZED MIX AND FROZEN DESSERTS

PASTEURIZED

	MAXIMUM BACTERIA LIMITS	MAXIMUM COLIFORM LIMITS	TEMPERATURE LIMITS
Mix	50,000/ml	40/ml	45° F
Frozen Dessert	50,000/ml	40/ml	45° F

Figure 25 TAC §217.65(f)(2)

BACTERIAL, COLIFORM, AND TEMPERATURE STANDARDS FOR UNPASTEURIZED IMITATION FROZEN DESSERTS, IMITATION FROZEN DESSERTS MIX, NONDAIRY FROZEN DESSERTS AND NONDAIRY FROZEN DESSERTS MIX

UNPASTEURIZED

	MAXIMUM BACTERIA LIMITS	MAXIMUM COLIFORM LIMITS	TEMPERATURE LIMITS
Imitation Frozen Desserts	50,000/ml	40/ml	45° F
Imitation Frozen Desserts Mix (Dry)	1,000/ml	10/ml	------
Nondairy Frozen Desserts	50,000/ml	40/ml	45° F
Nondairy Frozen Desserts Mix (Dry)	1,000/ml	10/ml	------

In Addition

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Request for Proposals

Notice of Request for Proposals: The Texas Department of Agriculture is soliciting proposals for a grant to develop an economic adjustment strategy for the sheep and goat industries. The grantee will work with the Texas Department of Agriculture to develop the strategy. This grant is authorized by § 12.002 of the Texas Agriculture Code.

Eligible Applicants: Eligible to apply are universities or non-profit research associations. Joint projects are welcome, but the application must clearly identify the applicant agency. The applicant must be able to document experience with strategic planning. Additionally, the applicant must be able to document that it has adequate personnel resources to conduct the strategy development.

Availability of Funds: The Texas Department of Agriculture will award a grant in the amount of up to $120,000 for a grant period of April 1, 2000 through May 31, 2001.

Grant Requirements: The grantee will be expected to undertake and complete the following work plan:

1. Hold "town meetings" and create "industry focus groups" to survey the needs, desires and challenges facing communities and sheep and goat food and fiber industries. Engage producers and businesses in these industries, as well as community members in the affected areas of the state. 2. Based on the results of the survey, initiate further studies in initiatives showing the most promise and support from the community and industry. 3. If feasible, seek new and innovative methods to support the existing livestock production industry through alternative production methods, new product development, vertical integration, marketing and other means to increase profitability. 4. Research the continued viability of the sheep and goat industry in Texas, and identify specific strategies to improve that industry. 5. If research indicates that the affected communities should consider diversification beyond the livestock industry, assist in identifying opportunities for new and expanded business development in that area. Create surveys to help affected communities assess and analyze workforce, natural resources, cost of energy and other subjects necessary to understand resources that attract businesses. 6. Develop specific strategies to improve the economy of communities affected by the decline in the sheep and goat industry including the creation of a Community Economic Development Plan based on the results of the aforementioned surveys. 7. Identify potential sources of funding for implementation and follow up. 8. Deliver a quarterly status report of project activities and accomplishments. 9. Deliver a completed Economic Adjustment Strategy subject to TDA specifications.

Funding Restrictions: No more than thirty percent (30%) and no less than twenty percent (20%) of the funding may be used to complete activities associated with non-ag diversification. Additionally, expenditures related to "town meetings" or "industry focus groups" may not exceed five percent (5%) of the total funding award.

Proposals: The budget and narrative of the proposals may be no longer than 10 pages. Applicants may, however, attach appendices that support the budget or narrative. Proposals will be judged according to point levels provided in each of the following components required in the proposals. Proposals must be submitted using the following outline:

Budget Summary (10 points). Proposals must be based on a budget of no more than $120,000. It must include a summary of budget estimations for travel, supplies, and personnel costs that demonstrate cost effectiveness and an ability to meet the requirements of this request for proposals within the allowed budget.

Statement of Experience (60 points). Proposals must document the experience of the applicant with strategic planning and a list of references.

Strategy Development (30 points). Based on the requirement of this request for proposals, applicants must outline a timeline, describe the methodology to be used, and describe an evaluation and implementation plan that includes information pertaining to the creation of jobs or businesses, business expansion, etc.

Contact: Interested parties requiring additional information should contact Anna Sieperda-Welch, Intergovernmental Affairs, Texas Department of Agriculture, Post Office Box 12847, Austin, Texas 78711, (512) 463-4331.

Closing Date: Proposals may be mailed to Carol Funderburgh, Intergovernmental Affairs, Texas Department of Agriculture, Post Office Box 12847, Austin, Texas 78711. Deliveries and overnight mail may be sent to 1700 North Congress, 9th Floor. All applications must be postmarked by or received no later than February 28, 2000.

Award Procedure: To be compliant, proposals must meet the minimum requirements of this request for proposals. All compliant proposals will be subject to evaluation by a committee appointed by the Agriculture Commissioner, which will assign a point score to each component of the proposal based on the criteria listed above. Points will be assigned based on the documented ability to carry out this project in an effective, timely, and cost effective manner. The committee will make a recommendation to the Commissioner and her decision is final. At any time during this process, an applicant may be asked to clarify their proposal, which may include telephone inquiries, revisions to the proposal, or a verbal presentation at the Texas Department of Agriculture.

The Texas Department of Agriculture reserves the right to accept or reject any or all proposals submitted. The Texas Department of Agriculture is not under any legal or other obligation to execute a grant on the basis of this notice or the distribution of any other information. Additionally, the Texas Department of Agriculture is not obligated to and will not pay for any costs incurred prior to the execution of a grant.

TRD-200000364
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: January 19, 2000

Texas Board of Architectural Examiners

Fee Schedule

The Texas Board of Architectural Examiners furnishes this Fee Schedule. These fees became effective October 15, 1999 and are subject to change as prescribed by the Board. A printed copy may be obtained from the Board by calling Monday through Friday between 8:00 a.m. and 5:00 p.m.

TEXAS BOARD OF ARCHITECTURAL EXAMINERS
FEE SCHEDULE
Effective October 15, 1999

All Fees subject to change as prescribed by the Board

Fee Description	Architect	Landscape Architect	Interior Designer
Exam Application	75	75	75
Reciprocal Registration	(1) 350	150	150
Renewal – Resident	(2) * 292	82	82
Renewal – Non-resident	(3) * 335	125	125
Renewal – Emeritus (Resident)	25	25	25
Renewal – Emeritus (Non-resident)	25	25	25
Inactive Status	* 10	-	-
Change in Status – Active to Inactive (Resident)	65	65	65
Change in Status – Active to Inactive (Non-resident)	95	95	95
Change in Status – Emeritus to Active (Resident)	65	65	65
Change in Status –Emeritus to Active (Non-resident)	95	95	95
Change in Status – Inactive to Active (Resident)	65	65	65
Change in Status – Inactive to Active (Non-resident)	95	95	95
Renewal Penalty – 1 - 30 days**	100	100	100
Renewal penalty – 31 – 365 days**	300	300	300
Reinstatement (Resident)	(4) * 872	(5) 662	(6) 662
Reinstatement (Non-resident)	(7) * 915	(8) 705	(9) 705
Replacement Certificates	50	50	50
Examination – Administrative Fee	-	40	25
Examination – File Maintenance	10	10	10
Grandfather File Maintenance	-	-	82
Reciprocal Application	-	-	150
Initial Registration by Examination	82	82	82
Non-Sufficient Funds Fee	25	25	25
Application by Prior Examination	-	-	100
Examination	980	570	495

Notes:

1) Professional Fee ($200) plus Reciprocal Registration Fee ($150)
2) Professional Fee ($200) plus Renewal Resident Fee ($82)
3) Professional Fee ($200) plus Renewal Non-Resident Fee ($125)
4) Professional Fee ($200) plus Reinstatement Resident Fee ($580) plus Renewal Resident Fee ($82)
5) Reinstatement Resident Fee ($580) plus Renewal Resident Fee ($82)
6) Reinstatement Resident Fee ($580) plus Renewal Resident Fee ($82)
7) Professional Fee ($200) plus Reinstatement Resident Fee ($580) plus Renewal Non-resident Fee ($125)
8) Reinstatement Resident Fee ($580) plus Renewal Non-Resident Fee ($125)
9) Reinstatement Resident Fee ($580) plus Renewal Non-Resident Fee ($125)

* $10.00 Statutory Scholarship Fund

** Renewal penalty will continue to accrue for each year that the delinquency continues.

TRD-200000303
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners

Filed: January 14, 2000

♦ ♦ ♦

Texas Commission for the Blind

Notice of Town Meeting

The Texas Commission for the Blind will hold a Town Meeting on Saturday, February 19, 2000, from 10:00 a.m. to 1:00 p.m., at the El Paso Regional Office of the Texas Commission for the Blind, 1314 Lomaland Drive, El Paso, Texas. The purpose of this Town Meeting is to provide people the opportunity to comment on current agency services. These recommendations and suggestions will be used in agency planning, updating our State Plan, and in improving our services.

Individuals who are unable to attend are invited to send written comments by February 18, 2000, to Glenda Embree, Texas Commission for the Blind, 4800 North Lamar, Suite 220, Austin, Texas 78756. Comments by fax (512-377-0592) and e-mail (glendae@tcb.state.tx.us) are also welcome.

Persons who plan to attend the meeting and will require an interpreter for the deaf or hearing impaired should call 1-800-687-7020 at least three days prior to the meeting so that arrangements may be made.

Additional information about the meeting may be obtained from Glenda Embree, (512) 377-0583.

TRD-200000330
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: January 19, 2000

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 January 6, 2000, through January 13, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: Lower Neches Valley Authority; Location: The project is located at specific locations within Pine Island Bayou and the Neches River near the City of Beaumont in Jefferson County, Texas. CCC Project No.: 00-0014-F1; Description of Proposed Action: The applicant requests authorization for a 5-year extension to install temporary saltwater barriers. Type of Application: U.S.A.C.E. permit application #19611(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Davis Petroleum Company; Location: The project is located in Galveston Bay in state Tract 251, Well No. 2, with the surface platform located at Latitude 29°33'38.834" and Longitude 94°55'45.147" in Chambers County, Texas. CCC Project No.: 00-0015-F1; Description of Proposed Action: The applicant proposes to place 2,667 cubic yards of shell, gravel, or crushed rock to construct a 100- by 240-foot pad and to drill Well No. 2 in State Tract 251 for the exploration of oil and gas in Galveston Bay under Permit 21364. The applicant proposes to construct a 7- by 17-foot well platform, a 27- by 20-foot production platform, and a 7- by 77-foot walkway connecting the two. The applicant also proposes to install approximately 190 linear feet of pipeline to connect the new rig with the existing 8 inch Vintage Petroleum Pipeline. Type of Application: U.S.A.C.E. permit application #21364(00)/004 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Jack Strange, Jr. Location: The project is located at wetlands adjacent to Moses Lake and Lot No. 2 of Lake Pointe Estates Subdivision, 2810 Lake Pointe Drive, Texas City, Galveston County, Texas. CCC Project No.: 00-0016-F1; Description of Proposed Action: The applicant proposes to fill approximately 0.20 acres of adjacent freshwater wetland immediately adjacent to an existing house pad. Type of Application: U.S.A.C.E. permit application #21775 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-200000336
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: January 19, 2000

Comptroller of Public Accounts

Notice of Consultant Contract Award

In accordance with Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consultant contract award.

The notice of issuance of the request for proposals from qualified consultants request was published in the November 5, 1999, issue of the *Texas Register* (24 TexReg 6341).

The consultant will provide Activity Based Costing (ABC) services to the Comptroller, Five Pilot Agencies, the Texas Department of Transportation and the ABC Management Team. The Five Pilot Agencies are: General Services Commission; Texas Water Development Board; Texas Workforce Commission; Texas Department of Economic Development; and Texas Cosmetology Commission. The ABC Management Team is comprised of representative's from the Comptroller; the State Auditor; the Legislative Budget Board; and the Governor's Office of Budget and Planning. The consultant will report findings and recommendations.

The contract is awarded to Mevatec Corporation, 231 East Main Street, Suite 210, Round Rock, Texas 78664, and 1525 Perimeter Parkway, Suite 500, Huntsville, Alabama 35806. The total amount of the contract is $388,500. The term of the contract is January 10, 2000 through August 31, 2001.

TRD-200000314
Pamela Ponder
Senior Legal Counsel
Comptroller of Public Accounts

Filed: January 18, 2000

Notices of Requests for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified, independent firms to provide consulting services to the Comptroller. The successful respondent will assist the Comptroller in a countywide management and performance review of the following independent school districts in Bastrop County: Bastrop, Elgin, McDade, and Smithville. The services sought under this RFP will culminate in a final report, which report shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review. The successful respondent will be expected to begin performance of the contract on or about March 21, 2000.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Legal Counsel, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, January 28, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also plans to make the complete RFP available electronically on the Texas Marketplace after Friday, January 28, 2000, 2 p.m. (CZT). All written inquiries, questions, and mandatory Letters of Intent to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Tuesday, February 15, 2000. The Letter of Intent must be addressed to Clay Harris, Legal Counsel and must contain the information as stated in the corresponding section of the RFP and be signed by an official of that entity. All responses to questions and other information pertaining to this procurement will only be sent to potential respondents who have submitted a timely Letter of Intent. The mandatory Letters of Intent and Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Prospective respondents that have faxed a Letter of Intent by the deadline are not required to submit an original Letter of Intent.

Closing Date: Proposals must be received in Legal Counsel's Office at the address specified above no later than **2 p.m. (CZT), on Monday, February 28, 2000**. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: *Issuance of RFP* - January 28, 2000, 2 p.m. CZT; *Mandatory Notice of Intent Form and Questions Due* - February 15, 2000, 2 p.m. CZT; *Proposals Due* - February 28, 2000, 2 p.m. CZT; *Contract Execution* - March 16, 2000, or as soon thereafter as practical; *Commencement of Project Activities* - March 21, 2000.

TRD-200000344
Pamela Ponder
Senior Legal Counsel
Comptroller of Public Accounts
Filed: January 19, 2000

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified, independent firms to provide consulting services to the Comptroller. The successful respondent will assist the Comptroller in a countywide management and performance review of the following independent school districts in Kleberg County: Kingsville, Ricardo, Riviera, and Santa Gertrudis. The services sought under this RFP will culminate in a final report, which report shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review. The successful respondent will be expected to begin performance of the contract on or about March 21, 2000.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Legal Counsel, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, January 28, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also plans to make the complete RFP available electronically on the Texas Marketplace after Friday, January 28, 2000, 2 p.m. (CZT). All written inquiries, questions, and mandatory Letters of Intent to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Tuesday, February 15, 2000. The Letter of Intent must be addressed to Clay Harris, Legal Counsel and must contain the information as stated in the correspon! ding Section of the RFP and be signed by an official of that entity. All responses to questions and other information pertaining to this procurement will only be sent to potential respondents who have submitted a timely Letter of Intent. The mandatory Letters of Intent and Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Prospective respondents that have faxed a Letter of Intent by the deadline are not required to submit an original Letter of Intent.

Closing Date: Proposals must be received in Legal Counsel's Office at the address specified above no later than 2 p.m. (CZT), on Monday, February 28, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: *Issuance of RFP* - January 28, 2000, 2 p.m. CZT; *Mandatory Notice of Intent Form and Questions Due* - February 15, 2000, 2 p.m. CZT; *Proposals Due*

- February 28, 2000, 2 p.m. CZT; *Contract Execution* - March 16, 2000, or as soon thereafter as practical; *Commencement of Project Activities* - March 21, 2000.

TRD-200000345
Pamela Ponder
Senior Legal Counsel
Comptroller of Public Accounts
Filed: January 19, 2000

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter A, Texas Government Code, the State Energy Conservation Office (SECO) of the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified, independent firms to provide a variety of energy engineering services to administer the LoanSTAR Revolving Loan Program for the Comptroller and SECO. The successful respondent will assist SECO and the Comptroller in a providing a variety of energy engineering services, including the performance of design specification review for all new and existing LoanSTAR Loan recipients. Comptroller also plans to award contracts for construction monitoring for the LoanSTAR program and program monitoring for all contracts awarded through SECO. The successful respondent will be expected to begin performance of the contract on or about March 1, 2000 for a term extending through August 31, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Legal Counsel, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, January 28, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also plans to make the complete RFP available electronically on the Texas Marketplace after Friday, January 28, 2000, 2 p.m. (CZT). *All Mandatory Letters of Intent to file a proposal and written inquiries must be received at the above-referenced address prior to 2 p.m. (CZT) on February 15, 2000.* The Mandatory Letter of Intent and questions must be in writing and must be addressed to Clay Harris, Legal Counsel. Potential respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. All responses to questions and other information pertaining to this procurement will only be sent to potential respondents who have submitted a timely Letter of Intent. All potential respondents are invited to attend a voluntary, non-mandatory pre-proposal conference from 10:00 a.m. until 2:00 p.m. on Wednesday, February 2, 2000, in the Comptroller's State Energy Conservation Office, located in the LBJ State Office Building, 111 East 17th Street, Room 1113, Austin, Texas 78774.

Closing Date: Proposals must be received in Legal Counsel's Office at the address specified above no later **than 2 p.m. (CZT), on Monday, February 28, 2000**. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller reserves the right to award one or multiple contracts based on this RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: *Issuance of RFP* - January 28, 2000, 2 p.m. CZT; *Mandatory Letters of Intent and Questions Due* - February 15, 2000, 2 p.m. CZT; *Proposals Due* - February 28, 2000, 2 p.m. CZT; *Contract Execution* - March 1, 2000, (or as soon thereafter as practical); *Commencement of Project Activities* - March 1, 2000.

TRD-200000372
Pamela Ponder
Senior Legal Counsel
Comptroller of Public Accounts
Filed: January 19, 2000

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/24/00 - 1/30/00 is 18% for Consumer [1]/Agricultural/ Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/24/00 - 1/30/00 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/00 - 02/29/00 is 10% for Consumer/Agricultural/Commercial/ credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/ 01/00 - 02/29/00 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200000367
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 19, 2000

Texas Credit Union Department

Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from NGT Credit Union (Amarillo) seeking approval to merge with Access Credit Union (Amarillo) with the latter being the surviving credit union.

An application was received from Service 1st Credit Union (Greenville) seeking approval to merge with Texans Credit Union (Richardson) with the latter being the surviving credit union.

An application was received from Trinity Credit Union (Ennis) seeking approval to merge with City Employees Credit Union (Dallas) with the latter being the surviving credit union.

An application was received from Dixie Bell Credit Union (Fort Worth) seeking approval to merge with Kro-Dal Federal Credit Union (Dallas) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200000339
Lynette Pool
Deputy Commissioner
Texas Credit Union Department
Filed: January 19, 2000

Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit the members of the Stemmons Corridor Business Association and their employees who work in Dallas, Texas to be eligible for membership in the credit union.

An application was received from Capitol Credit Union, Austin, Texas to expand its field of membership. The proposal would permit the employees of Janov Millworks and Manufacturing to be eligible for membership in the credit union.

An application was received from Galveston Government Employees Credit Union, Galveston, Texas to expand its field of membership. The proposal would permit the employees of the Tremont House, Harbor House, and Hotel Galvez and members of the family of such persons to be eligible for membership in the credit union.

An application was received from Dallas Teachers Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit the employees of Arthur Andersen LLP who are working or paid from office in Dallas County to be eligible for membership in the credit union.

An application was received from Telco Plus Credit Union, Longview, Texas to expand its field of membership. The proposal would permit persons who live in or work in Smith County, Texas, excluding any person that is a member of any credit union in Smith County with 5,000 or less members, with the exception: if they are eligible for membership through a family member or work for a sponsoring company of Telco Plus Credit Union, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200000340
Lynette Pool
Deputy Commissioner
Texas Credit Union Department
Filed: January 19, 2000

Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Texas Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership

Community Credit Union, Plano, Texas - See Texas Register issue dated 11-26-99

Application(s) to Amend Articles of Incorporation

Presbyterian Healthcare System Credit Union, Dallas, Texas - See Texas Register issue dated 11-26-99

Application(s) for a Merger or Consolidation

Martin Marietta Southwest Employees Credit Union and San Antonio Federal Credit Union - See Texas Register issue dated 11-26-99

South Texas Area Resources Credit Union and MECCA Federal Credit Union - See Texas Register issue dated 11-26-99

Application(s) for a Foreign Branch Office

Premier America Credit Union, Houston, Texas - Approved pursuant to Texas Finance Code §122.005(b), which grants the Commissioner the authority to waive or delay public notice of an action

Premier America Credit Union, Plano, Texas - Approved pursuant to Texas Finance Code §122.005(b), which grants the Commissioner the authority to waive or delay public notice of an action

TRD-200000338
Lynette Pool
Deputy Commissioner
Texas Credit Union Department
Filed: January 19, 2000

Texas Commission for the Deaf and Hard of Hearing

BEI Board Vacancies

The Texas Commission for the Deaf and Hard of Hearing is seeking applicants for the Board for Evaluation of Interpreters (BEI). At least one of the vacant positions must be filled by a person who is deaf.

To qualify applicants must be a Level III, IV, or V certified interpreter; be a resident of the State of Texas; be an interpreter who has engaged in the profession of interpreting for people who are deaf for at least three years out of the past five years, or must be actively engaged in the profession of providing interpreting services to people who are deaf at the time of appointment. For persons who are deaf, experience as a consumer of interpreter services and knowledge of the field of interpreting and linguistics will be considered.

Applicants should be involved or willing to be involved with the interpreter certification program of the Texas Commission for the

Deaf and Hard of Hearing, and be willing to attend regularly scheduled meetings of the Board for Evaluation of Interpreters. Board meetings are held approximately every two months. Travel expenses are paid by the Commission.

Interested individuals should submit a letter of intent and resume to David W. Myers, Executive Director, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711.

This posting will remain open until February 29, 2000 or until all positions are filled.

TRD-200000218
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: January 13, 2000

Deep East Texas Workforce Development Board, Inc.

Request for Proposal

The Deep East Texas Local Workforce Development Board, Inc. is seeking a qualified entity to provide professional, financial and compliance audit services of Federal funds received in the 12-county Deep East Texas region. The workforce area is composed of Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Tyler counties.

RFP release date: 8:00 a.m., Friday, January 14, 2000

Deadline for submission of proposals: 10:00 a.m. CST, Monday, February 14, 2000

Requests for copies of the RFP can be made to:

Chris Gaston, Staff Services Officer

Deep East Texas Local Workforce Development Board, Inc.

1318 S. John Redditt Drive, Suite C

Lufkin, Texas 75904

(409) 639-8898

FAX: (409) 633-7491

Email: chris.gaston@twc.state.tx.us

TRD-200000298
Harry Green
Executive Director
Deep East Texas Workforce Development Board, Inc.
Filed: January 14, 2000

Texas Department of Health

Extension of Public Comment Period and Reschedule of Public Hearing for Rules on Newborn Hearing Screening

The Office of General Counsel is extending the public comment period for the proposed amendments to 25 Texas Administrative Code, §§37.501 - 37.512 rules and rescheduling the public hearing that was originally set for January 20, 2000. The previous announcement and rules were published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10715). The new deadline for submission of comments is through February 25, 2000. The new hearing date is scheduled for February 22, 2000, to be held at the Texas Department of Health, Room K-100, 1100 West 49th Street, Austin, Texas. Comments may be submitted to Joy O'Neal, M.F.A., Director, Audiology Services, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7724.

TRD-200000369
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 19, 2000

Notice of Agreed Order on Sharon Holden and Linda Teresso dba The Elysium Spa and Salon

On December 29, 1999, the Associate Commissioner for Environmental and Consumer Health Protection, Texas Department of Health (department), approved the settlement agreement between the department's Bureau of Food and Drug Safety and Bureau of Radiation Control, and Sharon Holden and Linda Teresso, doing business as The Elysium Spa and Salon of Arlington. A total administrative penalty in the amount of $20,000 was assessed the company for violations of Texas Health and Safety Code, Chapters 401 and 431, and 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, $17,000 was probated, subject to the company's compliance with additional settlement agreement requirements.

A copy of all relevant material is available for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 W. 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200000348
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 19, 2000

Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code §289.205, has revoked the following certificates of registration: Medic Equipment Company, Inc., Houston, R08517, December 30, 1999; Valley Medical Clinic, El Paso, R11905, December 30, 1999; Bethsaida Medical Services, Inc., Houston, R22529, December 30, 1999; Healthtronix Medical Equipment, Inc., Plano, R23259, December 30, 1999; Chiropractic Family Health Center, Arlington, R18181, December 30, 1999.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200000346
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 19, 2000

Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code §289.205, has revoked the following radioactive material licenses: Stewart & Stevenson Services, Inc., Houston, G02080, December 30, 1999; Fluor Daniel NDE Services, Deer Park, L05034, December 30, 1999.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200000347
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 19, 2000

Texas Health and Human Services Commission

Joint Public Hearing-Proposed Payment Rates for Medicaid Programs Operated by Texas Department of Human Services (Nursing Facilities, Swing Beds, Hospice-nursing Facilities, and Bienvivir Waiver)

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (TDHS) will conduct a joint public hearing to receive public comment on proposed payment rates for the following Medicaid programs and services operated by TDHS: nursing facilities, swing beds, hospice-nursing facilities, and Bienvivir Waiver. The joint hearing will be held in compliance with Title 1 of the Texas Administrative Code, §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The public hearing will be held on February 4, 2000, at 9:30 a.m. in the Public Hearing Room (Room 125E) of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas (First floor, East Tower). Written comments regarding payment rates set by the HHSC may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Pam McDonald, TDHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Ms. McDonald at TDHS, MC W-425, 701 West 51st Street, Austin, Texas 78751-2312. Hand deliveries addressed to Ms. McDonald will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Ms. McDonald at (512) 438-3014. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Debbie Price, TDHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Price, TDHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by January 28, 2000, so that appropriate arrangements can be made.

TRD-200000337
Steve Aragón
Agency Liaison
Texas Health and Human Services Commission
Filed: January 19, 2000

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY to JOHN HANCOCK LIFE INSURANCE COMPANY, a foreign prepaid legal company. The home office is in Boston, Massachusetts.

Application to change the name of JOHN HANCOCK PROPERTY AND CASUALTY INSURANCE COMPANY to AXA RE PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200000371
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 19, 2000

Notice of Filing

The following petition has been filed with the Texas Department of Insurance, and is under consideration:

The adoption of amendments to the Plan of Operation for Texas Automobile Insurance Plan Association (TAIPA), pursuant to Article 21.81.

One proposal is to amend the TAIPA Plan of Operation, Section 5.C., "NOTE" to make the current installment payment plan available to a commercial auto risk as well as continuing to be available to a risk written on the Personal Auto Policy. As currently provided, the installment payment plan is not available to persons requesting an SR-22A or to persons financing their payments through a premium finance company. TAIPA requests an effective date of January 1, 2001 for this proposal, as ample lead-time will be needed.

The other proposal is to amend the TAIPA Plan of Operation, Section 13.B. by adding a new subsection 10, setting forth a miscellaneous category for complaints. This amendment to Section 13, "Performance Standards for Insurers," would allow complaints that are not necessarily related to timelines of the insurers' actions.

This filing is subject to Department approval without a hearing unless an objection is filed with David Durden, Associate Commissioner, Property & Casualty Group, Texas Department of Insurance, Mail Code 104-5A, P.O. Box 149104, Austin, Texas 78714-9104, within 15 days after publication of this notice.

For further information or to request a copy of the proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (reference number A-1099-16).

TRD-200000370
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 19, 2000

Third Party Administrator Applications

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

Application for admission to Texas of LifeMark Corporation, (doing business under the assumed name of HMO Blue Star+Plus), a foreign third party administrator. The home office is Wilmington, Delaware.

Application for incorporation in Texas of RetireDirect, Inc., a domestic third party administrator. The home office is Dallas, Texas.

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-200000319
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 18, 2000

Texas Natural Resource Conservation Commission

Notice of Corrected Water Rights Application

Notice is given that NEWLAND ROUND ROCK ASSOCIATES, L.P., A Texas Limited Partnership, 1717 N. Mayes, Suite 300-B, Round Rock, Texas 78664, applicant, seeks a permit pursuant to §11.121, Texas water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, *et seq*. Newland Round Rock Associates, L.P., a Texas Limited Partnership submitted Application Number 5667 to appropriate state water on November 4, 1999.

The application was declared administratively complete on December 13, 1999. The Executive Director recommends that public notice of the application be given pursuant to 30 TAC §295.152. Notice should be mailed pursuant to 30 TAC §295.153(a) and (b) to the water right holders in the Brazos River Basin. The applicant seeks authorization to construct two (2) dams and reservoirs with a total capacity of 12.67 acre-feet on an unnamed tributary of Chandler Branch, tributary of Brushy Creek, tributary of the San Gabriel River, tributary of Little River, tributary of the Brazos River, Brazos River Basin, and to construct two (2) dams and reservoirs with a total capacity of 7.56 acre-feet and to maintain eight (8) existing dams and reservoirs with a total capacity of 70.41 acre-feet on un-named tributaries of McNutt Branch, tributary of Brushy Creek. Combined impoundment of the twelve reservoirs will be 90.64 acre-feet of water for recreational uses in a residential subdivision in Williamson County, Texas. The center point of each dam is located approximately 5 miles south of Georgetown, Texas as follows: Station 3+00 on the dam of 1(C2): Bearing N 13.42øE, 1560 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 33.57øN and Longitude 97.68øW (proposed structure). Station 300 on the dam of 2(S1): Bearing S 78.0øE, 1200 feet from the northwest corner of N. B. Anderson Survey, Abstract A-29, Williamson County, also being Latitude 33.56øN and Longitude 97.68øW (proposed structure). Station 500 on the dam of 3(M2): Bearing S 72.0øE, 9684 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5775 øN and Longitude 97.6475øW (existing structure). Station 500 on the dam of 4(M3): Bearing N 69.0øE, 9966 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5792øN and Longitude97.6481øW (existiing structure). Station 500 on the dam of 5(M4): Bearing N 70.0øE, 8737 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5767øN and Longitude 97.6500øW (existing structure). Station 500 on the dam of 6(M5): Bearing N 65.0øE, 8250 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5775øN and Longitude 97.6528øW (existing structure). Station 500 on the dam of 7(M6): Bearing N 78.5øE, 7144 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5714øN and Longitude 97.6531øW (existing structure). Station 500 on the dam of 8(M7): Bearing N 73.0øE, 6525 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5828øN and Longitude 97.6542øW (existing structure). Station 500 on the dam of 9(M9): Bearing N 83.5øE, 7059 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5703øN and Longitude 97.6511øW (existing structure). Station 500 on the dam of 10(M12): Bearing N 86.0øE, 6946 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5697øN and Longitude 97.6519øW (existing structure). Station 500 on the dam of 11(M1A): Bearing N 82.0øE, 9525 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5730øN and Longitude 97.6456øW (proposed structure). Station 500 on the dam of 12(M1B): Bearing N 82.0øE, 9375 feet from the southwest corner of Barney C. Low Survey, Abstract A-385, Williamson County, also being Latitude 34.5739øN and Longitude 97.6464øW (proposed structure).

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-200000343
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: January 19, 2000

Notice of Public Hearing (Chapter 101)

The Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 101 and to the State Implementation Plan (SIP) under the requirements of 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 regulations concerning SIPs. The revisions to Chapter 101 constitute a revision to the SIP.

The pamendments to Chapter 101, concerning General Rules, would specify a reporting threshold for certain compounds, would require the submission of certain records concerning unauthorized emissions of air contaminants, would state under what conditions release of these contaminants may be exempted from state rules, and would correct typographical errors.

A public hearing on this proposal will be held in Austin on February 22, 2000, at 10:00 a.m. at the TNRCC Complex in Building E, Room 201S, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Lisa Martin, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 99050-101-AI. Comments must be received by 5:00 p.m., February 28, 2000. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239-1495.

TRD-200000227
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 14, 2000

Notice of Public Hearing (Chapter 114)

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 Chapter 114, Subchapter B, §114.21 and the SIP, concerning Motor Vehicle Anti-tampering Requirements, Exclusions and Exceptions.

The proposed amendment aligns the statewide anti-tampering provisions and exemptions for motor vehicle air pollution control systems with the federal requirements outlined in §7522 of the Federal Clean Air Act.

A public hearing on the proposal will be held February 22, 2000, at 2:00 p.m. in Room 3202A of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Angela Slupe, 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., February 28, 2000, and should reference Rule Log Number 99066-114-AI. For further information, please contact Alan Henderson, (512) 239-1510 or Bob Reese, (512) 239-1439.

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-200000229
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 14, 2000

Notice of Public Hearing (Chapter 331)

The Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning proposed amendments to 30 TAC Chapter 331, relating to underground Injection Control, Subchapter A, General Provisions, and Subchapter H, Standards for Class V Wells. This notice is given under the requirements of Texas Government Code, Subchapter B, Chapter 2001.

The proposed revisions to Subchapter A and Subchapter H are intended to clarify authorization-by-rule requirements related to Class V injection wells, and clarify that a closed-loop injection well is a Class V well. The proposed amendment to Subchapter H, Standards for Class V Wells, will update construction and closure standards to those standards and practices currently accepted as being more protective of groundwater.

A public hearing on the proposal will be held February 23, 2000 at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted 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., February 28, 2000, and should reference Rule

Log Number 99009-331-WT. For further information, please contact Mary Ambrose, Policy and Regulations Division, (512) 239-4813.

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-200000224
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 14, 2000

Public Notice

The Texas Natural Resource Conservation Commission (TNRCC or Commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, as amended (the "Act"), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the November 26, 1999, issue of the *Texas Register* (24 TexReg 10608-10610).

Pursuant to the Act, §361.184(a), the Commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication, the TNRCC hereby gives notice of a facility or area that the executive director has determined eligible for listing, and which the executive director proposes to list on the state registry. By this publication, the TNRCC also gives notice pursuant to the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility identified below. The TNRCC proposes a commercial/industrial land use designation. Determination of future land use will impact the remedial investigation and remedial action for the site.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published in the *Palacios Beacon* and *Bay City Tribune* on January 26, 2000.

The facility proposed for listing is the Hu-Mar Chemical site, located north of Palacios, Matagorda County, Texas on McGlothlin Road between 4th and 12th Streets. The approximate geographic coordinates of the site are 28 degrees, 43 minutes, 45 seconds, North Latitude and 96 degrees, 13 minutes, 15 seconds, West Longitude.

In 1976, Consolidated Chemical Company began pesticide/herbicide production at this 20-acre facility. In 1978, Hu-Mar Chemical Corporation bought the facility and all permits were transferred to Hu-Mar Chemical Corporation. Pesticide/herbicide production continued at this facility until it closed due to nuisance odors in December 1979.

In 1980, Hu-Mar Chemical Corporation performed a removal action. The removal was conducted in two phases: first, 190 drums containing chemicals were removed to an approved disposal site; second, soil from the area where spillage from the drums had occurred was excavated and moved to an approved disposal site. After the drums were removed, the kiln was demolished and all contaminated soil/bricks in and near the kiln site were removed. On-site surface impoundments were closed in 1985. During the closure activities, the surface impoundments were de-watered by pumping the wastewater onto a diked area adjacent to the surface impoundments. Contaminated sludges were left in the impoundments and were consolidated with other on-site soils. The impoundments were then capped and vegetated. On-site tanks were dismantled and sold.

Releases of hazardous substances to the groundwater pathway are the major concern for this site. Hazardous substances have been documented in the subsurface soils and shallow groundwater beneath the site. The Chicot Aquifer is the aquifer for the groundwater pathway.

A public meeting will be held Thursday, March 2, 2000, at 7:00 p.m., in council chambers of Palacios City Hall, located at 205 Fourth Street in Palacios, Texas. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the facility subject of this notice is located. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

Written comments may also be submitted to the attention of Michael A. Bame, Superfund Cleanup Section, Remediation Division, MC-143, P.O. Box 13087, Austin, Texas 78711-3087, telephone number (512) 239-5658. All comments must be submitted to the Commission by 5:00 p.m. on March 2, 2000.

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 executive director's determination of eligibility, are available for review at Palacios Library, 326 Main Street in Palacios, Texas, telephone number (361) 972-3234, during regular business hours. Copies of the complete public record files may be obtained during regular business hours at the TNRCC Records Management Center, Building D, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 (within Texas only) or (512) 239-2920. Photocopying of file information is subject to payment of a fee.

TRD-200000228
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 14, 2000

Notice of Water Quality Applications

The following notices were issued during the period of October 21, 1999 - January 14, 2000.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.**

ADVANCED AROMATICS, L.P. has applied for a renewal of TNRCC Permit Number 01914, which authorizes the discharge of treated process, domestic, utility wastewater and stormwater at a daily average flow not to exceed 60,000 gallons per day via Outfall 001, and stormwater 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 TX0059285 issued on June 20, 1997, and TNRCC Permit Number 01914 issued January 28, 1994. The applicant operates a petrochemical and industrial organic chemicals manufacturing plant. The plant site is located at 5501 Baker Road, midway between Decker Drive and Bayway Drive in the City of Baytown, Harris County, Texas.

CITY OF COAHOMA has applied for a renewal of Permit Number 10723-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 86,800 gallons per day via surface irrigation of 6 acres of cemetery land, 95 acres of farmland on R. L. Powell Farm and 100 acres of farmland on the J. L. Metcalf Farm. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located adjacent to the west side of Farm-to-Market Road 820, approximately 1.2 miles south of the intersection of Interstate Highway 20 and Farm-to-Market Road 820 in Howard County, Texas.

CITY OF CUERO has applied for a renewal of TNRCC Permit Number 10403-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day The plant site is located at the south end of Stockdale Road, approximately 1.5 miles south of the intersection of Stockdale Road and Morgan Street in DeWitt County, Texas.

CITY OF EDNA has applied for a renewal of TNRCC Permit Number 10164-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,800,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The plant site is located approximately 1.0 mile southeast of the intersection of State Highway Loop 521 and State Highway 111, adjacent to south bank of Post Oak Branch, southeast of the City of Edna in Jackson County, Texas.

EQUISTAR CHEMICALS, L.P. has applied for a major amendment to TNRCC Permit Number 00765 to authorize reduced monitoring frequencies for biochemical oxygen demand (5-day), chemical oxygen demand and total suspended solids at Outfall 001. The current permit authorizes the discharge of treated process water, domestic, utility wastewaters and storm water at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001 which will remain the same, and treated process, domestic, utility wastewaters, and storm water on an intermittent and flow variable basis via Outfall 002, which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0006297 issued on December 20, 1996, and TNRCC Permit Number 00765 issued on February 18, 1994. The applicant operates a plant manufacturing polyethylene. The plant site is located on the north side of Taylor Bayou and approximately one mile south of the intersection of Farm to Market Road 823 with State Highway 73 near the City of Port Arthur, Jefferson County, Texas.

CITY OF GOLDSMITH has applied for a renewal of Permit Number 11482-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 31,000 gallons per day via surface irrigation of 7 acres of landscape area at the plant site. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located immediately west of Farm-to-Market Road 866, approximately 3,500 feet south of State Highway 158 and south of the City of Goldsmith in Ector County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 367 has applied for a major amendment to TNRCC Permit Number 13875-002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 350,000 gallons per day to a daily average flow not to exceed 980,000 gallons per day. The plant site is located approximately 2.3 miles northeast of the intersection of State Highway 249 and Spring Cypress Road, 1.8 miles west of the intersection of Stuebner-Airline Road and Spring Cypress Road in Harris County, Texas.

ITEQ STORAGE SYSTEMS, INC. has applied for a renewal of TNRCC Permit Number 02725, which authorizes the discharge of hydrostatic test water at a daily maximum flow not to exceed 30,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 02725, issued on October 11, 1996. The applicant operates a facility that manufactures pressure vessels for industrial use. The plant site is located at 2828 Clinton Drive, which is approximately 2,000 feet south of the intersection of U.S. Highway 59 and Interstate Highway 10, in the City of Houston, Harris County, Texas.

LAMAR POWER PARTNERS, LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04127, to authorize the discharge of cooling tower blowdown, filter backwash and low volume waste (including boiler blowdown, floor drain waste, reverse osmosis reject water, and evaporator cooler blowdown) at a daily average flow not to exceed 1,200,000 gallons per day via Outfall 001. The applicant proposes to operate the Lamar Power Project, a combined cycle power plant. The plant site is located on the east side of Farm-to-Market Road 137, approximately 1/2 mile south of the intersection of Farm-to-Market Road 137 and 286 Loop Road, southeast of the City of Paris, Lamar County, Texas.

LOUISIANA PACIFIC CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04014, to authorize the discharge of log wet deck water, once through cooling water, log transport water, vehicle wash water, compressor condensate, and storm water runoff on an intermittent and flow variable basis via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The applicant proposes to operate the Cleveland Chipmill Plant, a wood chipping facility. The plant site is located on the east side of the intersection of U.S. Highway 59 and Washington Avenue, north of the City of Cleveland, Liberty County, Texas.

MARINE FUELING SERVICE, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04025, to authorize the discharge of treated barge wash water at a daily average flow not to exceed 35,000 gallons per day via Outfall 001. The applicant operates a barge cleaning facility. The plant site is located approximately one mile southeast of Veterans Memorial Bridge and approximately 0.5 miles west from the nearest point of Stewts Island in the City of Port Arthur, Jefferson County, Texas.

STRUCTURAL METALS, INC. has applied for a renewal of TNRCC Permit Number 01712, which authorizes the discharge of treated process and other wastewaters at a daily average flow not to exceed 120,000 gallons per day via Outfall 001; storm water runoff on an intermittent and flow variable basis via Outfalls 002, 003 and 004; and disposal of treated process and other wastewaters via irrigation at a daily average flow not to exceed 40,000 gallons per day. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0083178

issued on October 15, 1980, and TNRCC Permit Number 01712 issued on March 12, 1993. The applicant operates a steel products manufacturing facility. The plant site is located approximately one mile west of the intersection of Interstate Highway 10 and Farm-to-Market Road 464, west of the City of Seguin, Guadalupe County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit Number 11704-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day via surface irrigation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located adjacent to Park Road 33 and about 0.5 mile due south of the boat ramps which are at the east terminus of Park Road 33 in Possum Kingdom State Park in Palo Pinto County, Texas.

TEXAS-SHM, INC. has applied for a new permit, Proposed Permit Number 14009-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via subsurface drainfields with a total minimum area of 74,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located at 2600 North Main Street, on the east side of North Main Street, approximately 2,100 feet south of the intersection of North Main Street (Business Highway 287) and Turner Warnell (County Road 2026) in the community of Mansfield in Tarrant County, Texas.

US ARMY CORPS OF ENGINEERS has applied for a renewal of Permit Number 12254-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,600 gallons per day via evaporation in a 1.73 acre evaporation pond. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located in Friendship Park on the north side of Granger Lake, approximately 1 mile due southeast of the eastbound extension of Farm-to-Market Road 971 in Williamson County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

AIR PRODUCTS, INCORPORATED has applied for a renewal of TNRCC Permit Number 01280, which authorizes the discharge of process wastewater commingled with utility wastewater and treated sewage effluent at a daily average flow not to exceed 500,000 gallons per day via Outfall 001; and stormwater runoff on an intermittent and flow variable basis via Outfalls 002, 003, and 004. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0004944 issued on February 10, 1989, and TNRCC Permit Number 01280 issued on June 11, 1994. The applicant operates the LaPorte Plant which produces industrial gases. The plant site is located at 10202 Strang Road, approximately 1,500 feet northwest of the intersection of State Highway 225 and Miller Cutoff Road, bordered on the north by Strang Road, on the east by Miller Cutoff Road, on the south by Union Pacific railroad tracks, and on the west by Houston Light and Power right of way power lines, northwest of the City of LaPorte, Harris County, Texas.

CONCENTRATED ANIMAL FEEDING OPERATION

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

JIM HOODENPYLE has applied to the Texas Natural Resource Conservation Commission (TNRCC) for new TPDES Registration Number WQ0004185-000 to authorize the applicant to operate a dairy facility at a maximum capacity of 3,000 milking head and a total of 5,000 head in Reeves County, Texas. The application was received by TNRCC on November 5, 1999. No discharge of pollutants into the waters in the state is authorized by this Registration except under chronic or catastrophic rainfall conditions. All waste and wastewater will be beneficially used on agricultural land.The facility is located on Reeves County Road 210 approximately one-half mile north of the intersection of Reeves County Roads 210 and 209, this intersection is approximately one mile west of the intersection of Reeves County Road 210 and Farm-to-Market Road 869 in Reeves County, Texas. The facility is located in the drainage area of the Upper Pecos River in Segment Number 2231 of the Rio Grande River Basin.

JOCHEM JONGSMA has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Registration Number WQ0004100-000 to authorize the applicant to operate an existing dairy at a maximum capacity of 350 head in Wood County, Texas. The application for registration was received by TNRCC on December 22, 1999. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic or catastrophic rainfall conditions. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located on the west side of County Road 4200, 500 feet south of the intersection of County Road 4200 and Farm-to-Market Road 852, said intersection being 1.2 miles west of Winnsboro, Wood County, Texas. The facility is located in the drainage area of Big Sandy Creek in Segment Number 0514 of the Sabine River Basin

JOHN HEAVYSIDE has applied to the Texas Natural Resource Conservation Commission (TNRCC) for renewal of TPDES Permit Number WQ0003146-000 to authorize the applicant to operate an existing dairy at a maximum capacity of 750 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located at the end of County Road 492, which is only accessible from its intersection with County Road 182, approximately 1.5 miles northeast of the intersection of County Road 182 and U. S. Highway 67, said intersection being four miles east of Stephenville, Texas.. The facility is located in the drainage area of Paluxy River in Segment Number 1229 of the Brazos River Basin.

TRD-200000342
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: January 19, 2000

North Central Texas Council of Governments

Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to select a consultant firm to provide technical services to the Dallas County Department of Public Works for the scoring and ranking of candidate thoroughfare system improvements submitted as part of a County-issued Major Capital Improvement Program Call for Projects. The purpose of this request is to procure the services of a consulting firm to conduct the evaluation, scoring,

and ranking of roadway projects submitted for possible funding under a Dallas County-issued Call for Projects. The consulting firm chosen will review each project submittal for completeness, spot-check various projects for quality control purposes, assist the County in developing cost estimates and project scopes for candidate projects, evaluate pavement condition for several projects, apply a pre-established set of evaluation criteria to all the projects submitted under this Call for Projects, develop project rankings, and provide a final report documenting the results of this analysis.

Due Date

Proposals must be submitted no later than 5 p.m. Central Time on Tuesday, February 15, 2000, to Michael Burbank, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Michael Burbank, (817) 695-9251. NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS PAGE 2 OF 2

Contract Award Procedures

The firm selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200000366
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: January 19, 2000

Public Utility Commission of Texas

Notices of Application for Approval of a Business Separation

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of a business separation plan by an electric utility. A summary of the application follows.

Docket Title and Number: Docket Number 21950, *Application of TXU Electric Company For Approval of Its Plan To Implement Business Separation As Required Under §39.051 of the Public Utility Regulatory Act;* and Docket Number 21987, *Competitive Energy Services Issues Severed from Application of TXU Electric Company for Approval of its Plan to Implement Business Separation as Required Under §39.051 of the Public Utility Regulatory Act.*

The application was filed pursuant to the Public Utility Regulatory Act (PURA) §39.051, which requires electric utilities to (1) separate its business activities from one another into a power generation company, a retail electric provider, and a transmission and distribution utility; and (2) separate from its regulated utility activities its customer services business activities that are otherwise already widely available in the competitive market. TXU Electric Company petitions the commission for approval of its business separation plan filed pursuant to PURA §39.051(e), identifying competitive energy services, and petitioning to provide certain competitive energy service(s).

Persons who wish to comment upon, or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than February 11, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000356
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of a business separation plan by an electric utility. A summary of the application follows.

Docket Title and Number: Docket Number 21952, *Application of Southwestern Public Service Company Regarding Proposed Business Separation Plan before the Public Utility Commission of Texas;* and Docket Number 21990, *Competitive Energy Services Issues Severed from Application of Southwestern Public Service Company Regarding Proposed Business Separation Plan.*

The application was filed pursuant to the Public Utility Regulatory Act (PURA) §39.051, which requires electric utilities to (1) separate its business activities from one another into a power generation company, a retail electric provider, and a transmission and distribution utility; and (2) separate from its regulated utility activities its customer services business activities that are otherwise already widely available in the competitive market. Southwestern Public Service Company petitions the commission for approval of its business separation plan filed pursuant to PURA §39.051(e), identifying competitive energy services, and petitioning to provide certain competitive energy service(s).

Persons who wish to comment upon, or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than February 11, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000357
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of a business separation plan by an electric utility. A summary of the application follows.

Docket Title and Number: Docket Number 21953, *Application of Central Power & Light Company, Southwestern Electric Power Company and West Texas Utilities Company for Approval of Proposed Business Separation Plan Pursuant to §25.342;* and Docket Number 21989, *Competitive Energy Services Issues Severed from Application of Central Power & Light Company, Southwestern Electric Power Company and West Texas Utilities Company for Approval of Proposed Business Separation Plan Pursuant to §25.342.*

The application was filed pursuant to the Public Utility Regulatory Act (PURA) §39.051, which requires electric utilities to (1) separate its business activities from one another into a power generation company, a retail electric provider, and a transmission and distribution utility; and (2) separate from its regulated utility activities its customer services business activities that are otherwise already widely available in the competitive market. Central Power & Light Company, Southwestern Electric Power Company and West Texas Utilities Company petitions the commission for approval of its business separation plan filed pursuant to PURA §39.051(e), identifying competitive energy services, and petitioning to provide certain competitive energy service(s).

Persons who wish to comment upon, or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 11, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000358
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of a business separation plan by an electric utility. A summary of the application follows.

Docket Title and Number: Docket Number 21954, *Application of Sharyland Utilities, L.P. For Approval of Its Plan To Implement Business Separation As Required Under §39.051 of The Public Utility Regulatory Act;* and Docket Number 21988, *Competitive Energy Services Issues Severed from Application of Sharyland Utilities, L.P. for Approval of Business Separation Plan Pursuant to PURA §39.051, Docket Number 21954.*

The application was filed pursuant to the Public Utility Regulatory Act (PURA) §39.051, which requires electric utilities to (1) separate its business activities from one another into a power generation company, a retail electric provider, and a transmission and distribution utility; and (2) separate from its regulated utility activities its customer services business activities that are otherwise already widely available in the competitive market. Sharyland Utilities, L.P. petitions the commission for approval of its business separation plan filed pursuant to PURA §39.051(e), identifying competitive energy services, and petitioning to provide certain competitive energy service(s).

Persons who wish to comment upon, or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than February 11, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000359
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of a business separation plan by an electric utility. A summary of the application follows.

Docket Title and Number: Docket Number 21955, *Application of Texas-New Mexico Power Company for Approval of a Business Separation Plan;* and Docket Number 21986, *Competitive Energy Services Issues Severed Application of Texas-New Mexico Power Company for Approval of a Business Separation Plan, Docket Number 21955.*

The application was filed pursuant to the Public Utility Regulatory Act (PURA) §39.051, which requires electric utilities to (1) separate its business activities from one another into a power generation company, a retail electric provider, and a transmission and distribution utility; and (2) separate from its regulated utility activities its customer services business activities that are otherwise already widely available in the competitive market. Texas-New Mexico Power Company petitions the commission for approval of its business separation plan filed pursuant to PURA §39.051(e), identifying competitive energy services, and petitioning to provide certain competitive energy service(s).

Persons who wish to comment upon, or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 11, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000360
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of a business separation plan by an electric utility. A summary of the application follows.

Docket Title and Number: Docket Number 21956, *Reliant Energy, Inc. Business Separation Plan Filing Package;* and Docket Number 21985, *Competitive Energy Services Issues Severed from Reliant Energy, Inc. Business Separation Plan Filing Package, Docket Number 21956.*

The application was filed pursuant to the Public Utility Regulatory Act (PURA) §39.051, which requires electric utilities to (1) separate

its business activities from one another into a power generation company, a retail electric provider, and a transmission and distribution utility; and (2) separate from its regulated utility activities its customer services business activities that are otherwise already widely available in the competitive market. Reliant Energy, Inc. petitions the commission for approval of its business separation plan filed pursuant to PURA §39.051(e), identifying competitive energy services, and petitioning to provide certain competitive energy service(s).

Persons who wish to comment upon, or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than February 11, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000361
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for approval of a business separation plan by an electric utility. A summary of the application follows.

Docket Title and Number: Docket Number 21957, *Application of Entergy Gulf States, Inc. for Approval of Business Plan Separation Plan;* and Docket Number 21984, *Competitive Energy Services Issues Severed from Application of Entergy Gulf States, Inc. for Approval of Business Plan Separation Plan, Docket Number 21957.*

The application was filed pursuant to the Public Utility Regulatory Act (PURA) §39.051, which requires electric utilities to (1) separate its business activities from one another into a power generation company, a retail electric provider, and a transmission and distribution utility; and (2) separate from its regulated utility activities its customer services business activities that are otherwise already widely available in the competitive market. Entergy Gulf States, Inc. petitions the commission for approval of its business separation plan filed pursuant to PURA §39.051(e), identifying competitive energy services, and petitioning to provide certain competitive energy service(s).

Persons who wish to comment upon or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711- 3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 11, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000362
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

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Notice of Application for Approval of Internal Code of Conduct

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for approval of an internal code of conduct by an electric utility. A summary of the application follows.

Docket Title and Number: Docket Number 21958, *Application of El Paso Electric Company for Approval of Internal Code of Conduct Pursuant to PURA §39.157(d) and Substantive Rule §25.272.*

El Paso Electric Company petitions the commission for approval of its internal code of conduct filed pursuant to the Public Utility Regulatory Act §39.157(d) and Public Utility Commission Substantive Rule §25.272.

Persons who wish to comment upon, or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than February 11, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000363
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

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Notice of Application for Approval of Special Depreciation Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 12, 2000, for approval of special depreciation rates pursuant to §§52.002, 52.252, and 53.056, of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supp. 2000) (PURA). A summary of the application follows.

Docket Title and Number: Application of Taylor Telephone Cooperative, Inc. for Approval of Depreciation Rate Pursuant to P.U.C. Substantive Rule §26.206(h). Docket Number 21960.

The Application: Taylor Telephone Cooperative, Inc. (Taylor) requests approval of a depreciation rate for new fiber optic circuit equipment. Taylor is proposing an annual rate of 9.09% which is derived from the useful life of 11 years and net salvage rate of 0.0%. Taylor proposes an effective date of January 1, 1999.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200000214
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2000

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Notices of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 11, 2000, for a service provider certificate of operating authority

(SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Plex-Net, Ltd. for a Service Provider Certificate of Operating Authority, Docket Number 21968 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Digital Subscriber Line, ISDN, T1-Private Line, long distance and metro services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 2, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000209
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2000

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 14, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Hamilton Telephone Company, doing business as Hamilton Telecommunications for a Service Provider Certificate of Operating Authority, Docket Number 21995 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service (relay only), long distance services (relay only), and telecommunication relay services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 2, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000317
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2000

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Notice of Application Pursuant to Public Utility Commission Substantive Rule §26.208

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 7, 2000, pursuant to P.U.C. Substantive Rule §26.208 for approval of a tariff change.

Tariff Title and Number: Application of Southwestern Bell Telephone Company To Simplify Transfer of Customer Contracts Pursuant to P.U.C. Substantive Rule §26.208. Tariff Number 21941.

The Application: Southwestern Bell Telephone Company (SWBT) seeks to eliminate the requirement for a written request by a customer to transfer their service contracts to another party at the same location.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. Please reference Tariff Number 21941.

TRD-200000208
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2000

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Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 14, 2000, to amend a certificated service area boundary in Frio County pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supp. 1999) (PURA). A summary of the application follows.

Docket Style and Number: Joint Application of Medina Electric Cooperative, Inc. (Medina) and Central Power & Light Company (CPL) to Amend Certificated Service Area Boundaries Within Frio County. Docket Number 21993.

The Application: Medina and CPL request the boundary change based on proximity of Medina and CPL facilities to a new irrigation system design. This system will improve efficiency by converting from flood irrigation to center pivot irrigation. Copies of the joint application and additional associated maps are available for review at the Medina office, 2308 18th Street, Hondo, Texas or the CPL office, 1519 Calton Road, Laredo, Texas. Persons with questions about this project should contact Larry Oefinger at (830) 741-4384, Charles Brower at (956) 721-3010 or Allen H. King at (512) 474-1901.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800- 735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention.

TRD-200000332
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

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Notice of Petition for a Good Cause Exemption to Public Utility Commission Substantive Rule §25.221

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 30, 1999 for good cause exemption to P.U.C. Substantive Rule §25.221.

Docket Title and Number: Application of the Lower Colorado River Authority for a Good Cause Exemption to P.U.C. Substantive Rule §25.221. Docket Number 21914.

The Application: The Lower Colorado River Authority (LCRA) requests exemption to the requirements of P.U.C. Substantive Rule §25.221 regarding the filing of a cost separation report. The commission regulates LCRA's retail and transmission rates. LCRA requests an exemption because it has only three retail customers and believes the cost of preparing a cost separation report to reflect such an insignificant amount of service is unwarranted. LCRA affirms that its cost accounting system is in compliance with the Federal Energy Regulatory Commission chart of accounts system ensuring that the costs associated with generation service, transmission service, distribution service, and customer service are accurately and separately identified as required by P.U.C. Substantive Rule §25.221(d).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 10, 2000. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 21914.

TRD-200000315
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2000

Notice of Public Hearing on Amendments to §25.4 and §26.4; and Notice Of Workshop and Request For Comments On Mechanisms To Implement and Enforce The Prohibitions on Discrimination Found in Substantive Rules §25.4 and §26.4

The Public Utility Commission of Texas (commission) will hold a public hearing on proposed amendments to Substantive Rules §25.4 relating to Statement of Nondiscrimination and §26.4 relating to Statement of Nondiscrimination as published in the *Texas Register* on November 5, 1999 (24 TexReg 9733, 9734) under Project Number 21418, *Amendments to §25.4 and §26.4 Regarding Prohibited Discrimination (SB 86, PURA §17.004(a)(4))*. This public hearing will take place on Monday, February 28, 2000, at 10:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701 and will encompass only the proposed changes to the policy statements in §25.4 and §26.4 as they implement the Public Utility Regulatory Act §17.004(a)(4). At the same location, immediately following adjournment of the public hearing, staff will conduct a workshop regarding the mechanisms to implement and enforce the prohibitions on discrimination found in proposed §25.4 and §26.4. Comments filed in Project Number 21418, which revised the commission's policy enunciated in Substantive Rules §25.4 and §26.4 to incorporate prohibitions on discrimination based on income, source of income or geographic location, raised a number of issues that pointed out a need for an additional rulemaking to implement and enforce those provisions. Project Number 21932, *Rulemaking to Implement Provisions Contained in §25.4 and §26.4 Regarding Discrimination* has been established for this proceeding. The commission requests interested persons file comments in Project Number 21932 prior to the workshop on the following questions:

1. Should the changes to Substantive Rule §25.4 and §26.4, adding income, source of income and geographic location as protected categories under the current Statement of Nondiscrimination, be further implemented through:

a) a codification of a single implementation-related anti-discrimination rule, or;

b) changes currently being examined in each of the rulemaking projects related to customer protection, certification and other rules as appropriate?

Please explain your rationale.

2. The 76th Legislature added prohibitions on discrimination, based on income and source of income as well as a prohibition on unreasonable discrimination based on geographic location, to PURA §17.004(a)(4) and §64.004(a)(4).

a) What standards should the commission use to determine whether a Certificated Telecommunications Utility (CTU) is in compliance with these sections?

b) How, if at all, should the addition of these prohibitions alter providers' marketing and/or deployment practices?

3. What reports or records, if any, should the commission require CTUs to file or retain to demonstrate compliance with the requirements of PURA §17.004(a)(4) and §64.004(a)(4)? (e.g., the Texas Department of Insurance requires quarterly reporting on the geographic location of providers' customers)?

4. Finally, the commission requests that interested parties describe "best practice" examples of regulatory policies and their rationale that have been proposed and/or implemented in other states regarding any parallel prohibitions on discrimination based on income, source of income or geographic location.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 within 30 days of the date of publication of this notice. All responses should reference Project Number 21932. 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 public hearing and workshop the commission shall make available in Central Records an agenda for the format of the public hearing under Project Number 21418 and for the workshop under Project Number 21932.

Questions concerning the public hearing and workshop or this notice should be referred to Ms. Shari Hill, Enforcement Attorney, Office of Customer Protection, (512) 936-7048. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200000207
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: January 13, 2000

Public Notices of Amendments to Interconnection Agreements

On January 7, 2000, Southwestern Bell Telephone Company and Max-Tel Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21940. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21940. 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 February 7, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the 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 21940

TRD-200000197
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 12, 2000

On January 11, 2000, Southwestern Bell Telephone Company and Fort Bend Long Distance doing business as Fort Bend Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21969. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21969. 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 February 8, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the 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 21969.

TRD-200000198
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 12, 2000

On January 14, 2000, Southwestern Bell Telephone Company and United States Cellular Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21996. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21996. 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 February 9, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the 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 21996.

TRD-200000331
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

Public Notice of Intent to Use Negotiated Rulemaking, Request for Comment, and Notice of Team Meeting

The Public Utility Commission of Texas (commission) proposes to use formal negotiated rulemaking procedures pursuant to Texas Government Code, Chapter 2008, to develop rules relating to Retail Competition Pilot Projects. The Public Utility Regulatory Act (PURA) §39.104 and §39.405 mandate that electric utilities offer customer choice to 5.0% of the utility's combined load of all customer classes within the state beginning June 1, 2001. The purpose of this rulemaking is to establish requirements for the pilot projects. Project Number 21407, *Retail Competition Pilot Projects*, has been established for this proceeding.

Issues to be considered in developing the rules. Commission staff has identified the following potential issues that may be considered in the rulemaking: (1) goals of the programs; (2) scope of the programs; (3) amount of uniformity among programs statewide; (4) determination of the size of the programs; (5) reporting necessary to evaluate the programs; (6) distribution of participants among customer classes and geographic areas; (7) addressing requirements for load aggregation; (8) selection and registration of customers to participate; (9) method for customer withdrawal from the programs; (10) eligibility requirements for industry stakeholders; (11) accommodations for certain non-Electric Reliability Council of Texas (ERCOT) utilities participating in the pilot programs; (12) rates and tariffs; (13) settlement and customer billing; (14) application of customer protection rules.

Affected interests. The Convening Report for this rulemaking, developed pursuant to Texas Government Code §2008.052(d), identified the following stakeholder groups who could be significantly affected by the proposed rules: (1) aggregators; (2) industrial customers; (3) the Office of Public Utility Counsel; (4) general residential customers; (5) special needs residential customers (e.g., low income customers and customers with disabilities); (6) commercial customers; (7) renewable energy representatives; (8) the Electric Reliability Council of Texas (ERCOT); (9) Energy Services Companies; (10) Investor Owned Utility (IOU) affiliated generation companies (within ERCOT); (11) IOU transmission and distribution companies (within ERCOT); (12) IOU affiliated Retail Electrical Providers (REPs) (within ERCOT); (13) IOU affiliated generation companies (non-ERCOT); (14) IOU transmission and distribution companies (Non-ERCOT); (15) IOU affiliated REPs (Non-ERCOT); (16) Independent Power Producers; (17) large municipal electric utility systems; (18) small municipal electric utility systems; (19) the General Land Office; (20) certain state agencies; (21) cities (in capacities other than as municipal electric utility systems); (22) non-affiliated REPs; and (23) the commission staff.

Proposed negotiating committee. The commission proposes that the negotiating committee be made up of one representative for each of the above-mentioned stakeholder groups, with the following exceptions: two representatives for non-affiliated REPs and two representatives for independent power producers.

Request for comment. The commission requests comment on its proposal to engage in negotiated rulemaking for this rule. To aid parties in developing their comments, a copy of the Convening Report has been filed in the commission's Central Records Division under Project Number 21407. The Report also is available on the commission's Internet site at http://www.puc.state.tx.us/electric/projects/21407/21407.cfm. The commission also requests comment on the proposed negotiating committee structure and the membership of the negotiating committee. This comment process will serve as the procedure for applying for membership to the negotiating committee. Parties who will be significantly affected by the proposed rule are requested to align themselves with stakeholders having similar interests, and to nominate a representative to negotiate on behalf of the stakeholder group. The commission will make the final selection of members of the negotiating committee. Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 within 15 days of the date of publication of this notice. All responses should reference Project Number 21407.

Notice of Team Meeting. The commission staff project team will host a meeting with interested parties at the commission's offices on Monday, February 7, 2000, at 9:00 a.m. to discuss the negotiated rulemaking process and makeup of the negotiating committee.

Questions concerning this notice should be referred to Suzanne L. Bertin, Director, Office of Policy Development, (512) 936-7244. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200000213
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2000

Public Notices of Interconnection Agreements

On January 12, 2000, A-CBT System, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21976. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21976. 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 February 10, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the 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 21976.

TRD-200000231
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 14, 2000

On January 12, 2000, Southwestern Bell Telephone Company and Starway Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21977. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21977. 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 February 10, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the 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 21977.

TRD-200000232
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 14, 2000

On January 12, 2000, Digi Comm Communications, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21978. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21978. 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 February 10, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the 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 21978.

TRD-200000233
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 14, 2000

On January 13, 2000, MFS Communications Company, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21980. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21980. 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 February 9, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the 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 21980.

TRD-200000333
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

Public Notices of Workshops Regarding Building Access Pursuant to PURA §§54.259, 54.260, and 54.261

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss the rulemaking regarding building access pursuant to PURA §§54.259, 54.260, and 54.261 on Monday, February 7, 2000, at 10:00 a.m. at the Greater Dallas Chamber of Commerce, Renaissance Tower, Suite 2000, 1201 Elm Street, Dallas, Texas, 75270. Project Number 21400, *Rulemaking Regarding Building Access* pursuant to the Public Utility Regulatory Act §§54.259, 54.260, and 54.261, Texas Utilities Code Annotated §§11.001-64.158 (Vernon 1998 & Supp. 1999) (PURA), has been established for this proceeding.

At the December 16, 1999 open meeting the commission directed Staff to conduct additional workshops outside of Austin with interested parties to discuss Staff's draft rule regarding building access. This workshop is designed to facilitate involvement by interested parties that otherwise may have little, if any, participation in this Project.

The above referenced draft rule is available in Central Records and on the commission web site, under Project Number 21400, at http://www.puc.state.tx.us/rules/rulemake/21400/21400.cfm. The draft rules will assist in structuring the workshop discussion. An agenda for the workshop will also be available in Central Records and on the commission web site, under Project Number 21400, no later than January 31, 2000.

Questions concerning the workshop or this notice should be referred to Melanie Malone, Office of Policy Development, (512) 936-7247. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200000335
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss the rulemaking regarding building access pursuant to PURA §§54.259, 54.260, and 54.261 on Friday, February 11, 2000, at 10:00 a.m. at the Greater Houston Partnership, 1200 Smith, Suite 700, Houston, Texas 77002. Project Number 21400, *Rulemaking Regarding Building Access*, pursuant to the Public Utility Regulatory Act §§54.259, 54.260, and 54.261, Texas Utilities Code Annotated §§11.001-64.158 (Vernon 1998 & Supp. 1999) (PURA), has been established for this proceeding.

At the December 16, 1999 open meeting the commission directed Staff to conduct additional workshops outside of Austin with interested parties to discuss Staff's draft rule regarding building access. This workshop is designed to facilitate involvement by interested parties that otherwise may have little, if any, participation in this Project.

The above referenced draft rule is available in Central Records and on the commission web site, under Project Number 21400, at http://www.puc.state.tx.us/rule/rulemake/21400/21400.cfm. The draft rules will assist in structuring the workshop discussion. An agenda for the workshop will also be available in Central Records and on the commission web site, under Project Number 21400, no later than January 31, 2000.

Questions concerning the workshop or this notice should be referred to Melanie Malone, Office of Policy Development, (512) 936-7247. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200000334
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2000

Request for Proposals to Conduct an Audit of the Texas Universal Service Fund, for Fiscal Years 1999, 2000 and 2001

The Public Utility Commission of Texas (commission) is issuing a Request for Proposals (RFP) to conduct an audit of the Texas Universal Service Fund (TUSF), for fiscal years 1999, 2000 and 2001. This audit is being undertaken pursuant to the commission's statutory responsibility to administer the fund. Further information regarding the TUSF may be found in the Texas Utilities Code Chapter 56 and the commission's Substantive Rules §26.401 and §26.420 (16 Texas Administrative Code §26.401 and §26.420). The commission will use the audit to ensure that the TUSF is being managed in compliance with the relevant rules and procedures (see Audit Objectives and Scope, Sections 2.1 and 2.2 of the RFP) by the

contracted administrator, the National Exchange Carrier Association (NECA).

The offices of NECA and the records to be audited are located in Whippany, New Jersey. Administrative costs of the program are primarily generated by agencies of the State of Texas, located in Austin, Texas.

To be considered, the proposal must arrive at the commission on or before 3:00 p.m., C.S.T., Monday, February 28, 2000. The due date for the final Audit Report will be approximately three months from the beginning date of the study, which will begin approximately in late April or early May of 2000.

Bidders must provide statements affirming the following: The auditor is properly licensed for public practice as a certified public accountant; the auditor meets the independence requirements of the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, 1981 revision, published by the U.S. General Accounting Office; and the auditor does not have a record of substandard audit work.

Eligible Proposers. The Public Utility Commission is requesting proposals from entities with any relevant audit experience in the telecommunications industry. Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.100, are encouraged to submit a proposal.

Project Description. The Public Utility Commission of Texas requests proposals to conduct a financial audit of the Texas Universal Service Fund for each of the fiscal years ending August 31, 1999, 2000 and 2001. The audit shall cover all operations of NECA with respect to its administration of the Texas Universal Service Fund.

Selection Criteria. A proposal will be selected based on the ability of the proposer to provide the best value in carrying out requirements identified in the RFP. Evaluation criteria will include, but is not limited to, evidence of ability to manage project; experience of the organization; qualifications of assigned personnel; evidence of successful projects of similar nature; the clarity of the description of details for carrying out project; the total estimated fee; and whether the proposed project time lines are logical and appropriate. A complete description of selection criteria is set forth in the RFP. Proposers will be notified in writing of the selection.

Requesting the Proposal. A complete copy of the RFP for a financial audit of the Texas Universal Service Fund for the fiscal years 1999, 2000 and 2001, may be obtained by writing Susan K. Durso, General Counsel, Public Utility Commission, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or e-mail susan.durso@puc.state.tx.us, or faxing to (512) 936-7003. The RFP will be available Friday, January 28, 2000 and will be mailed on that date to all parties who have requested a copy and to a list of prospective bidders prepared by commission staff. You may also download the RFP from the Texas Department of Economic Development website, www.marketplace.state.tx.us or from the commission website, www.puc.state.tx.us, under "What's New".

Deadline for Receipt of Proposals. Proposals must be received no later than 3:00 p.m. on Monday, February 28, 2000, in Central Records, Room G-113, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701. Proposals received in Central Records after 3:00 p.m. on Monday, February 28, 2000 will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday. Regardless of the method of submission of the proposal, the commission will rely solely on the time/date stamp of Central Records in establishing the time and date of receipt. Proposals should be filed under Project Number 21991.

TRD-200000316
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2000

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San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposal

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified Internet Web Page design firms to assist the MPO in creating, implementing and (possibly) maintaining an effective MPO web page site.

A copy of the Request for Proposal (RFP) may be requested by calling Scott Ericksen, the MPO Public Involvement Coordinator, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 noon (CST), Tuesday, February 22, 2000 to the MPO office at:

VIA Metro Center

1021 San Pedro, Suite 2200

San Antonio, Texas 78212

The contract award will be made by the MPO's Transportation Steering Committee based on the recommendation of the Selection and Oversight Committee (SOC). The SOC will review the proposals based on the evaluation criteria listed in the RFP. Funding for this project in the amount of $25,000 is contingent upon the availability of Federal transportation planning funds.

TRD-200000329
Janet A. Kennison
Administrator
San Antonio-Bexar County Metropolitan Planning Organization
Filed: January 19, 2000

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Texas Turnpike Authority Division of the Texas Department of Transportation

Notice of Availability

The Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation hereby issues this notice to advise the public that a Draft Environmental Impact Statement (DEIS) has been prepared and approved for proposed State Highway 130. State Highway 130 is a proposed controlled access, multimodal transportation facility that would extend from IH 35 north of Georgetown, in Williamson County, through Travis and Caldwell Counties, to IH 10 near Seguin, in Guadalupe County. The proposed facility would be located generally parallel to and east of Interstate 35 and the urban areas of Austin, San Marcos, New Braunfels and San Antonio. The total length of the proposed facility is approximately 91 miles.

The proposed State Highway 130 project is being developed as a toll road candidate. Accordingly, in conjunction with other project development related activities, TTA is conducting a study to evaluate the feasibility of developing the proposed facility as a toll road and

financing it, in whole or in part, through the issuance of revenue bonds.

The State Highway 130 DEIS is available for review at the office of the TTA, 125 East 11th Street, Austin, Texas 78701. Copies of the DEIS may be purchased from TTA for the actual cost of reproduction ($117.93).

Copies of the DEIS have also been filed with and are available for public review at the Georgetown Public Library, Round Rock Public Library, Pflugerville Public Library, Austin Public Library/ Austin History Center, Lockhart Public Library, and Seguin Public Library. For additional information contact Stacey Benningfield, Environmental Manager, Texas Turnpike Authority Division, at the address listed in this notice or by telephone at (512) 936-0983.

TRD-200000353
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: January 19, 2000

Notice of Intent/#86-RFP5005

Pursuant to the authority granted under the Texas Transportation Code, Chapter 361, the Texas Turnpike Authority Division of the Texas Department of Transportation ("TTA") has promulgated and adopted rules located at 43 Texas Administrative Code, §54.1, et seq., under the caption of "Policy, Rules and Procedures for Private Involvement in Authority Projects" (the "Rules"). These Rules generally address private involvement in TTA projects and the solicitation of proposals for such projects. Section 54.4 of the Rules governs the submission and processing of solicited proposals, and provides for publication of notice that the TTA is seeking proposals for development of a turnpike project with private involvement.

This notice represents the first step in the process of soliciting private involvement in the development of the SH 130 Turnpike Project (the "Project"). Through this notice the TTA is seeking Letters of Request ("LOR") from parties interested in receiving a request for qualifications ("RFQ"). The TTA anticipates issuing the RFQ, receiving and analyzing RFQ responses, developing a short-list of proposing consortia, and issuing a request for proposals ("RFP") to that short-listed group. After review and a best value evaluation of the RFP responses, the TTA may negotiate and enter into an exclusive development agreement for development of the Project.

Description of the Project. The Project is an approximately 91-mile controlled access north-south highway located in Williamson, Travis, Caldwell and Guadalupe Counties, Texas. The Project extends from Interstate Highway 35 at State Highway 195, north of Georgetown in Williamson County, Texas, to Interstate 10, near Seguin, in Guadalupe County, Texas. The Project will be located generally parallel to, and east of, Interstate Highway 35 through Georgetown, Round Rock, Pflugerville, Austin, Lockhart and Seguin, and will provide an additional north-south travel corridor affecting the aforementioned communities as well as San Marcos, New Braunfels and San Antonio.

Release of RFQ and Presubmittal Workshop. The TTA currently anticipates that the RFQ will be available on or about February 17, 2000. Copies of the RFQ will be mailed or provided on or about that date to those parties who have submitted a LOR, and will be mailed or provided to others as LORs are received. The TTA is under no obligation to mail RFQs to parties submitting LORs after the deadline stated in this notice. Appendices and exhibits to the RFQ will be contained in a separate volume which will be available for review at the TTA offices or which can be purchased by a requestor at the TTA's cost of reproduction. Responses to the RFQ will be due on a date to be specified within the RFQ. A presubmittal/workshop will be held on March 9, 2000, which will be prior to the RFQ response deadline. Additional details will be contained in the RFQ.

Deadline for Letters of Request. A LOR notifying the TTA of a party's request for a copy of the RFQ will be accepted by fax at (512) 936-0970 (Attn: Crystal Hansen) or, by mail, hand-delivery or overnight courier at: Texas Turnpike Authority Division of the Texas Department of Transportation, 125 East 11th Street, 5th Floor, Austin, Texas 78701 Attention: Crystal Hansen. LORs must identify a contact person and an address to which the RFQ should be sent. LORs will be received until 5:00 p.m. C.S.T. on February 29, 2000.

TRD-200000365
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: January 19, 2000

Texas Water Development Board

Request for Proposals for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of proposals leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program.

Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the flood protection planning grant program is for the State to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to $600,000 has been initially authorized for FY 2000 assistance for flood protection planning from the Board's research and planning fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable proposals are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies on recycled paper of a complete flood protection planning grant application including the required at-

tachments must be filed with the Board prior to 5:00 p.m., March 30, 2000. Proposals can be directed either in person to Ms. Phyllis Thomas, Room 445, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants must contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Ms. Phyllis Thomas at the preceding mailing address, or by email at phyllis@TWDB.state.tx.us or by calling (512) 463-7926. This information can also be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-200000354
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: January 19, 2000

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