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.

Request for Opinions

RQ-0318-JC

Mr. Jim Nelson, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Re: Whether a school trustee may serve as a volunteer teacher in her district (Request No. 0318-JC)

Briefs requested by January 7, 2001

RQ-0319-JC

Mr. Charles W. Heald, P.E. Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas, 78701-2483

Re: Whether state highway revenues may be invested in a toll road project without a requirement for repayment (Request No. 0319-JC)

Briefs requested by January 7, 2001

RQ-0320-JC

Mr. Jose Montemayor, Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78714-9104

Re: Whether a bank may notify its customer that his records have been subpoenaed (Request No. 0320-JC)

Briefs requested by January 7, 2001

RQ-0321-JC

Ms. Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752

Re: Application of the Professional Services Procurement Act to contracts involving land surveyors (Request No. 0321-JC)

Briefs requested by January 8, 2001

RQ-0322-JC

The Honorable Michael P. Fleming, Harris County Attorney, 1019 Congress, 15th Floor Houston, Texas 77002-1700

Re: Use of an omnibus resolution to direct a public resale of tax foreclosed property (Request No. 0322-JC)

Briefs requested by January 8, 2001

TRD-200008796
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: December 18, 2000
For further information, please call 512- 463-2110

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL
SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates in Pest Management Zone 6 (Zone 6). A prior emergency amendment filed on November 30, 2000, and scheduled to be published in the *Texas Register* on December 15, extended the cotton destruction date for Zone 6, to December 14, 2000, and also extended the destruction deadline for Zone 7 to December 30. That emergency amendment is now being amended to extend the cotton destruction deadline, for Zone 6 only, through January 13, 2001.

The department is acting on behalf of cotton farmers in Zone 6, which includes Bastrop, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis, and Williamson counties. The department believes that extending the cotton destruction date for these counties is both necessary and appropriate. This extension is effective only for the 2000 crop year.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction date for these counties. The unusually wet weather prior to the cotton destruction period followed by cool temperatures that has minimized drying has prevented many cotton producers from destroying cotton by the December 14 deadline. A failure to act to further extend the cotton destruction deadline could create a significant economic loss to Texas cotton producers and the state's economy.

The emergency amendment to §20.22(a) will extend the date for cotton stalk destruction in Zone 6 through January 13, 2001.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:
Figure: 4 TAC §20.22(a)

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

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

TRD-200008688
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 15, 2000
Expiration date: January 15, 2001
For further information, please call: (512) 463-4075

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

1 TAC §155.45

The State Office of Administrative Hearings proposes amendments to §155.45 concerning the procedure for requesting participation by telephone or videoconferencing in hearings before the Office. While the Office does not yet have the ability to videoconference, reference to videoconferencing has been retained in the rule, so that a process will be in place when videoconferencing is effectuated. The proposed amendments accomplish a number goals derived from the Office's experience with the current rule for almost three years. First, the four factors movants must address under the current rule are eliminated because the overwhelming majority of such motions are uncontested. Second, the sentence following the four factors in the current rule is eliminated because it is redundant. Third, the "good cause" requirement in the current rule is replaced by a less burdensome requirement that movants state the reasons for the request. Finally, the amendments provide that uncontested requests will be granted without the necessity of issuing orders, while preserving the ALJ's discretion to deny such requests.

Paul Elliott, Director of Hearings, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Paul Elliott, Director of Hearings, also has determined that for the first five-year period the amended rule is in effect the public benefit anticipated as a result of the rule will be to ensure more streamlined procedures for participants in contested case hearings who seek participation by telephone or videoconferencing. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to individuals who are required to comply with the proposed rule.

Written comments must be submitted within 30 days after publication of the proposed amendments in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by facsimile to (512) 936-0770, or by e-Mail at debra.anderson@soah.state.tx.us.

The amended rule is proposed under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires adoption of hearings procedural rules, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendments affect Government Code, Chapters 2001 and 2003.

§155.45. Participation by Telephone.

(a) [~~Upon timely motion containing the pertinent telephone number(s), a~~]A party may request to appear by telephone or videoconferencing or to present the testimony of a witness by such methods[~~.~~], upon timely motion stating the reason(s) for the request and containing the pertinent telephone number(s). [~~The party requesting to appear or present testimony by telephone or videoconferencing has the burden to show that good cause exists for the granting of the request.~~]A timely motion that is unopposed will be deemed granted without the necessity of an order, unless denied by ALJ order.[~~Unless all parties agree to the request, the requesting party must demonstrate:~~]

[~~(1) how witnesses will be separated;~~]

[~~(2) how coaching of witnesses will be prevented;~~]

[~~(3) why observing a witness's demeanor is not essential to the case; and,~~]

[~~(4) how the witness's identity will be verified. If the request is granted, a party may appear or a witness may testify by telephone or videoconferencing if each participant in the hearing has an opportunity to participate in and hear the proceeding.~~]

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

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

Filed with the Office of the Secretary of State, on December 15, 2000.

TRD-200008706
Paul Elliott
Director of Hearings
State Office of Administrative Hearings
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 475-4931

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES

SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

4 TAC §19.101

The Texas Department of Agriculture (the Department) proposes an amendment to §19.101(b) concerning red imported fire ant quarantine. The amendment is proposed to add Mills County to the areas listed as quarantined.

During March 2000, a detection survey was conducted in Mills County for the presence of red imported fire ant. The results indicated widespread infestation of the pest. The proposed amendment adds Mills County to the list of quarantined areas, thereby restricting the movement of quarantined articles when transported from Mills County to a free area.

Dr. Awinash Bhatkar, coordinator for plant quality programs, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the rule. There will be no fiscal implication for local government as a result of enforcing or administering the rule

Dr. Bhatkar also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to mitigate the risk of introduction of red imported fire ant from infested areas to free areas of Texas. There will be no anticipated costs to small businesses, except that nursery stock shipped to the locations outside the quarantined area must be treated for fire ants. Hay stored in direct contact with soil will be prohibited entry into a free area. An analysis of registered nurseries in Mills County indicates that there are no shipments of nursery stock from Mills County to locations outside of the quarantined area.

Comments on the proposal may be submitted to Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, and Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code, §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The Texas Agriculture Code, Chapter 71 is affected by the proposal.

§19.101. Quarantined Areas

(a) (No change.)

(b) In addition to the areas described in subsection (a) of this section, Brooks, Brown, Cameron, Delta, Dimmit, Duval, Ector, Hidalgo, Jack, Jones, Kenedy, Kimble, Kinney, Lamar, La Salle, Mason, Maverick, McCulloch, Midland, Mills, Montague, Palo Pinto, Red River, San Saba, Stephens, Val Verde, Webb, Willacy, Young, and Zavala counties in Texas are quarantined.

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 December 18, 2000.

TRD-200008733
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 463-4075

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §35.4

The Texas Animal Health Commission (commission) proposes amendments to Chapter 35 concerning the Eradication of Brucellosis in Cattle. This proposal amends §35.4 which provides for entry, movement, and change of ownership requirements.

The rule is being proposed to clarify that the vaccination requirements for cattle entering Texas from other states apply to non-vaccinated female cows. Correspondingly, the rule specifically exempts female cattle from other free states as well as specifies the vaccination requirements for female cattle from other than free states. The reason for the change is to recognize and accept similar entry requirements for other states.

Bruce Hammond, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. The agency currently administers the program, and the proposed changes will not create any additional costs to the agency to administer the program.

Mr. Hammond 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 clear and concise regulations by conforming to other states' entry requirements.

In accordance with Government Code, §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendment may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, Chapter 163 of the Agriculture Code provides in §163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing.

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

§35.4. Entry, Movement, and Change of Ownership.

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) Permit requirement. Sexually intact cattle must obtain an "E" permit from the Texas Animal Health Commission prior to moving to a destination in Texas other than direct to slaughter, quarantined feedlot or designated pens. The permit number must be entered on the Importation Certificate (VS Form 17-30) and a copy of that certificate forwarded to the Commission's office in Austin immediately following issuance.

(2) Branding requirements.

(A) Sexually intact cattle destined for a quarantined feedlot or designated pen must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen.

(B) Spayed heifers shall be identified by branding prior to entry as specified in §35.1 of this title (relating to Definitions).

(3) Vaccination requirement. Nonvaccinated sexually intact female cattle between four and 12 months of age entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be placed under quarantine on arrival and officially brucellosis vaccinated as outlined in §35.2(m) of this title (relating to General Requirements). The quarantine may be released after meeting test requirements.

(4) Testing requirements for bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. Bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine and retested 120 to 180 days after arrival. The quarantine will be released following a negative brucellosis test.

(5) Testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. All sexually intact female cattle entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine on arrival and retested for brucellosis in no less than 120 days nor more than 180 days after arrival for release of the quarantine; however, if the sexually intact female cattle have not had their first calf prior to the 120 to 180 day post entry test, the quarantine will not be released until a second negative test for brucellosis is conducted no sooner than 30 days after the animal has had its first calf and the second negative test has been confirmed.

(6) Testing requirements for sexually intact cattle moving directly to a quarantined feedlot or designated pen. All sexually intact cattle destined for feeding for slaughter in a quarantined feedlot or designated pen must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen, and may move to the quarantined feedlot or designated pen only in sealed trucks with a VS 1-27 permit issued by a representative of TAHC or USDA personnel.

(7) Responsibility for costs. All costs of calfhood vaccination, testing, and retesting shall be borne by the owner.

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All nonvaccinated female cattle between four and 12 months of age shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements are:

(A) Female cattle entering for purposes of shows, fairs and exhibitions and returning to their original location.

(B) Female cattle moving within commuter herds.

(C) Spayed heifers.

(D) Female cattle from free states

~~[(D) Nonvaccinated female cattle between four and 12 months of age consigned from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, feedlot for feeding for slaughter or direct to slaughter. These cattle may be vaccinated at the market at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. Cattle from other than Class Free states entering for feeding for slaughter shall also be "F"-branded high on tail-head prior to or upon entering the feedlot.]~~

~~[(E) Nonvaccinated female cattle between four and 12 months of age consigned from an out-of-state livestock market to a Texas livestock market, feedlot for feeding for slaughter or direct to slaughter will be accompanied by an "S" permit or certificate of veterinary inspection. Individual identification is not required. These cattle may be vaccinated at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. Cattle from other than Class Free states entering for feeding for slaughter shall also be "F"-branded high on tail-head prior to or upon entering the feedlot.]~~

~~[(F) Nonvaccinated female cattle between four and 12 months of age moving may enter on a calfhood vaccination permit and must be vaccinated at no expense to the state within 14 days after arriving at the premise of destination.]~~

(E) Female cattle from other than free states shall be vaccinated as follows:

(i) Entering from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, a feedlot for feeding for slaughter, or direct to slaughter. These cattle may be vaccinated at the market at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market, then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. If consigned to a feedlot, they shall also be "F" branded high on the tail-head prior to or upon entering the feedlot.

(ii) Entering from an out-of-state livestock market to a Texas livestock market, a feedlot for feeding for slaughter or direct to slaughter will be accompanied by an "S" brand permit or certificate of veterinary inspection. Individual identification is not required. These cattle may be vaccinated at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market, then they shall be consigned from the market only to a feedlot for feeding for slaughter, or direct to slaughter, and accompanied by an "S" permit. If consigned to a feedlot, they shall also be "F" branded high on the tail-head prior to or upon entering the feedlot.

(iii) Entering from any out-of-state location and destined for a Texas premise may enter on a calfhood vaccination permit and must be vaccinated at no expense to the state within 14 days after arriving at the premise of destination.

(2) Testing. All non-quarantined cattle that are parturient or post parturient or that are 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers entering Texas:

(A) shall be moved directly from:

(i) a class free state or area; or

(ii) a certified free herd; or

(iii) a commuter herd as defined in these sections; or

(B) Cattle not from class free states or areas, certified brucellosis free herds, or commuter herds shall be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter, accompanied with an "S" permit, or moved directly from a farm of origin to a USDA specifically approved livestock market to be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter accompanied with an "S" permit; or

(C) rodeo bulls participating in a recognized and organized performance group may be moved without meeting other testing requirements provided:

(i) the bulls have been subjected to an official negative test for brucellosis within the previous 12 months; and

(ii) each bull is individually identified; and

(iii) there is no change of ownership; and

(iv) they are accompanied with an "E" permit; or

(D) shall be tested negative one or more times as described in this subparagraph:

(i) cattle from a Class "A" state or area shall:

(I) be tested negative within 30 days prior to entry; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test prior to sale;

(ii) cattle from a class "B" state or area shall:

(I) be tested negative within 30 days prior to entry, accompanied with an "E" permit, and held under quarantine for a negative retest 45-120 days at a farm, ranch, or feedlot; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test and held under quarantine for a negative retest 45-120 days after sale to a farm, ranch, or feedlot.

(c) Change of ownership within Texas.

(1) Vaccination. It is recommended that all female cattle between four and 12 months of age being purchased or sold for use in grazing, breeding, or dairying operations be officially vaccinated.

(2) Testing. All cattle that are parturient or post parturient or 18 months of age and older except steers and spayed heifers changing ownership within Texas shall:

(A) originate from a certified free herd; or

(B) be tested negative by the seller within 30 days prior to sale; or

(C) consigned to a livestock market and tested negative prior to sale; or

(D) consigned to a slaughter establishment for testing or blood collection.

(d) Movement to Mexico. All cattle 18 months of age and older except steers and spayed heifers must be tested negative within 30 days prior to export to Mexico for slaughter. Steers, spayed heifers, and feedlot finished bulls and heifers are not required to be tested prior to export. Test results must be recorded on the Certificate of Veterinary Inspection.

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 December 18, 2000.

TRD-200008727
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 719-0714

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER D. LICENSE

7 TAC §§1.401, 1.403, 1.404

The Finance Commission of Texas (the commission) proposes amendments to §§1.401, 1.403, and 1.404 pertaining to the technical correction of legal citations as a result of the recodification by the 76th Legislature of the *Texas Credit Code*, Texas Civil Statutes, Article 5069, into the Texas Finance Code.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the amendments as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the amendments.

Ms. Pettijohn also has determined that for each year of the first five-year period the amendments as proposed will be in effect, the public benefit anticipated as result of the amendments are the removal and replacement of incorrect citation with correct and appropriate citations to the statute. These is no anticipated cost to persons who are required to comply with the amendment as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed amendments may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected Chapter 342, Texas Finance Code.

§1.401. Branch Networks.

For purposes of §342.151(b), Texas Finance Code[~~Article 5069-3A.251(b),~~] an authorized lender with multiple licensed offices is authorized to make, negotiate, arrange, and collect loans from any of its licensed locations. Any action relating to a single account may occur at different licensed locations as long as every action is made by a licensed branch operated by the same authorized lender.

§1.403. Notice of Delinquency in Payment of Annual Fee.

For purposes of §342.155, Texas Finance Code [~~Article 5069-3A.255,~~] notice of delinquency in the payment of an annual fee is given upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service.

§1.404. Effect of Revocation, Suspension, or Surrender of License.

Revocation, suspension, or surrender of a consumer loan license does not affect a preexisting contract between a lender and a borrower, except that no more than 10% interest may be charged or received by the lender following the revocation, suspension, or surrender of its license. Alternatively, a lender whose license is revoked or suspended may transfer or sell its accounts to an authorized lender who may continue to charge or receive the contracted rate of interest within the authority of §342.001 et seq., Texas Finance Code [~~Article 5069-3A.001 et seq~~].

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

Filed with the Office of the Secretary of State, on December 15, 2000.

TRD-200008709
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 936-7640

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CHAPTER 4. CURRENCY EXCHANGE

7 TAC §4.6

The Texas Finance Commission (the commission) proposes to amend §4.6 concerning exemptions from currency exchange, transportation, and transmission licensing requirements. The proposed amendment eliminates provisions rendered redundant by enactments of the 76th Legislature which placed equivalent provisions in Chapter 153 of the Finance Code.

The proposed amendment neither adds nor eliminates a regulatory requirement. Rather, it eliminates rule provisions that are now addressed by statute because of amendments to Chapter 153, Finance Code, enacted by the 76th Legislature in 1999.

The reference in subsection (a) to §153.003 is eliminated. Section 153.003 was repealed by Act of May 29, 1999, 76th Legislature, Regular Session, chapter 356, §14, 1999 Texas General Laws 1338, 1341. The substance of repealed §153.003 was added to §153.117 as subsection (a)(5). *Id.* at 1339.

Subsection (d), exempting certain armored car and courier services from the licensing requirements of Finance Code, chapter 153, is eliminated because the 76th Legislature amended Finance Code, §153.117(e) to include the exemption. *Id.* at 1339-1340.

Subsection (e)(1), clarifying that an ambiguously worded codification did not change the prior substantive law exempting certain license holders pursuant to Finance Code, Chapter 152, from the licensing requirements of Chapter 153 is eliminated because the statutory language was amended by the 76th Legislature to remove the ambiguity. *Id.* at 1339.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that the section is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the section as amended.

Ms. Newberg also has determined that, for each of the first five years the section as amended is in effect, the public benefit anticipated as a result of the adoption of this section will be reduced uncertainty concerning the applicability of currency exchange licensing requirements caused by rules with obsolete references and provisions which merely duplicate a statutory provision. No economic cost will be incurred by a person required to comply with this section, and there will be no deleterious effect on small businesses.

Comments on the proposed amendment may be submitted to Loren E. Svor, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to loren.svor@banking.state.tx.us.

The amendment is proposed pursuant to rule-making authority under Finance Code, §152.102, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 152.

Finance Code, Chapter 152, is affected by the proposed amendment.

§4.6. Exemptions.

(a) General. The exemptions to licensing under the Finance Code, [~~§153.003 and~~] §153.117(a), are self-executing and require no action by the banking commissioner or the Department of Banking. The exemption available under the Finance Code, §153.117(b), requires that an application first be filed with the banking commissioner. When considering an application under the Finance Code, §153.117(b), the banking commissioner shall grant the exemption if the banking commissioner determines that the person is eligible for the exemption.

(b) (No change.)

(c) (No change.)

~~[(d) Armored car and courier services. An armored car service or other courier service, engaged in the business of transporting currency or other items for deposit or payment, must be registered and licensed under both Texas Civil Statutes, Article 4413(29bb), and Texas Civil Statutes, Article 6675c, to be exempt from the licensing requirement of the Act applicable to currency transportation. This exemption does not authorize an armored car service or other courier service to engage in the business of currency exchange or transmission without a license issued under the Finance Code, Chapter 153.]~~

(d) [~~(e)~~] Check sellers.

~~[(1) Former Texas Civil Statutes, Article 350, §3(b), provided that, "A person holding a license under the Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes) is not required to be licensed under this article but is required to comply with the other provisions of this article to the extent the person engages in currency exchange or currency transmission transactions." Effective September 1, 1997, Texas Civil Statutes, Article 350, §3(b), was codified in Finance Code, §153.117(a)(2). The language contained in Finance Code, §153.117(a)(2), is ambiguous and differs from that found in former Texas Civil Statutes, Article 350, §3(b). Pursuant to Acts 1997, 75th Legislature, Chapter 1008, §6, no substantive change in law was intended by the recodification. The purpose of this subsection is to clarify that check sellers licensed under Finance Code, Chapter 152, are exempt from the licensing requirements of Finance Code, Chapter 153, but are required to comply with the other provisions of Finance Code, Chapter 153, to the extent the licensed check sellers engage in currency exchange or currency transmission transactions.]~~

[~~(2)~~] Check sellers licensed under Finance Code, Chapter 152, which engage in currency exchange or currency transmission transactions, must comply with the net worth requirements under Finance Code, §152.203(a)(1), or Finance Code, §153.102(d)(5), whichever is greater. Check sellers licensed under Finance Code, Chapter 152, which engage in currency exchange or currency transmission transactions, must also post a bond or deposit in lieu of bond in accordance with Finance Code, §152.206, or Finance Code, §153.109, §153.110, and §4.7 of this chapter (relating to bond requirements and deposits in lieu of bond), whichever is greater.

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 December 15, 2000.

TRD-200008708
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Proposed date of adoption: February 23, 2001
For further information, please call: (512) 475-1300

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

CHAPTER 195. MEMORANDA OF UNDERSTANDING

10 TAC §§195.1 - 195.12

The Texas Department of Economic Development proposes new Chapter 195. §§195.1-195.12, concerning Memoranda of Understanding with the Department of Agriculture, the Texas Workforce Commission, the Texas General Land Office, the Texas Department of Housing and Community Affairs, the Comptroller of Public Accounts, the Texas Department of Transportation and the Texas Parks and Wildlife Department, the Texas Natural Resource Conservation Commission, the Texas Historical Commission, the Texas Commission on the Arts, the General Services Commission, the Texas Alternative Fuels Council, the Texas Agricultural Finance Authority, and the Health and Human Services Commission. Texas Government Code, §481.028, requires that the department enter into a memoranda of understanding with other state agencies involved in economic development to cooperate in planning and budgeting. Texas Government Code, §481.028, further directs that the memoranda of understanding be adopted as rules of the agencies. Article 7 of House Bill 2641, 76th Legislature provided that the commissioner of health and human services and the governing board of the department enter into a memorandum of understanding as necessary to implement the transfer of the administration of the Empowerment Zone and Enterprise Community grant program to the department.

Robin Abbott, General Counsel, has determined that for each year of the first five-year period the section is in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed rules. The department cannot quantify the exact cost to the state which will be associated with increased cooperation in planning and budgeting since it depends upon the extent of specific agreements between the agencies. The department anticipates the costs of the proposed rules will be more than offset by the public benefit that will occur from the increased cooperation between agencies with responsibility for economic development in Texas.

Ms. Abbott has determined that there will be no effect on local government as a result of enforcing the proposed rules. She has also determined that there will be no significant economic impact on small or micro-businesses, local economies or overall employment as a result of administering the proposed rules.

Ms. Abbott has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as

a result of enforcing the rules will be the increased coordination and communication between the department and other agencies involved with economic development with regard to program planning and budgeting. Reduced costs may result from the increased cooperation and communication since duplication of programs and services can be avoided. No economic costs are anticipated to persons who are required to comply with the proposed rules.

Written comments on the proposed rules may be hand-delivered to Mary Herrick, Legal Assistant, Texas Department of Economic Development, 1700 North Congress, Suite 130, Austin, Texas, 78701, mailed to P.O. Box 12728, Austin, Texas, 78711-2728, or faxed to (512) 936-0415, within 30 days of publication.

The rules are proposed under the authority of Texas Government Code, §481-0044(a) which gives the department the authority to adopt rules to carry out its responsibilities; Texas Government Code, §481.028(d) which directs that the Memoranda of Understanding be adopted as rules of the agencies; and Texas Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Government Code, §481.028 is affected by the proposed rules.

§195.1. Memorandum of Understanding with the Texas Department of Agriculture.

(a) Purpose. HB1 mandates that the Texas Department of Agriculture (TDA) and the Texas Department of Economic Development (TDED) execute a memorandum of understanding for the purpose of maintaining a statewide economic development program for rural areas during the 2000-01 biennium, and to reflect the cooperative agreement by the two agencies regarding implementation of the Agritech Corridor Partnership.

(b) Mutual Responsibilities. To efficiently serve the citizens of Texas and promote economic growth in the rural areas of the state, the agencies involved in this memorandum agree to cooperate in the following areas:

(1) Commissioner of Agriculture will be the lead spokesperson for rural development programs.

(2) TDA and TDED will jointly report all program related performance measures, as required by HB1.

(3) TDA and TDED will jointly develop and maintain a database to track economic development activities of the two agencies, including recording of leads, contacts, and phone calls. The database will be accessible by both agencies, including field offices.

(4) TDA and TDED will both modify their web pages to support each other's efforts and indicate their cooperative working relationship.

(5) TDA and TDED will jointly operate a toll free telephone line for the dissemination of information regarding rural development opportunities. Phone calls will be logged and reported to personnel at both agencies. All promotion of the phone number will identify it as a joint effort.

(6) TDA and TDED will designate one person within each agency to serve as the point of contact for each project.

(7) TDA and TDED will cross-train staffs of both agencies regarding each other's programs where appropriate, and will cooperate in promoting the programs of both agencies that pertain to rural economic development.

(8) TDA and TDED will create a basic information fact sheet on Texas rural development, including both agencies' products.

(9) TDA and TDED may cooperate in coordinating meetings with public and private entities to disseminate information beneficial to rural areas.

(10) TDA and TDED will work cooperatively on trade missions nationally and internationally-coordinating the use of staff and resources by mutual agreement for appropriate projects.

(11) TDA and TDED will report progress to the Commissioner of Agriculture, the TDED Governing Board and the Legislative Rural Caucus and conduct regular meetings to assess progress of rural development initiatives and projects.

(12) TDA will employ economic development specialists in field offices in the state to identify potential opportunities in rural areas and assist businesses and communities to maximize in their economic development efforts.

(13) TDED will develop and maintain an electronic and printed rural resource guide and provide research assistance where appropriate. TDA will provide input where appropriate.

(14) TDED will coordinate all non-rural (urban), non-agricultural business development, marketing and finance activities. TDED will engage the assistance of TDA where applicable. Under the direction of the Commissioner of Agriculture, TDA will be the lead agency on rural development projects. Where appropriate, TDED and TDA will be partnering on these projects and coordinating together. The shared database will ensure that both agencies are coordinating the actions for the maximum return on their efforts.

(15) TDED will continue to serve as the lead state agency in the Agritech Corridor Partnership for application of EDA grant funding. TDA will cooperate with TDED in this effort by serving as lead agency for implementation of the Agritech Corridor in accordance with the provisions of HB1.

(c) Terms of the Agreement. This Memorandum of Understanding, which is effective on September 1, 1999, shall terminate August 31, 2001, unless extended by mutual agreement of the parties.

§195.2. Memorandum of Understanding with the Texas Workforce Commission.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas Workforce Commission enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting regarding the skills development fund, and the dissemination of employment-related data, statistics, and analyses, and the use of field offices to distribute information of interest to businesses and communities in the state, including applications for Smart Jobs grants.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional planning in accordance with legislation and share information regarding workforce training grants and marketing efforts; cooperate in the distribution of information relating to the Smart Jobs Fund through municipal and county offices of economic development, Local Workforce Development Boards, Chambers of Commerce, and Economic Development Corporations; cooperate to encourage workforce and economic development and employment within Texas and share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding.

(c) Term. This Memorandum of Understanding shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.3. Memorandum of Understanding with the Texas General Land Office.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas General Land Office enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to rural economic development.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional planning within Texas; coordinate the rural economic development programs provided by each agency; share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding; and cooperate to encourage economic development within rural areas of Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.4. Memorandum of Understanding with the Texas Department of Housing and Community Affairs.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas Department of Housing and Community Affairs enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to their community development programs.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional planning within Texas; cooperate in developing and implementing community development programs; cooperate to encourage economic and community development in Texas; share information of mutual interest; and develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.5. Memorandum of Understanding with the Comptroller of Public Accounts.

(a) Purpose. Pursuant to §481.028 of the Government Code, the Texas Department of Economic Development (Department) and the Comptroller of Public Accounts (CPA) enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to the dissemination of economic data, statistics, and analyses and the use of field offices to distribute information to businesses and local communities in the state.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will:

(1) cooperate in program planning and budgeting relating to the dissemination of economic data, statistics, and analyses and the use of field offices to distribute information to businesses and local communities in the state;

(2) share information of mutual interest;

(3) develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding.

(c) Term. This Memorandum of Understanding shall continue in effect until terminated in a rule-making procedure, or until one of the parties ceases to have jurisdiction of the subject matter.

§195.6. Memorandum of Understanding with the Texas Department of Transportation, the Texas Parks & Wildlife Department, the Texas Commission on the Arts, and the Texas Historical Commission.

(a) Parties. Pursuant to §§481.028(b)(5), 481.172(8), and 444.030(b)(3) of the Texas Government Code and House Bill No. 1, General Appropriations Act, 76th Legislature, Regular Session, this memorandum of understanding is made and entered into by and between the Texas Department of Economic Development (TDED), the Texas Department of Transportation (TxDOT), Texas Parks and Wildlife Department (TPW), the Texas Commission on the Arts (TCA), and the Texas Historical Commission (THC) to formalize their agreement to cooperate and coordinate efforts in marketing and promoting Texas as a premier travel destination and to provide services to travelers.

(b) Recitals.

(1) Whereas, the Texas Department of Economic Development, the Texas Department of Transportation, Texas Parks and Wildlife Department, Texas Commission on the Arts, and the Texas Historical Commission, collectively the State Agency Partners, are among the state agencies charged with promoting Texas tourism destinations as well as travel and tourism in Texas; and

(2) Whereas, §481.022(5) of the Texas Government Code requires TDED to promote the state as a premier tourist destination and §481.172 of the Texas Government Code sets forth the responsibilities of TDED in promoting Texas as a tourist destination. §§481.028(b)(5) and 481.172(8) of the Texas Government Code direct that TDED, TxDOT, TPW, THC and TCA cooperate in all matters relating to each agency's efforts to promote tourism; and

(3) Whereas, Article 6144(e), Texas Civil Statutes (1995) authorizes TxDOT to publish such pamphlets, bulletins, maps and documents as it deems necessary to serve the motoring public and road users, and Article 6144(e) requires TxDOT to maintain and operate Travel Information Bureaus at the principal gateways to Texas to provide road information, travel guidance and various descriptive materials designed to aid and assist the traveling public and to stimulate travel to and within Texas; and

(4) Whereas, Texas Parks and Wildlife Code, §§12.006 and 13.017, authorizes TPW to provide certain information to the public relating to outdoor recreation, state parks, wildlife management areas, and wildlife conservation; and Texas Parks and Wildlife Code, §§13.002, 13.101, and 13.102 and §§81.401 and 81.405, authorizes TPW to acquire land, manage natural and cultural resources, and operate state parks and state wildlife management areas for public outdoor recreation; and

(5) Whereas, §444.021(a)(1), (a)(2), and (a)(5) of the Texas Government Code, directs the TCA to foster the development of a receptive climate for the arts that will culturally enrich and benefit state citizens in their daily lives, to make visits and vacations to the state more appealing to the world, and to provide advice to the General Services Commission, THC, Texas State Library, TDED, TxDOT, and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation for the arts in the state; and

(6) Whereas, §442.005 of the Texas Government Code sets forth the duties and responsibilities of THC and authorizes THC to promote the appreciation of historic sites, structures, or objects in the state

through a program designed to develop tourism and to promote heritage tourism by assisting persons, including local governments, organizations, and individuals, in the preservation, enhancement, and promotion of heritage and cultural attractions in this state;

(7) Now, therefore, the parties agree to cooperate in developing and promoting Texas as a premier travel destination in the following subject areas. The subject areas and each agency's responsibilities are as follows:

(c) Undertakings by Each Party.

(1) Communications.

(A) Each of the five agencies will identify internal representatives from the cross-functional areas to regularly communicate status reports to all cooperating agencies. Agency cross- functional areas will outline project goals and timelines. Status report meetings will include reviews of goals and timelines.

(B) Primary agency representatives to be designated by Executive Directors will meet as often as necessary, but no less than twice annually, to coordinate efforts related to tourism marketing and promotion. Other committees or task forces will be assigned as the need arises.

(C) Executive Directors of the participating five state agencies will be briefed at least once a year during a joint meeting. During each fiscal year, periodic status report meetings will include cooperating agencies? Executive Directors, as needed. All cross-functional goals, timelines and project status reports will be reviewed by the primary agency representatives.

(D) The participating agencies will produce a unified, annual tourism marketing overview that describes the combined tourism marketing efforts of each agency. This overview will be presented to the Executive Directors of each of the participating five state agencies during their joint annual meeting.

(E) The five participating state agencies acknowledge that other state agencies have a role in tourism and may be affected by the tourism marketing efforts of the five primary agencies. To that end, the five primary agencies agree that, when appropriate, other state agencies comprising the State Agency Tourism Council will be included in the planning, communications, meetings and other coordination efforts conducted under this agreement. These agencies will also be provided copies of status reports and the annual tourism marketing overview. These other agencies include, but are not limited to: Texas A&M University; Office of Music, Film, Television and Multimedia; Texas General Land Office; Texas Department of Agriculture; Texas Department of Public Safety; and the Texas State Preservation Board.

(2) Marketing.

(A) Each agency will pay for its own marketing and promotional activities.

(B) All five agencies recognize that the overall goal of the state's tourism marketing effort is to generate travel to and within Texas. While some agencies may have a responsibility to conduct broad-based tourism marketing, others may have a responsibility to focus more heavily on a particular segment of tourism, such as nature tourism, heritage tourism or cultural tourism. All five agencies recognize the importance of achieving a coordinated, statewide marketing effort that includes all the tourism activities the State of Texas offers. To that end, appropriate staff members of each agency will meet at least twice a year to coordinate and review each agency's annual tourism marketing plans, including identifying cooperative and/or cost sharing opportunities related to, at a minimum:

(i) Advertising

(ii) Consumer/Trade Shows

(iii) Workshops/Training

(iv) Public Relations

(v) Familiarization (FAM) Tours

(vi) Standard Fulfillment Packet design and contents review to ensure the pieces meet the needs of the intended audiences

(vii) Use of Technology

(viii) Publications

(ix) Research

(x) Education and Training

(xi) Resource Sharing

(C) To provide a consistent and unified state tourism marketing effort, each agency will ensure that its tourism marketing and promotional activities, including appropriate materials, adhere to:

(i) Use of the trademarked "Texas. It's Like A Whole Other Country" slogan and the Texas "Patch," and when appropriate, the "1-800-8888-TEX" phone number and the www.TravelTex.com website.

(ii) The seven tourism marketing regions known as the Panhandle Plains, Prairies and Lakes, Piney Woods, Gulf Coast, South Texas Plains, Hill Country and Big Bend Country.

(iii) Each agency's website shall provide consumers with links to the other four agencies' websites.

(D) The members recognize that promotion of state-operated sites including state parks and historic sites is important. State agency partners will look for ways to more effectively coordinate efforts to market and promote these sites.

(3) Consumer/Trade Shows. The state agencies will coordinate their participation in domestic and international consumer and travel trade shows/initiatives, developing a coordinated schedule prior to fiscal year budget planning deadlines. Each of the five agencies may participate in staffing the shows, depending upon each agency's focus and budget restrictions. Each agency will be responsible for its participation costs at such trade shows. The agencies will use a consistent and unified travel and tourism marketing theme in a manner appropriate for each show, including use of the trademarked "Texas. It's Like A Whole Other Country" slogan and the Texas "Patch." Texas ancillary products and magazines may be promoted at these shows. TDED will be the prime Texas representative at shows conducted in out-of-state markets. TxDOT, TPW, TCA and THC may participate at other shows with collateral materials and staff where appropriate.

(4) Fulfillment.

(A) TDED is the agency with primary responsibility for conducting advertising and marketing activities to generate consumer requests for State of Texas travel literature. TDED maintains the 1-800-8888-TEX toll-free telephone number and the www.TravelTex.com website to receive such consumer requests. TDED will continue to contract and pay for the services required to maintain these consumer resources.

(B) TxDOT is the agency with primary responsibility for the fulfillment of consumer travel literature requests. TxDOT will contract and pay for printing, storage, handling, mail preparation, packaging and postage for consumer requests. Data entry costs for coupon

cards, tip-in cards, business reply cards or other sources will be reimbursed to TxDOT at cost by any agency using this service.

(C) TxDOT may negotiate with other agencies working under this memorandum to provide fulfillment services for their publications and/or products. These agreements will be for actual costs for packaging, handling, storage and postage.

(D) TDED may perform fulfillment of consumer requests for travel literature and TDED's licensed merchandise received via its 1-800 telemarketing contractor and/or the TravelTex.com website, when such fulfillment services are not made available by TxDOT. These services include, but are not limited to, first class mail and/or express delivery of such fulfillment materials and/or merchandise.

(E) The Travel Information System (TIS) fulfillment database created by fulfillment responses is cooperatively owned by both TDED and TxDOT. Decisions concerning functional operation, internal or external marketing and any revenues gained from the sale of this database will be made cooperatively by the tourism/travel division directors of both agencies. Revenues generated from the marketing and sale of the fulfillment database will be shared by the two agencies based on a percentage of the inquiries generated by each agency during the fiscal year.

(F) Working level meetings will be held bimonthly, at a minimum, to discuss tourism inquiry fulfillment, coordinate fulfillment activities, and other issues of mutual interest. The primary focus of these meetings will be to continually improve the effectiveness and efficiency of the fulfillment system.

(G) TxDOT will continue to develop, maintain and enhance the Travel Information System (TIS) with cooperation and input from TDED and, when appropriate, other State Agency Partners. TxDOT will have final approval on any enhancement proposals which are generated by the fulfillment team or other sources.

(H) TxDOT will make available to travel industry members, TDED and their advertising agency staff, vendors, and State Agency Partners, the software to utilize TIS and the data contained therein.

(5) Technology. State Agency Partners will form a technology committee that will meet at least twice annually to coordinate use of technology as a means of marketing and developing Texas as a tourist destination. This committee will address, at a minimum, the following issues:

(A) Enhancing tourism marketing through new and innovative technology products and methods, particularly expanded use of the Internet.

(B) Enhancements of and collaboration on Texas tourism websites www.TravelTex.com, www.tpwd.state.tx.us, www.thc.state.tx.us, and www.artonart.com to ensure consumers are provided a consistent marketing message and easy access to tourist information, events and services contained on each site.

(C) Increased use of the Travel Information System (TIS) database by each agency.

(D) Enhanced methods of sharing electronic data, particularly via the Internet.

(6) Publications.

(A) The magazine staffs of *Texas Highways* and *Texas Parks & Wildlife* will confer to avoid inappropriate redundancy of topical content. Information of mutual interest and marketing opportunities shall be discussed in informal meetings throughout the year and at an annual meeting attended by both publishers and other appropriate staff members.

(B) All agencies will convene at least annually to discuss any new tourism publications, planned or produced, or major revisions to tourism publications. The agencies may choose to incorporate this review during either of the two marketing meetings. Other state agencies involved in tourism will be invited, as appropriate, to discuss publications.

(7) Research.

(A) The agencies will coordinate research workplans and projects to ensure that the state's travel research is comprehensive and appropriate to guide the tourism marketing and promotional activities of the five agencies.

(B) TDED will be the lead agency in conducting and gathering Texas tourism research. Any agency under this agreement may conduct other research independently. Each agency will pay for its own research or share costs as may be identified in the research workplans. The five agencies will distribute their new research publications, as they are completed and become available, to the other agencies.

(8) Education and Training.

(A) TDED will take the lead in organizing community training and education for tourism development for the Texas travel industry partners. TxDOT, TPW, TCA, and THC may assist in the organization and sponsorship of these community training sessions, together with other state, regional, and local organizations. Training sessions may include, but are not limited to, identification of and packaging and marketing tourism products, nature tourism, cultural tourism, heritage tourism, hospitality training, and development and funding techniques. All five state agencies are encouraged to participate in the community training and education seminars to educate the travel industry about the state's tourism activities and available services.

(B) State Agency Partners will continue to conduct their own training seminars and conferences. However, the agencies recognize the value of cross training and sharing training information among the State Agency Partners and will inform the other partners of such programs and opportunities.

(9) Tourism Facilities. TxDOT will continue to operate and fund TxDOT's existing Travel Information Centers. TxDOT's Travel Information Centers will be a major distribution point for state agency tourism literature to tourists driving through the state. These information centers should promote tourism-related marketing and promotional activities of the five state agencies. TDED, TCA, THC and TPW may provide information and travel literature to the Travel Information Centers when appropriate. TxDOT will continue providing collateral materials and advice to city information centers in an effort to expand state travel information throughout Texas. State Agency Partners will use their facilities as distribution points for travel information as appropriate. Texas state parks, fisheries centers and wildlife management areas can also serve as distribution points for tourism material.

(10) Resource Sharing.

(A) In order to maximize the efficient utilization of state resources and facilitate sharing of those resources among State Agency Partners, the partners that maintain audiovisual files (still photography, video, and original art work) will provide access to MOU partners. Agencies shall be reimbursed at cost for any duplication or material transfers.

(B) Budgets permitting, State Agency Partners will share agency staff expertise and staff time for training sessions and consultations around the state.

(d) Term. This memorandum of understanding shall be effective upon execution by representatives of each agency and shall automatically renew each year on the anniversary of the effective date, unless terminated in accordance with the provisions of Section V below.

(e) Termination. This memorandum of understanding renews each year on the anniversary of the effective date, unless terminated by entering into a new agreement that supercedes this agreement, or by legislative action. Any of the State Agency Partners may terminate its participation in this agreement upon written notice to the other State Agency Partners, and the agreement shall continue in effect among the other Partners. In the event that the functions of any of the State Agency Partners are altered or abolished by law, rendering portions of this agreement unenforceable, the remaining portions of the agreement shall not in any way be affected or impaired.

(f) Amendments and Changes.

(1) Any alteration, addition, or deletion to the terms of this agreement shall be by amendment hereto in writing and executed by all parties.

(2) This memorandum of understanding does not supercede any other agreements or contracts that may exist now or that may be executed in the future between or among all or some of the participating agencies.

(g) Compliance with Laws and Budgetary Constraints. The obligations of the parties in carrying out the provisions of this MOU are subject to the statutory authority of each agency, all other applicable laws and the appropriations available to each agency to accomplish the purposes set forth herein. This memorandum of understanding does not include the transfer of any personnel or funds from one agency to another.

(h) Adoption as Rule. The Texas Department of Economic Development, the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts, and the Texas Historical Commission shall adopt this Memorandum of Understanding as a rule in compliance with §481.028, Texas Government Code. §444.030(e), Texas Government Code, further requires the Texas Commission on the Arts to publish the Memorandum of Understanding in the *Texas Register*.

§195.7. Memorandum of Understanding with the Texas Natural Resource Conservation Commission.

(a) Need for Agreement. Texas Health and Safety Code §382.0365(e) directs the Texas Natural Resource Conservation Commission (TNRCC) to enter into a Memorandum of Understanding (MOU) with the Texas Department of Economic Development (TDED) to coordinate assistance to any small business applying for permits from the TNRCC. Texas Government Code §481.028(b)(6) directs TDED to develop an MOU with TNRCC to cooperate in program planning and budgeting regarding small business finance and permits, the marketing of recyclable products, and business permits.

(b) Responsibilities.

(1) TNRCC:

(A) Is the agency of the state given primary responsibility for implementing the Constitution and laws of this state relating to the conservation of natural resources and the protection of the environment;

(B) Sets standards, criteria, levels, and limits for pollution to protect the air and water quality of the state's natural resources and the health and safety of the state's citizens;

(C) Protects the air, land, and water resources through the development, implementation, and enforcement of control programs as necessary to satisfy all federal and state environmental laws and regulations;

(D) Maintains a Small Business Stationary Source Assistance Program as defined in Texas Health and Safety Code §382.0365;

(E) Establishes programs designed to encourage Texas businesses to reduce, reuse and recycle industrial and hazardous wastes; and

(F) Has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(2) TDED:

(A) Is the state agency designated to promote economic development and tourism and provide business information services for small business owners;

(B) Serves as an information center and referral agency for information on various state and federal programs affecting small businesses, including those offered by local governments, local economic development organizations, and small business development centers to promote business development in the state;

(C) Promotes small business ownership and development for the state;

(D) Collects, publishes, and disseminates information useful to small businesses including data on employment and business activities and trends; and

(E) Has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(c) Activities.

(1) TNRCC will, in a timely manner:

(A) Refer small business owners to TDED for information on financial and loan assistance and business licenses, permits, registrations, or certificates necessary to operate a place of business in Texas;

(B) Provide TDED with information regarding environmental permitting processes, registration time lines, fee schedules, reporting requirements, and pollution prevention techniques; as well as schedule workshops, seminars, and conferences that educate small businesses on environmental concerns;

(C) Provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by TDED;

(D) Establish and maintain working links from the TNRCC web site to pages on the TDED web site relevant to current information on financial and loan assistance and business licenses, permits, registrations, or certificates necessary to operate a place of business in Texas;

(E) Research the requirements and costs of pollution control equipment and environmental audits needed by small businesses for compliance with environmental regulations;

(F) Train TDED staff, as requested and subject to staff availability, on environmental regulations, environmental management techniques, and pollution prevention and recycling practices that apply to small businesses;

(G) Share information with TDED to ensure non-duplication of agency efforts;

(H) Provide the necessary permit applications and forms to TDED, upon request, so that TDED may complete a comprehensive application request by a business; and

(I) Analyze and evaluate alternatives for improving permit processes within TNRCC, and submit jointly with TDED any report required by Texas Government Code §481.129.

(2) TDED will, in a timely manner:

(A) Refer small business owners and prospective owners to the TNRCC Small Business Stationary Source Assistance Program for help with environmental permitting, registration, compliance, and reporting requirements and pollution prevention techniques;

(B) Provide information to TNRCC regarding financial and loan assistance and business licenses, permits, registrations or certificates necessary to operate a place of business in Texas;

(C) Provide speakers and educational materials, as requested and subject to staff availability for seminars, conferences, and workshops sponsored by TNRCC;

(D) Maintain current information supplied by TNRCC on the application process and time lines for environmental permits, registrations, certifications, or other general environmental compliance information needed to operate a place of business in Texas;

(E) Incorporate TNRCC information concerning businesses' rights, obligations, and requirements under environmental regulations into the general material distributed by TDED to people establishing business operations in Texas;

(F) Identify and provide information to TNRCC on financial assistance programs that make loans to small businesses for the purchase of new equipment or process upgrades necessary to operate in compliance with environmental regulations;

(G) Serve as a point of contact, when requested, between TNRCC and the Small Business Administration, Farm Service Agency, the Small Business Development Centers, the Texas Manufacturing Assistance Centers, Community Development Corporations, and other business and financial assistance programs;

(H) Maintain the information produced by TNRCC about the impacts of environmental regulations on the state's economy and small business community;

(I) Share information with TNRCC to ensure non-duplication of agency efforts; and

(J) Analyze and evaluate alternatives for improving permit processes within TNRCC, and submit jointly any report required by Texas Government Code §481.129.

(d) Review of MOU. This memorandum shall continue in effect until terminated in a rule- making procedure, or until one of the parties ceases to have jurisdiction of the subject matter.

§195.8. Memorandum of Understanding with the Texas Historical Commission.

(a) Pursuant to §481.028 of the Government Code, the Texas Department of Economic Development (the department) and the Texas Historical Commission (THC) enter into this Memorandum of Understanding (MOU), under which they agree to cooperate in program planning and budgeting relating to community preservation, restoration and revitalization to encourage travel to the state's historical attractions.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will:

(1) cooperate on regional planning within Texas;

(2) cooperate regarding community preservation, restoration and revitalization efforts;

(3) share information of mutual interest;

(4) assist with the development of a cooperative heritage tourism program;

(5) develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding; and

(6) cooperate to encourage economic development and employment in Texas.

(c) Transfer of Funds. From the amounts appropriated to the Department to advertise and promote Texas as a travel destination in selected national and international markets, the Department, pursuant to Texas Government Code, Chapter 481.172, will transfer $300,000.00 during the biennium beginning September 1, 1999 to THC to be used towards marketing and tourism development activities to encourage travel to the state's historical attractions. Both parties agree that in Fiscal Year 2000, the Department will transfer $150,000 to THC within 30 days following execution of this Memorandum of Understanding and in Fiscal Year 2001 will transfer $150,000 to THC on or before October 31, 2000.

(d) Coordination of Statewide Travel-Related Efforts: The Department uses the advertising slogan "Texas. It's Like A Whole Other Country." in all of its travel promotion and tourism development efforts. To effectively coordinate and ensure a consistent message is used in all statewide travel-related efforts, THC agrees to use the Department's advertising slogan, the Texas Patch logo, the Department's toll-free telephone number (1-800-8888-TEX) and the Department's web site address (www.TravelTex.com) in all projects THC undertakes that are funded in whole or in part by funds transferred to THC from the Department under this MOU.

(e) Acknowledgment. THC agrees that in all projects THC undertakes using funds transferred from the Department to THC under this MOU, THC will provide acknowledgment that the project(s) are funded in whole, or in part, by funds provided by the Department. THC also agrees to cite the funding source.

(f) Close-Out Report. Both parties agree that prior to the end of each fiscal year during the biennium beginning September 1, 1999, THC will submit to the Department a fiscal year close- out report that details how THC used the Funds towards tourism development and tourism marketing activities to encourage travel to the state's historical attractions.

(g) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001, unless extended by the mutual agreement of the parties.

§195.9. Memorandum of Understanding with the General Services Commission.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the General Services Commission enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to procurement information, certification and technical assistance to small and historically underutilized businesses.

(b) Mutual Responsibilities. To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they

will: cooperate on regional economic planning within Texas; cooperate in providing procurement information, certification and technical assistance to small and historically underutilized businesses; share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding; and cooperate to encourage economic development within Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.10. Memorandum of Understanding with the Texas Alternative Fuels Council.

(a) Purpose. Pursuant to Texas Government Code §481.028, the Texas Department of Economic Development and the Texas Alternative Fuels Council enter into this Memorandum of Understanding, under which they agree to cooperate in program planning and budgeting relating to the promotion of the use of alternative fuels within Texas.

(b) Mutual Responsibilities: To serve the citizens of Texas in an efficient and fiscally responsible way, the parties agree that they will: cooperate on regional planning within Texas; cooperate in encouraging the use of alternative fuels within Texas; share information of mutual interest; develop the agreements necessary to accomplish the activities set forth in this Memorandum of Understanding; and cooperate to encourage economic development in Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by representatives of each agency, shall terminate on August 31, 2001 unless extended by the mutual agreement of the parties.

§195.11. Memorandum of Understanding with the Texas Agricultural Finance Authority.

(a) Purpose. The purpose of this memorandum of understanding is to meet legislative requirements specified in §481.028(b)(12) of the Government Code relating to the marketing and promotion of the programs administered by the Texas Agricultural Finance Authority (TAFA).

(b) Mutual Responsibilities. To efficiently serve the citizens of Texas and promote economic growth in agriculture and agriculture relating industries, the agencies involved in the memorandum agree to cooperate in the following areas:

(1) TAFA will administer its finance programs involving agriculture, horticulture, and other agricultural-related business to best utilize the expertise of the staff of TAFA.

(2) TAFA will not duplicate the current fee-based services of the Texas Department of Economic Development (TDED), which include but are not limited to loan packaging, feasibility studies, and credit analyses. TAFA staff will perform credit analysis in accordance with its credit policy and procedures as it relates to projects seeking participation in any of the programs administered by TAFA.

(3) TDED will cooperate and assist in marketing and promoting the finance programs administered by TAFA. TDED will forward all requests for financial assistance involving any agriculture or agricultural-related project to TAFA.

(4) TDED And the Texas Department of Agriculture (TDA) will cooperate in development, marketing and finance activities as identified in the memorandum of understanding between TDED and TDA dated effective September 1, 1999, so as to best utilize each agency's expertise and resources.

(5) TAFA and TDED will cooperate to foster economic development throughout Texas.

(c) Term. This Memorandum of Understanding, which is effective upon execution by the representatives of each agency, shall terminate August 31, 2001 unless extended by mutual agreement of the parties.

§195.12. Memorandum of Understanding with the Health and Human Services Commission.

This Memorandum of Understanding (MOU) is entered into and between the Health and Human Services Commission (HHSC) and Texas Department of Economic Development (TDED) for the purpose of accomplishing the transfer of the Empowerment Zone and Enterprise Community (EZ/EC) Program from HHSC to TDED.

(1) Background and Objectives

(A) Establishment of the EZ/EC Program.

(i) In 1993, Congress created the Empowerment Zone/Enterprise Community (EZ/EC) program in the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, August 10, 1993). This 10-year program targets federal grants to distressed urban and rural communities for social services and community redevelopment and provides tax and regulatory relief to attract or retain businesses in distressed communities. On December 24, 1994, President Clinton designated 72 urban areas and 33 rural communities as empowerment zones or enterprise communities based on their strategic plan. Each urban zone received $100 million and each rural zone $40 million. While each enterprise community received a one-time grant award of approximately $3 million.

(ii) Federal funding for the EZs and ECs was made available through the title XX Social Service Block Grant (SSBG) program, which is administered by the Department of Health and Human Services (HHS). The U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture are responsible for managing programmatic aspects of the initiative.

(B) EZ/EC Grant Awards to the State of Texas. The State of Texas was awarded approximately $55 million which included one empowerment zone (Rio Grande Valley), one urban enhanced enterprise community (Houston), and four urban enterprise communities (Dallas, El Paso, San Antonio, and Waco). These funds are being administered by HHSC that serves as fiscal intermediaries for the EZ/EC SSBG grant.

(C) H.B. 2641, 76th Legislature. In 1999, House Bill 2641 was enacted during the 76th regular legislative session. Among other things, it requires HHSC to transfer the EZ/EC program to TDED effective September 1, 1999. The law also requires HHSC and the governing board of TDED to enter into a MOU to implement the transfer. In order to effectuate the transfer and reassignment of administrative duties from HHSC to TDED, a letter from the federal government authorizing the transfer of the EZ/EC program to TDED will be executed.

(D) Objectives. HHSC and TDED desire to implement the requirements of House Bill 2641 by executing this Memorandum of Understanding.

(2) Obligations of the Parties

(A) General Obligations. Effective September 1, 1999, all duties and obligations that pertain to the operation of the EZ/EC Program are, except as specifically provided in this MOU, transferred or assigned to the TDED.

(B) Responsibilities of HHSC. To implement the requirements of H.B. 2641, HHSC will:

(i) Identify a point of contact to work with the individual appointed by TDED to facilitate resolution of issues relating to

the transfer. An alternate person will also be identified during periods when the primary point of contact is absent.

(ii) Notify by correspondence all federal partners and localities of the effective date of the transfer of the EZ/EC program to TDED. These include: U.S. Department of Health and Human Services (HHS), U.S. Department of Housing and Urban Development (HUD), U.S. Department of Agriculture (USDA), Rio Grande Valley Empowerment Zone Corporation, City of Houston, City of El Paso, City of Waco, City of Dallas, and City of San Antonio.

(iii) Transfer to TDED all records, documents, and data generated or maintained by HHSC, including all grantee payments, administrative costs, and all grant revenues received by HHSC.

(iv) Assign and transfer to TDED all contracts, memoranda or understanding or other agreements executed on behalf or pertaining exclusively to the EZ/EC program.

(v) Provide a status report on current monitoring activities that identifies programmatic and/or fiscal compliance issues currently under review by HHSC to avoid delays or disruptions during the transition period.

(C) Responsibilities of TDED. To facilitate the transfer of the EZ/EC program by HHSC, TDED will:

(i) Identify a point of contact, and an alternate, to work with the individual designated by HHSC to resolve details and issues relating to the transfer.

(ii) Inform by correspondence, federal partners and each grantee of its new responsibility to administer the EZ/EC program effective September 1, 1999.

(iii) Identify for HHSC the location of the office or offices that will receive the records of the EZ/EC program.

(iv) Review all records, documents, and data compiled by HHSC to make sure that requested information is provided.

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

Filed with the Office of the Secretary of State, on December 11, 2000.

TRD-200008636
Tracye McDaniel
Deputy Executive Director
Texas Department of Economic Development
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 936-0177

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CHAPTER 200. ADMINISTRATION

10 TAC §200.1

The Texas Department of Economic Development (Department) proposes new chapter 10 TAC Chapter 200. Administration.§200.1 adopts by reference the rules of the General Services Commission related to Historically Underutilized Businesses. The department adopts by reference the rules of the Texas General Services Commission in 1 TAC §§111.11-111.28, concerning historically underutilized business certification program, which became effective October 4, 1995.

Gail Little, HUB Program Coordinator, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Gail Little, HUB Program Coordinator, has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed section will be a more uniform and consistent approach for procuring goods and services from HUB vendors. The new rule does not impose any new duties on small or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the rule. There is no anticipated difference in cost of compliance between micro, small, and large businesses and no anticipated economic cost for these entities.

Written comments on the proposal may be submitted within 30 days of publication in the *Texas Register* to Mary Herrick, Legal Assistant, Texas Department of Economic Development. Comments may be mailed to P.O. Box 12728, Austin, Texas 78711-3498; hand delivered to 1700 North Congress Avenue, Suite 130, Austin, Texas 78701; or faxed to (512) 936-0415.

Government Code §§2161.002, 2161.003 and 2161.123, require the Department to adopt the Commission's rules as its own rules.

Texas Government Code, §2161 is affected by this proposal.

§200.1. Historically Underutilized Businesses.

The Texas Department of Economic Development (Department) adopts by reference the rules promulgated by the General Services Commission (GSC) regarding historically underutilized businesses, which are set forth in 1 TAC §§111.11-111.28, as amended. A copy of the GSC rules may be obtained by writing to: Mary Herrick, Legal Assistant, Texas Department of Economic Development, P.O. Box 12728, Austin, Texas 78711-22728 or by accessing the Web site of the Secretary of State, at www.sos.state.tx.us/tac/

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

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

TRD-200008697
Tracye McDaniel
Deputy Executive Director
Texas Department of Economic Development
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 936-0177

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10 TAC §200.11

The Texas Department of Economic Development (department) also proposes new rule §200.11 adopting by reference the Office of the Attorney General's rules relating to Contract Negotiation, Mediation, and Other Assisted Negotiation and Mediation Processes. The department adopts by reference the rules, which became effective May 31, 2000.

Robin Abbott, General Counsel, has determined that for the first five years the rules are in effect, there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules; there are no estimated

reductions in costs to the state or local governments; there are no estimated losses or increases in revenue to the state or to local governments; there are no foreseeable implications relating to costs or revenues to local governments as a result of administering the rules; and there are no anticipated costs to persons who are required to comply with the rules as proposed.

Ms. Abbott has also determined that there may be an effect on small businesses and anticipated economic costs to persons who are required to comply with the adopted rules. The costs will depend on a number of factors, including the methods of negotiation, mediation or other assisted negotiation or mediation processes agreed upon by the parties.

Ms. Abbott, General Counsel, has determined that the public benefit anticipated as a result of the rules as proposed will be to modify the contract negotiation and dispute resolution rules of the Department to conform to the statutorily recommended negotiation and dispute resolution provisions.

Written comments on the proposal may be submitted within 30 days of publication in the *Texas Register* to Mary Herrick, Legal Assistant, Texas Department of Economic Development. Comments may be mailed to P.O. Box 12728, Austin, Texas 78711-3498; hand delivered to 1700 North Congress Avenue, Suite 130, Austin, Texas 78701; or faxed to (512) 936-0415.

Texas Government Code Section 2260.052 directs the Office of the Attorney General (OAG) and the State Office of Administrative Hearings (SOAH) to provide rules for negotiation and mediation that units of government may adopt.

Texas Government Code, §2260 is affected by this proposal

§200.11. Contracts Negotiation, Mediation, and Other Assisted Negotiation and Mediation Processes.

The Texas Department of Economic Development (Department) adopts by reference the rules promulgated by the Office of the Attorney General (OAG) and the State Office of Administrative Hearings (SOAH) relating to the procedures for the negotiation and mediation of certain breach of contract claims asserted by contractors against the State of Texas, pursuant to §9 of House Bill 826, 76th. R.S., 1 TAC Chapter 68, Subchapters A-C, §§68.1, 68.3, 68.5, 68.7, 68.21, 68.23, 68.25, 68.27, 68.29, 68.31, 68.33, 68.35, 68.37, 68.47, 68.49, 68.51, 68.53, 68.55, 68.57, 68.59, and 68.61. A copy of the OAG's rules may be obtained by writing to: Mary Herrick, Legal Assistant, Texas Department of Economic Development, P.O. Box 12728, Austin, Texas 78711-22728 or by accessing the Web site of the Secretary of State, at www.sos.state.tx.us/tac//

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

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Tracye McDaniel
Deputy Executive Director
Texas Department of Economic Development
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For further information, please call: (512) 936-0177

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 164. PHYSICIAN ADVERTISING

22 TAC §164.4

The Texas State Board of Medical Examiners proposes new §164.4, relating to the use of the term board certification by physicians in advertising. This section will outline the criteria to be followed when using the term board certification so as not to be false or misleading in content.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state and local government as a result of enforcing the section.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be outlined criteria to be followed when using the term board certification so as not to be false or misleading in content. There will be no effect on small businesses. Whether or not there will be economic cost to persons who are required to comply with the section as proposed cannot be determined at this time.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

The new section is proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Texas Occupations Code, Annotated, §164.052(a)(6) is affected by this proposal.

§164.4. Board Certification.

(a) A physician's authorization of or use of the term "board certified," or any similar words or phrase calculated to convey the same meaning in any advertising for his or her practice shall constitute misleading or deceptive advertising unless the physician discloses the complete name of the specialty board which conferred the certification and the certifying organization meets the requirements in paragraphs (1)-(2) of this subsection:

(1) The certifying organization is a member board of the American Board of Medical Specialties, or the Bureau of Osteopathic Specialists, or is the American Board of Oral and Maxillofacial Surgery; or

(2) The certifying organization requires that its applicants be certified by a separate certifying organization that is a member board of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists, or appropriate Royal College of Physicians and Surgeons, and the certifying organization meets the criteria set forth in subsection (b) of this section.

(b) Each certifying organization that is not a member board of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists must meet each of the requirements set forth in paragraphs (1)-(5) of this subsection:

(1) the certifying organization requires all physicians who are seeking certification to successfully pass a written or an oral examination or both, which tests the applicant's knowledge and skills in

the specialty or subspecialty area of medicine. All or part of the examination may be delegated to a testing organization. All examinations require a psychometric evaluation for validation;

(2) the certifying organization has written proof of a determination by the Internal Revenue Service that the certifying board is tax exempt under the Internal Revenue Code pursuant to Section 501(c);

(3) the certifying board has a permanent headquarters and staff;

(4) the certifying board has at least 100 duly licensed certificants from at least one-third of the states; and

(5) the certifying organization requires all physicians who are seeking certification to have satisfactorily completed identifiable and substantial training in the specialty or subspecialty area of medicine in which the physician is seeking certification, and the certifying organization utilizes appropriate peer review. This identifiable training shall be deemed acceptable unless determined by the Board of Medical Examiners to be inadequate in scope, content, and duration in that specialty or subspecialty area of medicine in order to protect the public health and safety.

(c) A physician may not use the term "board certified" or any similar words or phrase calculated to convey the same meaning if the claimed board certification has expired and has not been renewed at the time the advertising in question was published or broadcast.

(d) The terms "board eligible," "board qualified," or any similar words or phrase calculated to convey the same meaning shall not be used in physician advertising.

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

Filed with the Office of the Secretary of State, on December 18, 2000.

TRD-200008735
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 305-7016

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CHAPTER 175. FEES, PENALTIES, AND APPLICATIONS

22 TAC §175.1

The Texas State Board of Medical Examiners proposes an amendment §175.1, regarding fees. The amendment will clarify new fees for biennial non-profit health organization applications and fees for filing late applications.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be fiscal implications as a result of enforcing the section. There will be increased revenue to state government, exact amount cannot be determined at this time.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of new fees for biennial non-profit health organization applications and fees for filing late applications. A fee of $1,000 for submission of a biennial application and a fee of $2,000 for late filing of a biennial application will be assessed for those required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Texas Occupations Code, Annotated, §153.051 is affected by this proposal.

§175.1. Fees.

The board shall charge the following fees.

(1) Physicians:

(A) processing an application for complete or partial licensure examination (includes one USMLE Step 3 or COMLEX Level 3 and jurisprudence examination fee)--$800;

(B) processing an application for licensure by endorsement (includes one jurisprudence examination fee)--$800;

(C) examination fees (required and payable each time applicant is scheduled for examination):

(i) USMLE Step 3--$500;

(ii) COMLEX Level 3--$500;

(iii) Jurisprudence--$30;

(D) processing an application for a special purpose license for practice of medicine across state lines (includes one jurisprudence examination fee)--$800;

(E) temporary license:

(i) regular--$50;

(ii) distinguished professor--$50;

(iii) state health agency--$50;

(iv) section 3.0305--$50;

(v) rural/underserved areas--$50;

(vi) continuing medical education--$50;

(F) annual renewal--$330.

(2) Physicians in Training:

(A) institutional permit (began training program prior to 6-1-2000)--$50;

(B) renewal of institutional permit (began training program prior to 6-1-2000)--$35;

(C) basic postgraduate resident permit--$75;

(D) advanced postgraduate resident permit--$75;

(E) temporary postgraduate resident permit--$50;

(F) renewal of basic postgraduate resident permit--$50;

(G) renewal of advanced postgraduate resident permit--$50;

(H) faculty temporary permit--$110;

(I) visiting professor permit--$110;

(J) evaluation or re-evaluation of postgraduate training program--$150.

(3) Physician Assistants:

(A) processing application for licensure as a physician assistant--$200;

(B) temporary license--$50;

(C) annual renewal--$150.

(4) Acupuncturists/Acudetox Specialists:

(A) processing an application for license as an acupuncturist--$300;

(B) temporary license for an acupuncturist--$50;

(C) annual renewal for an acupuncturist--$250;

(D) acupuncturist distinguished professor--$50;

(E) processing an application for acudetox specialist--$50;

(F) annual renewal for acudetox specialist--$25;

(G) review of continuing acupuncture education courses--$50;

(H) review of continuing acudetox acupuncture education courses--$50.

(5) Non-Certified Radiologic Technicians:

(A) processing an application--$50;

(B) annual renewal--$50.

(6) Certification as a Non-Profit Health Organization:

(A) processing an application for new or initial certification - $2,500;

(B) processing an application for biennial recertification - $1,000[~~$500~~];

(C) processing a late application for biennial recertification - $2,000 [~~$1,250~~].

(7) Miscellaneous Fees:

(A) duplicate license--$45;

(B) endorsement--$40;

(C) reinstatement after cancellation for cause--$350;

(D) office-based anesthesia site registration--$300.

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 December 18, 2000.

TRD-200008736

F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 305-7016

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CHAPTER 177. CERTIFICATION OF NON-PROFIT ORGANIZATIONS

22 TAC §§177.1, 177.2, 177.4, 177.6 - 177.11, 177.13, 177.15, 177.16

The Texas State Board of Medical Examiners proposes amendments to §§177.1, 177.2, 177.4, 177.6-177.11, 177.13, 177.15, and 177.16, regarding certification of non-profit health organizations. The amendments will update new cites to the Occupations Code, address administrative procedures regarding late filing of biennial applications and insufficient reports, and clarify fees.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing the sections. There will be increased revenue to state government, exact amount cannot be determined at this time.

Ms. Shackelford also 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 will be updated cites to the Occupations Code, the address of administrative procedures regarding late filing of biennial applications and insufficient reports, and clarification of fees. A fee of $1,000 for submission of a biennial application and a fee of $2,000 for late filing of a biennial application will be assessed for those required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Texas Occupations Code, Annotated, §§162.001-162.003 are affected by this proposal.

§177.1. Definitions.

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

(1) Act--The Texas Medical Practice Act, Texas Occupations Code Annotated, Subtitle B.

(2) Actively engaged in the practice of medicine--The physician is engaged in diagnosing, treating or offering to treat any mental or physical disease or disorder or any physical deformity or injury or performing such actions with respect to individual patients for compensation and shall include clinical medical research, the practice of clinical investigative medicine, the supervision and training of medical students or residents in a teaching facility or program approved by the Liaison Committee on Medical Education of the American Medical Association, the American Osteopathic Association or the Accreditation Council for Graduate Medical Education, and professional managerial, administrative, or supervisory activities

related to the practice of medicine or the delivery of health care services.

(3) Board--Texas State Board of Medical Examiners .

(4) [~~(3)~~] Board of Directors--The board of the Health Organization whether referred to as the board of directors, the board of trustees or other title.

(5) Certification by the Board--In accordance with Chapter 162, Texas Occupations Code Annotated, the Board shall certify a health organization as a non-profit health organization; as a migrant, community, or homeless health center; or as a federally qualified health center.

(6) [~~(4)~~] Chief Executive Officer--The officer of the Health Organization authorized in the articles of incorporation, the bylaws, or otherwise, to perform the functions of the principal executive officer, irrespective of the name by which such officer may be designated by the Health Organization.

(7) [~~(5)~~] Director--A member of the Board of Directors whether referred to as a director, trustee or other title.

(8) [~~(6)~~] Member--A member of the Health Organization.

(9) [~~(7)~~] Health Organization--An applicant for or holder of certification from the Texas State Board of Medical Examiners under the Act, §162.001(b) [~~§5.01(a)~~].

(10) [~~(8)~~] Rules--The rules promulgated by the Texas State Board of Medical Examiners pursuant to the Act.

(11) [~~(9)~~] Supplier--

(A) A physician retained to provide medical services to or on behalf of the Health Organization; and

(B) any other person providing or anticipated to provide services or supplies to or on behalf of the Health Organization in excess of $10,000 during a twelve-month period.

§177.2. Initial Certification.

Any Health Organization meeting the qualifications specified in §177.3 of this title (relating to Qualifications for Certification) may seek certification by the Texas State Board of Medical Examiners under the Act, §162.001(b) [~~§5.01(a)~~], by the submission of an application as provided in §177.4 of this title (relating to Applications for Certification).

§177.4. Applications for Certification.

A Health Organization seeking certification shall submit an application to the Texas State Board of Medical Examiners, attention permits department, on a form approved by the Texas State Board of Medical Examiners, which application shall include:

(1) Initial Identification Statement. A statement signed and verified by the chief executive officer:

(A) indicating the name and mailing address of the Health Organization;

(B) indicating the names and mailing addresses of all Member(s) or that there are no Member(s);

(C) indicating the names and mailing addresses of all Officers; and

(D) indicating the names and mailing addresses of all Directors.

(2) Initial Document Statement. A statement signed and verified by the chief executive officer attaching a copy of the current certificate of incorporation of the Health Organization and attaching a copy of the current by-laws of the Health Organization including provision that:

(A) the Health Organization is organized for any or all of the following purposes:

(i) the carrying out of scientific research and research projects in the public interest in the fields of medical sciences, medical economics, public health, sociology, or [~~and~~] related areas;

(ii) the supporting of medical education in medical schools through grants and scholarships;

(iii) the improving and developing of the abilities of individuals and institutions studying, teaching, and practicing medicine;

(iv) the delivery of health care to the public or;

(v) the engaging in the instruction of the general public in the area of medical science, public health, and hygiene and related instruction useful to the individual and beneficial to the community.[~~;~~]

(B) the physician(s) organizing and incorporating the Health Organization shall select the initial Board of Directors consistent with the mission, goals, and purposes of the Health Organization;

(C) the by-laws of the Health Organization shall be interpreted in a manner that reserves to the Health Organization through its retained physicians the sole authority to engage in the practice of medicine and reserves to the Health Organization through its Board of Directors the sole authority to direct the medical, professional, and ethical aspects of the practice of medicine;

(D) each Director is required to immediately report to the Texas State Board of Medical Examiners any action or event which such Director reasonably and in good faith believes constitutes a violation or attempted violation of the Act or the Rules;

(E) each Director is required to individually disclose to the Member(s), if any, and to the Board of Directors (at the times of nomination and appointment) and to the Texas State Board of Medical Examiners (at the times of initial application and biennial reports) the identity of each financial relationship known to such Director, if any, which such Director has with any Member, any other Director, any Supplier of the Health Organization or any affiliate of any Member, other Director, or Supplier of the Health Organization, and to provide a concise explanation of the nature of each such financial relationship;

(F) the termination of the retention of any physician to provide medical services on behalf of the Health Organization during such physician's term of retention may be accomplished only by the Board of Directors or its physician designee(s) and such termination shall be subject to due process procedures adopted by the Board of Directors or its physician designee(s) or provided by the retention agreement between the Health Organization and the subject physician unless the physician is terminated.

(3) Initial Director Statements. Statements signed and verified by each current Director indicating that:

(A) such Director is licensed by the Texas State Board of Medical Examiners;

(B) such Director is actively engaged in the practice of medicine;

(C) such Director will, as a Director, exercise independent judgment in all matters and, specifically, matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;

(D) such Director will, as a Director, exercise best efforts to cause the Health Organization to comply with all relevant provisions of the Act and the Rules;

(E) such Director will, as a Director, immediately report to the Texas State Board of Medical Examiners any action or event which such Director reasonably and in good faith believes constitutes a violation or attempted violation of the Act or the Rules; and

(F) such Director has disclosed within such Director's statement the identity of all of such Director's financial relationships, if any, of the type described in paragraph (2)(E) of this section and provided a concise explanation of the nature of each such financial relationship within such Director's statement.

(4) Initial Compliance Statement. A statement signed and verified by the chief executive officer indicating that the Health Organization is in compliance with the requirements for certification and continued certification as required by the provisions of the Act and the Rules.

(5) Initial Fee Payment. A fee in the amount and form specified by the Rules.

§177.6. Biennial Report.

Each Health Organization certified under the Act, §162.001(b) [~~§5.01(a)~~], shall file with the Texas State Board of Medical Examiners a Biennial Report in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year, and the Biennial Report shall include:

(1) Biennial Identification Statement. A statement signed and verified by the chief executive officer:

(A) indicating the name and mailing address of the Health Organization;

(B) indicating the names and mailing addresses of all Member(s) or that there are no Member(s);

(C) indicating the names and mailing addresses of all Officers;

(D) indicating the names and mailing addresses of all Directors; and

(E) disclosing any changes in the composition of the Board of Directors since the last biennial report.

(2) Biennial Document Statement. A statement signed and verified by the chief executive officer attaching a copy of the current certificate of incorporation and by-laws of the Health Organization if not already on file with the Texas State Board of Medical Examiners and indicating:

(A) whether or not the by-laws or articles of incorporation of the Health Organization have been revised since the last biennial report;

(B) whether or not such revisions, if any, were recommended or approved by the Board of Directors; and

(C) a concise explanation of such revisions, if any.

(3) Biennial Director Statements. Statements signed and verified by each current Director indicating that:

(A) such Director is licensed by the Texas State Board of Medical Examiners;

(B) such Director is actively engaged in the practice of medicine;

(C) such Director will, as a Director, exercise independent judgment in all matters and, specifically, matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;

(D) such Director will, as a Director, exercise best efforts to cause the Health Organization to comply with all relevant provisions of the Act and the Rules;

(E) such Director will, as a Director, immediately report to the Texas State Board of Medical Examiners any action or event which such Director reasonably and in good faith believes constitutes a violation or attempted violation of such Act or the Rules; and

(F) such Director has disclosed within such Director's statement the identity of all of such Director's financial relationships, if any, of the type described in §177.4[~~(a)~~](2)(E) of this title (relating to Applications for Certification) and provided a concise explanation of the nature of each such financial relationship within such Director's statement.

(4) Biennial Compliance Statement. A statement signed and verified by the chief executive officer indicating that the Health Organization is in compliance with the requirements for certification and continued certification as required by the provisions of the Act and the Rules.

(5) Biennial Fee Payment. A fee in the amount and form specified by the Rules.

§177.7. Establishment of Fees.

The fees established pursuant to the Act, §153.011 and §153.051 [~~§2.09(k)~~] and the Rules for certification and continued certification shall be as follows.

(1) Initial Fee. In addition to all other requirements for certification under the Act, §162.001(b) [~~§5.01(a)~~], and the Rules, to obtain certification, the Health Organization shall submit a fee of $2,500 in the form of a check or money order payable to the Texas State Board of Medical Examiners.

(2) Biennial Fee. In addition to all other requirements for continued certification under the Act, §162.001(b) [~~§5.01(a)~~], and the Rules, to maintain certification, at the time of submission of the Biennial Report, the Health Organization shall submit a fee of $1,000 [~~$500~~] in the form of a check or money order payable to the Texas State Board of Medical Examiners.

(3) Late Fee. In addition to all other requirements for continued certification under the Act, §162.001(b), if the Health Organization is more than 30 days late in submitting their completed Biennial Report and Biennial Fee as specified in §177.7(2) of this title (relating to Initial Certification), the Health Organization will be required to pay a penalty amount of $1,000 at the time of submission of their late Biennial Report in addition to the biennial fee in the form of a check or money order payable to the Texas State Board of Medical Examiners.

(4) [~~(3)~~] Refunds. Fees shall not be refundable.

§177.8. Failure to Submit Reports or Fees.

(a) The failure of a Health Organization seeking certification under the Act, §162.001(b) [~~§5.01(a)~~], and the Rules to submit any required fee shall be grounds for the Texas State Board of Medical Examiners to stop the processing of the application for certification and to deny the application.

(b) The failure of a Health Organization which is certified under the Act, § 162.001(b) [~~§5.01(a)~~], and the Rules to timely submit an accurate Biennial Report along with any required fee within 90 days of

its due date [shall be grounds for decertification pursuant to §177.12 of this title (relating to Review of Applications and Reports)] may result in decertification at the next Board meeting of the Texas State Board of Medical Examiners.

(c) If a Health Organization has been decertified, it will be required to submit a new application for certification as a nonprofit health organization under §162.001(b) of the Act and a fee of $2,500 with the application for certification in the form of a check or money order payable to the Texas State Board of Medical Examiners.

§177.9. Denial of Certification.

Subject to due process procedures, the Texas State Board of Medical Examiners may[, at its discretion,] refuse to [approve and] certify any such Health Organization making application to the board if in the board's determination the applying Health Organization is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Act.

§177.10. Revocation of Certification.

Subject to due process procedures, the Texas State Board of Medical Examiners shall revoke a [an approval or] certification if in the board's determination the Health Organization is established, organized, or operated in contravention of or with the intent to circumvent any of the provisions of the Act.

§177.11. Review of Applications and Reports.

(a) Applications for certification and biennial reports under this section shall be initially reviewed by the permits and legal staffs of the Texas State Board of Medical Examiners or other designees of the Texas State Board of Medical Examiners to determine compliance with the requirements for certification.

(b) If an application is insufficient or there is any other basis for denial, the Health Organization will be notified in writing that unless it takes corrective action, the Health Organization's application will be denied. The Health Organization shall have 60 days from the date of the mailing by the Texas State Board of Medical Examiners to submit the corrected application.

(c) If a biennial report is insufficient or there is any other basis for decertification, the Health Organization will be notified in writing that unless it takes corrective action, the Health Organization will be recommended for decertification at the next meeting of the Texas State Board of Medical Examiners. The Health Organization shall have 60 days from the date of the mailing by the Board to submit the corrected biennial report.

(d) If upon review of the application or biennial report [statement] and any supporting documentation, the applying or reporting Health Organization appears to be in compliance for certification or continued certification, such certification shall be made upon approval of the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners.

(e) In the event that such compliance cannot be determined or is otherwise in question for any reason including complaints of actions by the Health Organization in contravention of this section or the Act, including but not limited to failure to provide due process or evidence of undue influence on the practice of medicine, the application or statement and any supporting documentation shall be submitted to the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners for further review, investigation, [and] approval, [or] denial or decertification. [If an application for certification is denied or an insufficient biennial report results in decertification, the Health Organization shall be notified in writing of the basis for the denial or decertification, and the Health Organization may attempt to correct the deficiency, address any complaint, and resubmit the certification application or reporting statement without paying an additional fee if resubmitted within 60 days of the date of the mailing of the denial or decertification letter. If a biennial reporting statement is insufficient or there appears to be a basis for decertification, the Health Organization shall be notified in writing of the potential basis for decertification, and the Health Organization may attempt to correct the deficiency or potential basis for decertification without paying an additional fee if the corrective action is taken and the reporting statement is resubmitted within 60 days of the date of the mailing by the Texas State Board of Medical Examiners of the written explanation regarding the deficiency or apparent basis for decertification. If the deficiency or apparent basis for decertification is not remedied or adequately explained, and the corrected reporting statement submitted within the 60 day period, the Health Organization shall be decertified at the next meeting of the Texas State Board of Medical Examiners.]

§177.13. Approved Form.

A Health Organization seeking certification under the Act, §162.001(b) [§5.01(a)], shall submit an application on a board-approved form.

§177.15. Migrant, Community or Homeless Health Centers.

(a) Section 162.001(c) [Section 5.01(b)], non-profit health organizations. Migrant, community, or homeless health centers organized and operated under the authority of and in compliance with 42 U.S.C. §§254b, or 254c, [or 256] or federally qualified health centers under 42 U.S.C. §1396(d)(l[1])(2)(B), who are non-profit corporations under the Texas Non-Profit Corporation Act, Article 1396-1.01, Texas Civil Statutes, and the Internal Revenue Code, §501(c)(3), and who wish to obtain approval and certification to contract with and employ physicians pursuant to the Medical Practice Act, §162.001(c) [§5.01(b)], Texas Occupations Code Annotated, Subtitle B [Article 4495b, Vernon's Texas Civil Statutes], may do so by submitting an application on a form approved by the Texas State Board of Medical Examiners to the permits department of the board with the following attached documentation:

(1) a copy of the certificate of incorporation under the Texas Non-Profit Corporation Act;

(2) a copy of documentation verifying that a determination has been made that the organization is tax exempt under the Internal Revenue Code pursuant to section 5[.]01(c)(3); and,

(3) a copy of documentation verifying that the organization is organized and operated as a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. §§254b, or 254c, [or 256,] or is a federally qualified health center under 42 U.S.C. §1396(d)(l[1])(2)(B).

(b) Denial of approval and certification. Subject to due process procedures, the Texas State Board of Medical Examiners may, at its discretion, refuse to approve and certify any such migrant, community, or homeless health center, or federally qualified health center making application to the board if in the board's determination the organization is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Act or this section.

(c) Revocation of certification. Subject to due process procedures, the Texas State Board of Medical Examiners shall revoke an approval or certification if in the board's determination the organization is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Act or this section.

(d) Biennial reports. Each organization approved and certified under the Act, §162.001(c) [§5.01(b)], shall file with the Texas State Board of Medical Examiners a completed Biennial Report on a board-approved form which contains updated and current information

which would otherwise be required for initial approval and certification to contract with and employ physicians. The Biennial Report shall be submitted in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year. Failure to timely submit a required Biennial Report shall be grounds for withdrawal or revocation of approval and certification to contract with and employ physicians pursuant to subsection (e) of this section.

(e) Review of applications and reports. Applications for approval and certification to contract with and employ physicians pursuant to the Act, §162.001(c) [~~§5.01(b)~~], and subsequent Biennial Reports shall initially be reviewed by the permits and legal staffs of the Texas State Board of Medical Examiners or other designees of the Texas State Board of Medical Examiners to determine compliance with the requirements for approval and certification. If upon review of the application or statement and any supporting documentation, the applying or reporting organization appears to be in compliance for approval and certification or continued approval and certification, upon consideration and approval by the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners, the organization shall be certified and approved to contract with and employ physicians. In the event that such compliance cannot be determined or is otherwise in question for any reason including complaints of actions by the organization in contravention of this section or the Act, the application or statement and any supporting documentation shall be submitted to the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners for further review, investigation, and approval or denial. If an application for approval and certification to contract with and employ physicians is denied, the organization shall be notified in writing of the basis for the denial and the organization may attempt to correct the deficiency, address any complaint, supplement the application to comply with the requirements for approval and certification, or resubmit a new application for consideration. If a biennial reporting statement is insufficient or appears to be a basis for revocation or withdrawal of approval and decertification, the organization shall be notified in writing of the basis for the revocation or withdrawal of approval and decertification, and the organization may attempt to correct the deficiency, address any complaint, or supplement the biennial statement to comply with the requirements for continued approval and certification. If a deficiency or apparent basis for denial, revocation, or withdrawal of approval and decertification is not remedied or adequately explained, and corrected or required supplemental documentation is not submitted within 60 days of the date of the mailing of the notification by the Texas State Board of Medical Examiners, the organization shall be denied, revoked, decertified, or otherwise have approval withdrawn at the next meeting of the Texas State Board of Medical Examiners.

(f) Procedure for denial of approval and certification or recertification. Denial, revocation, withdrawal of approval, or decertification of an organization for failure to comply with the provisions of this section or the Act, shall follow the procedures set forth in subsection (e) of this section.

(g) Approved forms. An organization seeking approval and certification to contract with and employ physicians under the Act, §162.001(c) [~~§5.01(b)~~], shall submit an application on a board-approved form. Biennial reports for continued approval and certification shall be submitted on a board-approved form.

(h) Compliance date. Organizations approved and certified prior to the effective date of this section shall be required to be in compliance with these provisions no later than January 1, 1997. Organizations applying for approval and certification after the effective date of this section shall be required to meet the requirements of these provisions as a prerequisite for approval and certification to contract with and employ physicians pursuant to the Act, § 162.001(c) [~~§5.01(b)~~].

§177.16. Complaint Procedure Notification.

(a) Method of Notification. For the purpose of directing complaints to the board regarding health-care delivery by licensees of the board practicing through non-profit health organizations certified pursuant to the Medical Practice Act, §162.001[~~§5.01~~], the non-profit health organizations which are certified or otherwise approved pursuant to the Medical Practice Act, §162.001(b) [~~§5.01(a)~~] and §162.001(c)[~~§5.01(b)~~], shall provide notification to the public of the name, mailing address, and telephone number of the board by displaying in a prominent location at each site of health-care delivery and readily visible to patients or potential patients, signs in English and Spanish of no less than 8 1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement.

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules:
Figure: 22 TAC §177.16(b)(No change.)

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules:
Figure: 22 TAC §177.16(c)(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 December 18, 2000.

TRD-200008737
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 305-7016

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34, §291.36

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records, and §291.36, concerning Class A Pharmacies Compounding Sterile Pharmaceuticals. The amendments, if adopted, will permit practitioners to electronically replicate their manual signature on written prescriptions.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five- year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to streamline the process of issuing prescriptions through the use of new technologies. Since the new process is not a requirement, there is no fiscal impact for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by noon, February 2, 2000.

The amendments are proposed under sections 551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Chapters 552-566, Texas Occupations Code.

§291.34. Records.

(a) (No change.)

(b) Prescriptions.

(1) (No change.)

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Except as noted in clause (ii) of this subparagraph, written [~~Written~~] prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, provided that security features of the system require the practitioner to authorize each use. [~~(electronically produced or rubber stamped signatures may not be used).~~]

(ii) Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075, and be manually signed by the practitioner.

(iii) [~~(i)~~] A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g. J.H. Smith or John H. Smith.

(iv) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in clause (i) of this subparagraph.

(v) [~~(ii)~~] The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner . However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) - (G) (No change.)

(3) - (9) (No change.)

(c) - (k) (No change.)

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

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

(e) Records.

(1) (No change.)

(2) Prescriptions.

(A) Professional responsibility. Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Written prescription drug orders.

(i) Practitioner's signature.

(I) Except as noted in subclause (II) of this clause, written [~~Written~~] prescription drug orders shall be:

(-a-) manually signed by the practitioner; or

(-b-) electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, provided that security features of the system require the practitioner to authorize each use. [~~(electronically produced or rubber stamped signatures may not be used).~~]

(II) Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075, and be manually signed by the practitioner.

(III) [~~(I)~~] A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(IV) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in subclause (I) of this clause.

(V) [~~(II)~~] The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(ii) - (vii) (No change.)

(C) - (J) (No change.)

(3) - (11) (No change.)

(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 December 14, 2000.

TRD-200008689
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.72

The Texas State Board of Pharmacy proposes amendments to §291.72, concerning Definitions. The amendments, if adopted, will permit a patient of any state operated correctional facility to be considered an inpatient of any other state operated correctional facility for the purpose of delivery of pharmacy services.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five- year period the rule is in effect, there will be NO fiscal implications for local government as a result of enforcing or administering the rule. The fiscal impact to state government will be a cost savings to state operated correctional institutions that will result from a reduction in prescription drug costs. The agency is unable to determine the exact amount of savings to the state operated correctional facilities. However, the Texas Youth Commission estimated a loss in excess of $140,000 during FY99 due to current requirements.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to streamline the drug delivery system for persons confined in state operated correctional facilities resulting in a more efficient use of public funds. There is no fiscal impact for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by noon, February 2, 2000.

The amendments are proposed under sections 551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Chapters 552-566, Texas Occupations Code.

§291.72. Definitions.

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

(1) - (35) (No change.)

(36) Inpatient -- A person who is duly admitted to the licensed hospital, or other hospital or facility maintained or operated by the state, or who is receiving long term care services or Medicare extended care services in a swing bed on the hospital premise or an adjacent, readily accessible facility which is under the authority of the hospital's governing body. For the purposes of this definition, the term "long term care services" means those services received in a skilled nursing facility which is a distinct part of the hospital and the distinct part is not licensed separately or formally approved as a nursing home by the state, even though it is designated or certified as a skilled nursing facility. An inpatient includes a person confined in any correctional institution operated by the state of Texas.

(37) - (59) (No change.)

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

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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CHAPTER 305. EDUCATIONAL REQUIREMENTS

22 TAC §305.2

The Texas State Board of Pharmacy proposes new §305.2, concerning Pharmacy Technician Training Programs. The new section, if adopted, will implement the provisions of Senate Bill 730, Acts of the 76th Legislature, by setting standards for recognition and approval of pharmacy technician training programs wishing to be approved and listed by the Texas State Board of Pharmacy.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five- year period the rule is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the rule. The fiscal impact on state government will be an approximate cost of $100 to process each application for pharmacy technician training programs not accredited through the American Society of Health-System Pharmacists (ASHP). However, this cost will be offset with a $100 application fee to each program.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to establish standards for pharmacy technician training programs wanting to be approved and listed by the Texas State Board of Pharmacy. Since Board approval and listing of pharmacy technician training programs is voluntary, there is no fiscal impact for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by noon, February 2, 2000.

The amendments are proposed under sections 551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code) and Senate Bill 730, Acts of the 76th Legislature which amended the Texas Pharmacy Act (Article 4542a-1, now codified as Chapters 551-566, Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets Senate Bill 730 as requiring the Board to regulate the training of pharmacy technicians, issue standards for recognitions an approval of technician training programs, and maintain a list of Board- approved training programs which meet the standards.

The statutes affected by this rule: Chapters 552-566, Texas Occupations Code.

§305.2. Pharmacy Technician Training Programs.

(a) Purpose. The purpose of this section is to set standards for Board approval of pharmacy technician training programs to ensure that graduates of the programs have the basic knowledge and experience in general pharmacy to practice in most pharmacy settings. Pharmacy technician training programs are not required to be approved by the Board. However, the Board maintains a list of Board-approved pharmacy technician training programs that meet the standards established in this section.

(b) Board-approved pharmacy technician training programs.

(1) The approval by the Board of pharmacy technician training programs do not change any requirements for on-site training required of all pharmacy technicians as outlined in the rules for each class of pharmacy.

(2) The standard for Board-approved pharmacy technician training programs shall be the American Society of Health-System Pharmacists' Accreditation Standard for Pharmacy Technician Training Programs.

(3) The Board may approve pharmacy technician training programs which are currently accredited by the American Society of Health-System Pharmacists, and maintain such accreditation.

(4) The Board may approve pharmacy technician training programs not accredited by the American Society of Health-System Pharmacists provided:

(A) the program meets the American Society of Health-System Pharmacists' Accreditation Standard for Pharmacy Technician Training Programs, modified as follows:

(i) entities providing the pharmacy technician training programs are not required to be health care organizations or academic institutions;

(ii) entities that offer or participate in offering pharmacy technician training programs are not required to be accredited by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, or the National Committee on Quality Assurance; and

(iii) students enrolled in pharmacy technician training programs must have a high school or equivalent degree, e.g., GED, or they may be currently enrolled in a program which awards such a degree;

(B) the program:

(i) makes application to the Board;

(ii) provides all information requested by the Board, necessary to confirm that the program meets the requirements outlined in subparagraph (A) of this paragraph;

(iii) assists with any inspections requested by the Board of the facilities, records, and/or programs guidelines necessary to confirm that the program meets the requirements outlined in subparagraph (A) of this paragraph; and

(iv) pays an application processing fee to the Board of $100.00;

(C) the program director provides written status reports upon request of the Board and at least every three years to assist in evaluation of continued compliance with the requirements; and

(D) the program is subject to an on-site inspection at least every six years.

(5) The Board may require an outside entity to conduct any evaluations and/or inspections of a pharmacy technician training program as outlined in paragraph 4 of this subsection. This outside entity shall report to the Board whether a pharmacy technician training program meets the American Society of Health- System Pharmacists' Accreditation Standards for Pharmacy Technician Training Programs as modified. Cost of these evaluations shall be the responsibility of the pharmacy technician training program.

(c) Students enrolled in a Board-approved pharmacy technician training programs. A student enrolled in a Board-approved pharmacy technician training program may be a pharmacy technician trainee for the duration of their enrollment when working in a pharmacy as part of the experiential component of the Board-approved pharmacy technician training program.

(d) Review of accreditation standards. The Board shall review the American Society of Health-System Pharmacists' Accreditation Standard for Pharmacy Technician Training Programs periodically and whenever the Standard is revised.

(e) Listing of Board-approved Pharmacy Technician Training Programs. The Board shall maintain a list of the pharmacy technician training programs approved by the Board and periodically publish this list in the minutes of the Board. If the Board determines that a training program does not meet or no longer meets any of the requirements set forth in this section, the training program will not be listed as a Board-approved pharmacy technician training program.

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 December 14, 2000.

TRD-200008691
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 305-8028

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 401. SYSTEM ADMINISTRATION
SUBCHAPTER E. CONTRACTS MANAGEMENT

25 TAC §§401.371 - 401.380, 401.387 - 401.399

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§401.371 - 401.380 and §§401.387 - 401.399 of Chapter 401, Subchapter E, concerning

contracts management. New §§417.51 - 417.65 of new Chapter 417, Subchapter B, concerning contracts management for TDMHMR facilities and Central Office, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new and more current rules governing the same matters.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to cost or revenue of the state or local governments.

Bill Campbell, deputy commissioner for finance and administration, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected is the adoption of new and more current rules governing the same matters. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or micro-businesses.

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.

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority; §533.016, which allows TDMHMR to adopt rules relating to certain procurements of goods and services; §533.034, which provides TDMHMR with the authority to contract for community-based services; and §534.059(b), which requires TDMHMR's contract rules to provide for sanctions if TDMHMR intends to sanction a local mental health or mental retardation authority's for failing to comply with its performance contract.

These sections would affect the Texas Health and Safety Code, §533.016, §533.034, and §534.059(b).

§401.371. Purpose.
§401.372. Application.
§401.373. Definitions.
§401.374. Principles of Contracting.
§401.375. Accountability.
§401.376. Methods of Procurement.
§401.377. Sealed Bid and Request for Proposal.
§401.378. Additional Requirements for Sealed Bid.
§401.379. Additional Requirements for Request for Proposal.
§401.380. Sole Source Contracting.
§401.387. General Requirements for the Department.
§401.388. General Requirements for Provider Contracts.
§401.389. Support Services Contracts.
§401.390. Consultant Contracts.
§401.391. Professional Services Contracts.
§401.392. Employee Education and Training Contracts.
§401.393. Community-based Residential and Nonresidential Services Contracts.
§401.394. Other Provider Contracts.
§401.395. Provider Contract Terminations.
§401.396. Abeyance and Removal of Current or Potential Contractual Rights.
§401.397. Exhibits.
§401.398. References.
§401.399. Distribution.

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

Filed with the Office of the Secretary of State, on December 18, 2000.

TRD-200008730
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 206-4516

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CHAPTER 407. INTERNAL FACILITIES MANAGEMENT

SUBCHAPTER B. CONSTRUCTION BIDDING PROCEDURES

25 TAC §§407.51 - 407.58

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§407.51 - 407.58 of Chapter 407, Subchapter B, concerning construction bidding procedures. New §§417.51 - 417.65 of new Chapter 417, Subchapter B, concerning contracts management for TDMHMR facilities and Central Office, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new and more current rules governing the same matters.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to cost or revenue of the state or local governments.

Bill Campbell, deputy commissioner for finance and administration, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected is the adoption of new and more current rules governing the same matters. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or micro-businesses.

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.

These sections are proposed for repeal under the Texas Health and Safety Code, §551.007(c), which requires TDMHMR to adopt rules relating to awarding contracts for the construction of buildings and improvements.

These sections would affect the Texas Health and Safety Code, §551.007(c).

§407.51. Purpose.

§407.52. Definitions.

§407.53. Responsibility.

§407.54. Prebid Requirements.

§407.55. Announcement.

§407.56. Submitting Bids.

§407.57. Bid Opening.

§407.58. Selecting the Successful Bidder.

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 December 18, 2000.

TRD-200008731
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 206-4516

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CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES
SUBCHAPTER B. CONTRACTS MANAGEMENT FOR TDMHMR FACILITIES AND CENTRAL OFFICE

25 TAC §§417.51 - 417.65

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§417.51 - 417.65 of new Chapter 417, Subchapter B, concerning contracts management for TDMHMR facilities and Central Office. The repeals of §§401.371 - 401.380 and §§401.387 - 401.399 of Chapter 401, Subchapter E, concerning contracts management, and the repeals of §§407.51 - 407.58 of Chapter 407, Subchapter B, concerning construction bidding procedures, are contemporaneously proposed in this issue of the *Texas Register*.

The new sections describe TDMHMR's policies for acquisition of all goods and services by TDMHMR facilities and Central Office with the exception of Medicaid provider contracts and contracts for lease or sale of real property. The main difference between the proposed new subchapter and the subchapters proposed for repeal is that the new subchapter would require compliance with procurement rules recently adopted by the Health and Human Services Commission, which ensures best value for the agency awarding the contract. Other differences are the new subchapter's application to construction contracts and the inclusion of protest and appeal procedures, monitoring requirements, and remedies and sanctions that TDMHMR may impose for a contractor's default.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed new rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenue of the state or local governments.

Bill Campbell, deputy commissioner for finance and administration, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit expected as a result of the adoption of the new rules is the promulgation of rules that describe TDMHMR's policies for acquisition of certain goods and services by TDMHMR facilities and Central Office, which comply with state statute. It is anticipated that there would be no economic cost to persons required to comply with the proposed new rules.

It is anticipated that the proposed new rules will not affect a local economy.

It is anticipated that the proposed new rules will not have an adverse economic effect on small businesses or micro-businesses because the new rules do not place additional requirements on small or micro-businesses than those in the rules proposed for repeal.

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.

These new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority; §533.016, which allows TDMHMR to adopt rules relating to certain procurements of goods and services; §533.034, which provides TDMHMR with the authority to contract for community-based services; §534.059(b), which requires TDMHMR's contract rules to provide for sanctions if TDMHMR intends to sanction a local mental health or mental retardation authority's for failing to comply with its performance contract; and §551.007(c), which requires TDMHMR to adopt rules relating to awarding contracts for the construction of buildings and improvements.

These new sections would affect the Texas Health and Safety Code, §533.016, §533.034, §534.059(b), and §551.007(c).

§417.51. Purpose.

The purpose of this subchapter is to provide rules governing the management of contracts by Texas Department of Mental Health and Mental Retardation (TDMHMR) facilities and Central Office.

§417.52. Application.

(a) This subchapter applies to contracts managed by the Texas Department of Mental Health and Mental Retardation (TDMHMR) facilities and Central Office.

(b) This subchapter does not apply to:

(1) Medicaid provider contracts; or

(2) leases or contracts for sale of real property.

§417.53. Definitions.

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

(1) Best value - The optimum combination of economy and quality that is the result of fair, efficient, and practical procurement decision-making and that achieves health and human services procurement objectives as described in §391.21 of Title 1 (relating to Health and Human Services Procurement Objectives).

(2) Business entity - A sole proprietorship, including an individual, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(3) CC&PS - The Central Contracting and Procurement Support division at Central Office.

(4) Central Office - TDMHMR's administrative offices in Austin.

(5) Consultant contract - A contract to retain the services of a business entity to study an existing or proposed operation or project, or to provide advice with regard to the operation or project consistent with Texas Government Code, Chapter 2254, Subchapter B, to exclude:

(A) practitioners of professional services (as defined in this section);

(B) private legal counsel;

(C) investment counselors;

(D) actuaries; or

(E) medical or dental services providers.

(6) Consumer - A person with mental illness or mental retardation receiving services funded by TDMHMR.

(7) Contract - A written agreement, including a purchase order, between a facility or Central Office and a business entity that obligates the entity to provide goods or services in exchange for money or other valuable consideration.

(8) Contract director - The TDMHMR employee who is responsible for contracts management as follows:

(A) at a facility - the director of Contract and Materials Management section.

(B) at Central Office -

(i) the director of CC&PS or

(ii) the director of the Maintenance and Construction section.

(9) Contract management - Developing specifications or scope of work or contractor qualifications, evaluating responses, and procuring, negotiating, drafting, awarding, executing, monitoring, and enforcing a contract.

(10) Contractor - A business entity that provides goods or services for funds pursuant to a contract.

(11) Facility - Any state hospital, state school, or state center operated by the Texas Department of Mental Health and Mental Retardation.

(12) Higher authority - The TDMHMR employee to whom the contract director reports, as follows:

(A) at a facility - the superintendent, director, or executive director.

(B) at Central Office -

(i) the deputy commissioner for finance and administration; or

(ii) the director of the Support Services division.

(13) Local authority - An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(14) Performance contract - A written agreement between TDMHMR and a local authority for the provision of one or more functions as described in the Texas Health and Safety Code, §533.035(a).

(15) Professional services - As specified in the Texas Government Code, §2254.002, those services:

(A) within the scope of the practice, as defined by state law, of:

(i) accounting;

(ii) architecture;

(iii) landscape architecture;

(iv) land surveying;

(v) medicine;

(vi) optometry;

(vii) professional engineering;

(viii) real estate appraising; or

(ix) professional nursing; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

(i) a certified public accountant;

(ii) an architect;

(iii) a landscape architect;

(iv) a land surveyor;

(v) a physician, including a surgeon;

(vi) an optometrist;

(vii) a professional engineer;

(viii) a state certified or state licensed real estate appraiser; or

(ix) a registered nurse.

(16) Respondent - A business entity that submits an oral, written, or electronic response to a solicitation. The term is intended to include "bidder," "offeror," "proposer," and other similar terminology to describe the business entity that responds to a solicitation.

(17) Response - A respondent's oral, written, or electronic "bid," "offer," "proposal," "quote," "application," or other applicable expression of interest to a solicitation.

(18) Solicitation - A written or electronic notification of TDMHMR's intent to purchase goods or services, such as a request for proposals (RFP) or an invitation for bids (IFB).

(19) TDMHMR - The Texas Department of Mental Health and Mental Retardation.

(20) *TDMHMR Contracts Manual* - A publication of TDMHMR's internal policies and procedures relating to contracting.

§417.54. Procurement.

(a) With the exception of construction contracts, TDMHMR must acquire goods and services by a method approved by the Health and Human Services Commission (HHSC) that provides the best value

to TDMHMR. Acquisition of goods and services must be in accordance with:

(1) the Texas Government Code, §2155.144;

(2) Health and Human Services Commission rules, 1 TAC, Part 15, Chapter 391, governing Purchase of Goods and Services by Health and Human Services Agencies; and

(3) this subchapter.

(b) Pursuant to §391.109(13) of Title 1 (relating to Exceptions to Competitive Procurement Methods), TDMHMR may waive competitive procurement requirements for purchases of less than $100,000 if there is a demand of such urgency for the goods or services that a delay in purchasing would cause operational or financial harm.

(c) As required in §391.165(b) of Title 1 (relating to Streamlined Purchasing Standards), TDMHMR's threshold for streamlined purchases is $10,000.

(d) TDMHMR must comply with the Uniform Grant Management Standards, promulgated by the Governor's Office of Budget and Planning, pursuant to the Texas Government Code, Chapter 783, and 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4, when providing financial assistance to a unit of local government or when providing block grants to a business entity.

(e) To increase purchases and contract awards to historically underutilized businesses, TDMHMR adopts by reference rules of the General Services Commission (GSC) contained in 1 TAC, Part 5, Chapter 111, §§111.11 - 111.27 (relating to Historically Underutilized Business Program).

(f) All procurements over $25,000 must be posted on the Texas Marketplace/Electronic State Business Daily, except as otherwise provided for in the *TDMHMR Contracts Manual*.

(g) TDMHMR may reject any or all responses or any part of a response. TDMHMR reserves the right to cancel a solicitation without award for any reason or for no reason.

(h) Upon written request by an unsuccessful respondent, TDMHMR must provide information concerning why the respondent's response was not selected for award.

§417.55. Accountability.

(a) Conflicts of interests and standards of conduct for TDMHMR employees and officers.

(1) Conflicts of interest. TDMHMR employees and officers may not have a conflict of interest in contracts management. An employee or officer has a conflict of interest when the employee, officer, or a person related within the second degree of consanguinity or affinity to the employee or officer, intends to have or has:

(A) actual employment with a respondent or contractor;

(B) paid consultation with a respondent or contractor;

(C) membership on a respondent's or contractor's board of directors;

(D) ownership of 10% or more of the voting stock of shares of a respondent or contractor;

(E) ownership of 10% or more or $5,000 or more of the fair market value of a respondent or contractor; or

(F) received funds from a respondent or contractor in excess of 10% of the employee's, officer's, or related person's gross income for the previous year.

(2) Standards of conduct.

(A) TDMHMR employees and officers who participate in contracts management may not:

(i) accept or solicit any gift, favor, service, or benefit from a respondent or contractor that might reasonably tend to influence the officer or employee in the discharge of official duties relating to contract management, or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official duties; or

(ii) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or for having performed official duties in favor of another respondent or contractor.

(B) TDMHMR employees who participate in contracts management shall comply with additional standards of ethical conduct contained in the TDMHMR Ethics Operating Instruction (417-16) and applicable state law.

(b) Conflicts of interests and standards of conduct for a respondent and its officers and employees.

(1) Conflict of interest. A respondent and its officers and employees may not have a conflict of interest in the solicitation for which the respondent submits a response. A person has a conflict of interest when that person is related within the second degree of consanguinity or affinity to a TDMHMR employee or officer participating in the contract management for that contract.

(2) Standards of conduct.

(A) A respondent may not attempt to induce any business entity to submit or not submit a response.

(B) A respondent must arrive at its response independently and without consultation, communication, or agreement for the purposes of restricting competition.

(C) A respondent and its officers and employees may not have a relationship with any person, at the time of submitting the response or during the contract term, that may interfere with fair competition.

(D) A respondent and its officers and employees may not participate in the development of specific criteria for award of the contract, nor participate in the selection of the business entity to be awarded the contract.

(c) When contracting with former and retired employees, TDMHMR must ensure compliance with applicable state law, including the Texas Government Code, §572.054, §659.0115, and §2252.901.

(d) Except for the contracts management of construction contracts and performance contracts, all contracts management must be conducted in accordance with the requirements of the *TDMHMR Contracts Manual*.

(e) All contracts must contain standard terms and conditions as described in the *TDMHMR Contracts Manual* unless an exception is granted by CC&PS

(f) TDMHMR is prohibited from contracting with a business entity that:

(1) is held in abeyance or barred from the award of a federal or state contract;

(2) is not in good standing for state tax, pursuant to the Texas Business Corporation Act, Texas Civil Statutes, Article 2.45;

(3) is not residing or located in Texas unless the business entity has a Texas sales tax permit or certifies that the entity does not sell taxable goods or services within Texas, pursuant to the Texas Government Code, §2155.004; or

(4) is on warrant hold status, pursuant to the Texas Government Code, §403.055.

(g) TDMHMR must ensure that its contractors comply with all contract provisions regardless of whether a contractor subcontracts a portion of the contract.

(h) TDMHMR may make advance payments to a contractor provided the payments meet a public purpose, ensure adequate consideration, and are accompanied by sufficient controls to ensure accomplishment of the public purpose. With the exception of contracts paid on a capitated basis, at the end of each contract period the contractor must return to TDMHMR any state or federal funds received from or through TDMHMR which have not been encumbered.

(i) TDMHMR may recoup improper payments when it is verified that a contractor has been overpaid because of improper billing or accounting practices or failure to comply with the contract terms. The determination of impropriety is based on federal, state, and local laws and rules; TDMHMR procedures; contract provisions; or statistical data on program use compiled from paid claims and other sources of data. TDMHMR will recoup payments for contracted services not received by TDMHMR.

(j) TDMHMR shall ensure quality services are provided to consumers, including during the transition from one contractor to another.

(k) All purchases of goods and services may be made only pursuant to a contract.

§417.56. Provisions for All Contracts.

(a) Unless an exception is granted by CC&PS, all contracts governed by this subchapter must include the following standards and conditions:

(1) the beginning and ending dates of the contract;

(2) identification of the service(s) or good(s) to be purchased;

(3) identification of all parties;

(4) total allowable payment or, if the contract is for services provided solely on a referral basis or on a capitated basis, the rates of payment;

(5) the method of payment;

(6) documentation retention requirements;

(7) the requirement that the contractor must comply with all applicable federal and state laws, rules, and regulations, including Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990 (ADA); and the Age Discrimination in Employment Act of 1967;

(8) sanctions and remedies TDMHMR may take in response to the contractor's default; and

(9) a statement that the contractor is not currently held in abeyance or barred from the award of a federal or state contract, and that the contractor will provide immediate written notification to TDMHMR if the contractor becomes held in abeyance or barred from the award of a federal or state contract during the term of the contract.

(b) All contracts for services provided to consumers must include the standards and conditions that are described in subsection (a) of this section and provisions stating:

(1) the clearly defined performance expectations which directly relate to the community service's objectives, including goals, outputs, and measurable outcomes, and that the contractor must provide services in accordance with such expectations;

(2) that no consumer will be excluded from participation in, denied the benefits of, or unlawfully discriminated against, in any program or activity funded by the contract on the grounds of race, color, national origin, religion, sex, age, disability, or political affiliation in accordance with applicable law;

(3) that all consumer-identifying information will be maintained by the contractor as confidential, in accordance with applicable law and Chapter 414, Subchapter A of this title (relating to Client-Identifying Information);

(4) that the contractor, its licensed staff, and other appropriate staff (as identified in the contract) will be credentialed before services are delivered to consumers by such contractor and staff;

(5) that any allegation of abuse, neglect, or exploitation of consumers under the contract will be reported in accordance with applicable law, TDMHMR rules, and Texas Department of Protective and Regulatory Services rules;

(6) that AIDS/HIV workplace guidelines, similar to those adopted by TDMHMR, and AIDS/HIV confidentiality guidelines, consistent with state and federal law, will be adopted and implemented by the contractor;

(7) that the contractor will comply with relevant TDMHMR rules, certifications, accreditations, and licenses, as specified in the contract;

(8) that pursuant to Texas Health and Safety Code, §534.061, TDMHMR and its designees, including independent financial auditors, shall have, with reasonable notice, unrestricted access to all facilities, records, data, and other information under the control of the contractor as necessary to enable TDMHMR to audit, monitor, and review all financial and programmatic activities and services associated with the contract;

(9) that any allegation involving the clinical practice of a physician, dentist, registered nurse, or licensed vocational nurse, be referred to the contractor's medical, dental, or nursing director (as appropriate to the discipline involved) for review for possible peer review and reporting to disciplinary boards; and

(10) the accounting, reporting, and auditing requirements with which the contractor must comply.

(c) All contracts for residential services must include the standards and conditions that are described in subsections (a) and (b) of this section and provisions stating:

(1) that services will be provided in accordance with consumers' treatment plans; and

(2) that the contractor must comply with Chapter 414, Subchapter K of this title (relating to Criminal History Clearances) regarding conducting criminal history clearances of its applicants, employees, and volunteers, and that if an applicant, employee, or volunteer of the contractor has a criminal history relevant to his or her employment as described in Chapter 414, Subchapter K of this title (relating to Criminal History Clearances), then the contractor will take appropriate action

with respect to the applicant, employee, or volunteer, including terminating or removing the employee or volunteer from direct contact with consumers served by the contractor.

§417.57. Additional Requirements for Specific Contracts.

(a) Consultant contracts. All consultant contracts must conform with the requirements of the Texas Government Code, Chapter 2254, Subchapter B.

(b) Professional services contracts. All professional services contracts must conform with the requirements of the Texas Government Code, Chapter 2254, Subchapter A.

(c) Grant contracts. All grant contracts must conform with the requirements of all terms and conditions of the grant and the Texas Health and Safety Code, §533.001(d). Block grant contracts must also conform with the requirements of:

(1) the Texas Government Code, Chapter 2105; and

(2) the Uniform Grant Management Standards, promulgated by the Governor's Office of Budget and Planning, pursuant to the Texas Government Code, Chapter 783, and 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4.

(d) Automated information systems (i.e., information services) contracts. Automated information systems contracts must conform with the requirements of the Texas Government Code, §2157.068 and Chapter 2054, and applicable rules of the General Services Commission.

(e) Construction contracts. All construction contracts must conform with the requirements of the Texas Health and Safety Code, §551.007, the Uniform General Conditions for Construction Contracts, promulgated by the General Services Commission, pursuant to the Texas Government Code, Chapter 2166, and TDMHMR's Supplementary General Conditions for Construction Contracts.

(f) Interagency contracts. All interagency contracts must conform with the requirements of the Texas Government Code, Chapter 771.

(g) Interlocal contracts. All interlocal contracts must conform with the requirements of the Texas Government Code, Chapter 791.

(h) Employee education and training contracts. All employee education and training contracts must conform with the requirements of the Texas Government Code, Chapter 656, Subchapter C.

§417.58. Contract Extension or Renewal.

(a) All contracts governed by this subchapter may be extended or renewed only if:

(1) the solicitation or contract allows for extension or renewal;

(2) funding is available for the extension or renewal;

(3) extension or renewal is in the best interest of TDMHMR; and

(4) the contractor has demonstrated satisfactory performance.

(b) The determination of whether to renew a block grant contract or reduce the funding of a block grant contract must include the consideration of factors described in the Texas Government Code, §2105.202(b).

§417.59. Award of Construction Contracts.

(a) This section describes TDMHMR's procedures for awarding construction contracts, as required by the Texas Health and Safety Code, §551.007(c).

(b) TDMHMR shall make a reasonable effort to give notice of its intent to award a construction contract by publishing an Invitation for Bids (IFB) notice twice in two newspapers of general circulation. TDMHMR may send the IFB notice to plan rooms (i.e., a clearinghouse established by independent organizations in which private companies and government agencies may file plans and specifications for construction proposals). The IFB notice shall include:

(1) a description of the construction project;

(2) the project location;

(3) the procedures for obtaining bidding documents (i.e., plans and specifications of the construction project and other related documentation); and

(4) the place and time of the bid opening.

(c) Each bid must be written on the form that is included with the bidding documents and submitted in a sealed envelope to the announced place on or before the bids are scheduled to be opened.

(d) At the announced place and promptly at the announced time, a representative of TDMHMR's Maintenance and Construction Section shall open each bid envelope and read aloud all bid amounts contained the bid. Any bid arriving later than the announced time will not be accepted, and will be returned unopened to the bidder. Bid openings are open to the public.

(e) After all bids have been opened TDMHMR shall determine which, of all the responsive bids received, is the lowest and best bid. In determining the lowest and best bid and a bidder's ability to comply with the contract, TDMHMR may require a bidder to submit a qualifications form showing the bidder's capabilities.

§417.60. Protest and Appeal Procedures.

(a) Any respondent who is aggrieved in connection with TDMHMR's award or tentative award of a contract may formally protest to the contract director (as defined). Protests must be in writing and received by the contract director no later than 10 working days after such aggrieved respondent knows, or should have known, of the occurrence of the action which is protested. Copies of the protest must be mailed or delivered by the protester to all respondents involved.

(b) If a protest is received within the 10-day time frame as required in subsection (a) of this section and the contract has not been awarded, the contract director will not proceed with the contract award unless a written determination is made that delaying the award would cause substantial harm to TDMHMR.

(c) A protest must be limited to matters relating to the protestant's qualifications, the suitability of the goods or services offered by the protestant, or alleged irregularities in TDMHMR's procurement process.

(d) A protest must be sworn, notarized, and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue(s) to be resolved;

(5) a statement of the basis for the protest and any authority that supports the protest; and

(6) a statement that copies of the protest have been mailed or delivered to all respondents involved.

(e) If the protest is resolved by mutual agreement, then the protestor and the contract director shall sign an agreement acknowledging resolution of the protest.

(f) If the protest is not resolved by mutual agreement, then the contract director shall consider all relevant information contained in the protest and issue a written determination on the protest.

(1) If the contract director determines that no violation of rules or statutes has occurred, the director shall so inform the protester and all respondents involved by letter which sets forth the reasons for the determination and of the appeal process requirements.

(2) If the contract director determines that a violation of the rules or statutes has occurred, the director shall so inform the protester and all respondents involved by letter which sets forth the reasons for the determination (including the provisions that were violated) and the corrective action that will be taken. If a contract has been awarded, the corrective action may include voiding the contract.

(g) The contract director's determination on a protest may be appealed by the protester or a respondent to the higher authority (as defined). An appeal of the director's determination must be in writing and received by the higher authority no later than 10 working days after the date of the director's determination. The appeal is limited to review of the director's determination. Copies of the appeal must be mailed or delivered by the appellant to all respondents involved and must contain a statement that such copies have been provided.

(h) The higher authority shall review the director's determination and issue a written determination on the appeal. The higher authority's written determination is final and shall be sent to the appellant, all respondents involved, and the contract director.

(i) A protestor's or appellant's failure to meet the requirements of this section invalidates the protest or appeal.

§417.61. Monitoring.

(a) All contracts must be monitored for compliance.

(b) The monitoring activities for all construction contracts must include performing desk reviews of invoices and reports and conducting on-site reviews.

(c) The monitoring activities for all professional services contracts for architects, engineers, and land surveyors must include periodic reviews of work product.

(d) The monitoring activities for all interagency and interlocal contracts must include performing desk reviews of invoices and reports; evaluating the contractor's performance upon completion of the contract; and, if appropriate, requiring prior approvals for expenditures.

(e) The monitoring activities for all contracts for goods and non-consumer services that do not exceed $25,000 must include performing desk reviews of invoices and reports.

(f) Contract monitoring for all contracts not described in subsections (b)-(e) is as follows.

(1) Contract monitoring levels and examples of monitoring activities are as follows:

(A) Level I - TDMHMR performs desk reviews of invoices and reports, and evaluates the contractor's performance upon completion of the contract.

(B) Level II - TDMHMR performs desk reviews of invoices and reports; requires prior approvals for services and/or expenditures; and evaluates the contractor's performance every six months or upon completion of the contract if the term is less than one year.

(C) Level III - TDMHMR performs desk reviews of invoices and reports; requires prior approvals for services and/or expenditures; conducts on-site reviews to ensure specific performance and service levels (as defined in the contract) are met; and evaluates the contractor's performance quarterly and upon completion of the contract.

(2) Each contract must be assigned a monitoring level based on staff's risk assessment of the contract. Risk assessment factors must include at least the following:

(A) licensing or regulatory oversight of the contractor;

(B) geographic dispersion;

(C) contract term;

(D) number of consumer to be served;

(E) service mix and complexity of service or complexity of specifications;

(F) degree of competition;

(G) historical performance of contractor; and

(H) the contract amount.

(3) TDMHMR shall monitor contracts at the level that corresponds with the assigned risk assessment.

(g) In addition to the monitoring requirements and activities described in subsection (f) of this section, for contracts for the provision of services to consumers, TDMHMR must evaluate each contractor's service delivery for:

(1) safety of the environment in which services are provided;

(2) compliance with the contract, including the clearly defined performance expectations (referenced in §417.56 (b)(1) of this title (relating to Provisions for All Contracts)); and

(3) satisfaction of consumers and family members with services provided.

§417.62. Remedies and Sanctions for All Contracts Except Construction Contracts.

(a) TDMHMR may impose remedies and sanctions for a contractor's default. Default by a contractor includes:

(1) submitting falsified documents or fraudulent invoicing or making false representations or certifications relating to the contract;

(2) endangering the life, health, welfare, or safety of consumers served under the contract;

(3) failing to perform or comply with any provision, term, or condition of the contract, including:

(A) failing to perform according to the terms and conditions or within the time limit(s) specified in the contract;

(B) failing to comply with applicable federal and state statutes and TDMHMR rules;

(C) failing to notify and reimburse TDMHMR for services TDMHMR paid for when the contractor received reimbursement from a liable third party;

(D) failing to disclose or make available, upon demand, to TDMHMR or its representatives any records the contractor is required to maintain;

(E) failing to correct contract performance deficiencies after receiving written notice about them from TDMHMR; and

(F) failing to repay or make and follow through with arrangements satisfactory to TDMHMR to repay identified overpayment or other erroneous payments.

(b) Remedies may include:

(1) requesting the contractor to respond in writing to identified problems;

(2) requiring the contractor to submit to extensive monitoring by TDMHMR;

(3) requiring the contractor to obtain training or technical assistance; and

(4) requiring the contractor to submit financial and/or programmatic reports.

(c) Sanctions may include:

(1) terminating the contract;

(2) withholding contract payments;

(3) reducing the total allowable payment or rate(s) of payment;

(4) reducing scope of contracted services or contract term;

(5) assessing damages or financial penalties as allowed by law; and

(6) requiring the contractor to correct performance to comply with contract at no additional cost to TDMHMR.

§417.63. Negotiation and Mediation.

TDMHMR and its contractors must comply with Chapter 417, Subchapter S of this title (relating to Negotiation and Mediation of Certain Contract Claims Against TDMHMR), as applicable.

§417.64. References.

The following laws and rules are referenced in this subchapter:

(1) Texas Government Code, Chapters 656, Subchapter C; 783; 771; 791; 2054; 2105; 2166; and 2254, Subchapters A and B; §403.055; §411.115; §572.054; §659.0115; §2155.004; §2155.144; §2157.068; §2252.901; and §2260.051(c);

(2) Texas Health and Safety Code, Chapter 250; §533.001(d); §533.007; §533.035(a); §534.061; and §551.007;

(3) Texas Civil Statutes, Article 2.45;

(4) 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4;

(5) 1 TAC, Part 5, Chapter 111, §§111.11 - 111.27 (relating to Historically Underutilized Business Program);

(6) 1 TAC, Part 15, Chapter 391, governing Purchase of Goods and Services by Health and Human Services Agencies;

(7) Chapter 417, Subchapter S of this title (relating to Negotiation and Mediation of Certain Contract Claims Against TDMHMR);

(8) Chapter 414, Subchapter A of this title (relating to Client-Identifying Information);

(9) Chapter 414, Subchapter K of this title (relating to Criminal History Clearances); and

(10) TDMHMR Operating Instruction for Ethics (417-16).

§417.65. Distribution.

This subchapter shall be distributed to:

(1) members of the Texas MHMR Board;

(2) executive, management, and program staff at Central Office;

(3) superintendents/directors of all TDMHMR facilities; and

(4) advocacy organizations.

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 December 18, 2000.

TRD-200008729
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 206-4516

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 11. CONTRACTS
SUBCHAPTER A. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

30 TAC §11.1

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §11.1, Historically Underutilized Business Program. The commission proposes the amendment to Chapter 11, Subchapter A, to adopt by reference all, and the most current, Texas General Services Commission (GSC) Historically Underutilized Business (HUB) rules, except those that apply only to the GSC.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Texas Government Code, §2161.003, as added by Senate Bill (SB) 178, 76th Legislature, 1999, requires every state agency to adopt, as that agency's own rules, the GSC HUB rules promulgated in response to the requirements of Texas Government Code, §2161.002, as revised and expanded by SB 178. The GSC adopted amendments to 1 TAC, §§111.12, 111.16, and new 111.28 on June 9, 2000, to comply with the requirements of Texas Government Code, Subchapter B, §2161.065 (Mentor Protege Program), Subchapter C (Planning and Reporting Requirements), and Subchapter F (Subcontracting) as enacted by SB 178.

To comply with the requirements of Texas Government Code, §2161.003, the commission proposes to adopt by reference all of the GSC HUB rules under Title 1 TAC, Chapter 111, Subchapter B (Historically Underutilized Business Program) through the most recent revisions adopted by the GSC and published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5621); except for §111.24 (Program Review) and §111.25 (Memorandum

of Understanding between the Texas Department of Economic Development and the General Services Commission) which apply only to the GSC.

SECTION BY SECTION DISCUSSION

The proposed changes to §11.1 would add language to adopt by reference 1 TAC §§111.26 - 111.28, which were not previously adopted by reference, and replace the date and issue of the *Texas Register* the referenced rules are amended through to represent the most recent revisions published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5621). In order to correctly cite the subchapter title of the GSC rules, the word "Certification" would be deleted.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendment is in effect there will be no significant fiscal impacts for units of state and local government as a result of administration or enforcement of the proposed amendment, which would implement, by reference, GSC HUB rules.

The GSC is the primary agency responsible for implementing statewide HUB rules. Senate Bill 178 requires all state agencies to adopt the GSC HUB rules. The agency previously implemented GSC HUB rules through July 9, 1999; however, the GSC has updated and added several new HUB rules since then. This rulemaking is proposed to adopt GSC HUB rules, by reference, that have been updated or changed through June 9, 2000.

The primary intended benefit of this rulemaking is to HUBs located in Texas, because these HUBs will no longer have to compete with out-of-state HUBs for business opportunities, primarily those contracts $25,000 and less (which require a minimum of two of the three required bids to be from HUBs), within Texas effective August 31, 2001. All state agencies must make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that agencies expect to award in accordance with specific percentages detailed in the GSC HUB rules. Agencies must include a detailed report with their Legislative Appropriations Request showing good faith effort compliance for the past two calendar years. Additionally, the State Auditor's Office will monitor good faith effort compliance and report non-complying agencies to the GSC.

Additional GSC HUB rule revisions that will be implemented as a result of the proposed amendment include: the definition change of a HUB from socially to economically disadvantaged persons; a requirement that state agencies track and report the total amount of purchases and payments made to HUBs and the number of bids and proposals made by HUBs regarding agency acquisitions, construction, or equipping of a facility or implementation of a program; implementation of a GSC designed mentor protege program that pairs new HUB contractors with experienced contractors in order to share information; development of a forum program that will provide HUBs the opportunity to give technical and business presentations demonstrating their ability to do business with the state; and a requirement for a HUB subcontracting plan which applies to contracts with an expected value of at least $100,000. The agency must determine the probability of subcontracting in its bids, proposals, and offers. If the agency requires a HUB subcontracting plan, a vendor's bid, proposal, or offer must contain the subcontracting plan, which shows that a good faith effort has been made to contact and arrange work with at least three HUBs, in order to be considered for the award of a contract.

The proposed amendment is administrative in nature and provides updated HUB guidance to state agencies and set up programs to assist HUBs which desire to do business with the state. All state agencies must implement the GSC HUB rules by reference; however, local governments do not have to abide by the GSC HUB rules. The commission anticipates that provisions to be implemented by this rulemaking will not result in increased or additional expenditures for units of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be the potential increased use of HUBs by units of state government and associated contractors.

This rulemaking is proposed to adopt GSC HUB rules, by reference, that have been updated or changed through June 9, 2000. The primary intended benefit to HUBs is that only HUBs located in Texas can be certified under the GSC certification program. As a result, HUBs located in Texas will no longer have to compete with out-of-state HUBs for business opportunities, primarily those contracts $25,000 and less (which require a minimum of two of the three required bids to be from HUBs), within Texas effective August 31, 2001.

Additional GSC HUB rule revisions that will be implemented as a result of the proposed amendment include: the definition change of a HUB from socially to economically disadvantaged persons; a requirement that state agencies track and report the total amount of purchases and payments made to HUBs and the number of bids and proposals made by HUBs regarding agency acquisitions, construction, or equipping of a facility or implementation of a program; implementation of a GSC designed mentor protege program that pairs new HUB contractors with experienced contractors in order to share information; development of a forum that will provide HUBs the opportunity to give technical and business presentations demonstrating their ability to do business with the state; and a requirement for a HUB subcontracting plan which applies to contracts with an expected value of at least $100,000. The agency must determine the probability of subcontracting in its bids, proposals, and offers. If the agency requires a HUB subcontracting plan, a vendor's bid, proposal, or offer must contain the subcontracting plan, which shows that a good faith effort has been made to contact and arrange work with at least three HUBs, in order to be considered for the award of a contract.

All provisions in the proposed rulemaking are already required to be adhered to; therefore, the commission anticipates no additional costs for individuals and businesses as a result of implementation of the proposed amendment. Those HUBs that are eligible for certification may experience positive fiscal benefits due to the proposed amendment, in an amount that cannot be determined at this time, through increased contracting with state government. Non-certified HUBs which are located outside of Texas may be adversely affected due to potentially fewer contracts with the state, in an amount that cannot be determined at this time.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-business as a result of the proposed amendment. The

amendment is administrative in nature and is intended to implement recently updated and newly added GSC HUB rules by reference.

The majority of HUBs in Texas are estimated to be small or micro-businesses. The primary intended benefit to Texas HUBs which only can be certified under the GSC certification program is that they will no longer have to compete with out-of-state HUBs for business opportunities, primarily those contracts $25,000 and less (which require a minimum of two of the three required bids to be from HUBs), within Texas effective August 31, 2001. The proposed amendment is intended to implement additional beneficial HUB programs that will also set up mentor protege and forum programs in order to promote information exchanges between experienced state contracting vendors and HUBs, and will provide a forum for HUBs, that desire to do business with the state, to demonstrate business and technical expertise to units of state government. Additionally, all vendor bids for state contracts valued in excess of $100,000 must contain a HUB subcontracting plan, which shows that a good faith effort has been made to contact and arrange work with at least three HUBs.

Small and micro-businesses throughout the state, both HUBs and non-HUBs, that desire to do business with the state already have to adhere to the GSC HUB rules. Since the proposed amendment does not add additional regulatory requirements, the commission estimates that the provisions in the rulemaking will not result in additional costs for small or micro-businesses affected by the proposed amendment. GSC HUB certification will probably have positive and negative fiscal impacts on small and micro-businesses that intend to bid for contracts with state government. Those HUBs that are eligible for certification may experience positive fiscal benefits due to the proposed amendment, in an amount that cannot be determined at this time, through increased contracting with state government. Non-certified HUBs may be adversely affected, in an amount that cannot be determined at this time, due to potentially fewer contracts with the state.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. "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 does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The rulemaking proposes to adopt by reference administrative rules of the GSC relating to HUBs as required by Texas Government Code, §2161.003. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Nevertheless, the commission further evaluated the proposed rule and performed a preliminary assessment of whether the proposed rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to adopt by reference administrative rules of the GSC relating to HUBs as required by Texas Government Code, §2161.003. Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, 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 2000-049-011-AD. Comments must be received by 5:00 p.m., January 29, 2001. For further information, please contact Jill Burditt, Regulation Development Section, at (512) 239-0560.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; and Texas Government Code, §2161.003, which requires a state agency to adopt the GSC rules under Texas Government Code, §2161.002, as the agency's own rules.

The proposed amendment implements Texas Government Code, §2161.003, relating to Agency Rules.

§11.1. Historically Underutilized Business Program.

The commission adopts by reference the rules of the Texas General Services Commission in 1 TAC §§111.11 - 111.23 and §§111.26 - 111.28 (relating to Historically Underutilized Business [~~Certification~~] Program), as amended through the June 9, 2000, issue of the *Texas Register* (25 TexReg 5621) [~~July 9, 1999 (24 TexReg 5179)~~].

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 December 18, 2000.

TRD-200008728
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 239-5017

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

The Texas Juvenile Probation Commission proposes new chapter 341 rules relating to Texas Juvenile Probation Commission standards. The proposed standards provide structural and substantive changes from the current standards.

Erika Sipiora, Staff Attorney, 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 or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement will be the consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the proposed amendments may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.1. Definitions.

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

(1) Chief Administrative Officer-regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department or a multi-county juvenile judicial district.

(2) Commission-The Texas Juvenile Probation Commission

(3) Courtesy Supervision-practice where a juvenile probation department agrees to supervise a juvenile who is under the jurisdiction of another county's juvenile probation department.

(4) Financial Records-any documentation associated with the expenditure of state dollars that would be required to substantiate a purchase.

(5) Internal Controls-the process designed to provide reasonable assurance regarding the achievement of objectives in the following categories: effectiveness and efficiency of operations, reliability of financial reporting, safeguarding of assets and compliance with laws and regulations.

(6) Juvenile Justice Program-a non-residential program operated for the benefit of juveniles referred to a juvenile probation department that is either directly administered by the juvenile probation department, or is operated under contract with a juvenile board. A juvenile justice program does not include any program operated in a facility that is licensed or operated by a state agency other than the Texas Juvenile Probation Commission.

(7) Mechanical Restraint Devices-devices used for the physical restraint of juveniles including but not limited to handcuffs, wristlets, anklets, ankle cuffs, plastic cuffs, restraint chairs, restraint jackets and waistbands.

(8) Referral-a referral to the juvenile court for conduct defined in Texas Family Code Section 51.03 that results in a face-to-face interview between the juvenile and the authorized staff of the juvenile probation department.

(9) State Aid-funds allocated by the Commission to a juvenile board to financially assist the board financially in achieving the purposes of Chapter 141 of the Texas Human Resources Code and in conforming to the Commission's standards or policies.

(10) Video Training-pre-recorded training materials or conferences. Video training does not include video teleconferences.

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 December 18, 2000.

TRD-200008771
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 424-6710

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SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2-341.6

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.2. Administration.

(a) Local juvenile probation services administration.

(1) The juvenile board shall employ hire a chief administrative officer for each autonomous juvenile probation department.

(2) The juvenile board shall specify the responsibilities and functions of the juvenile probation department as well as the authority, responsibility, and function of the position of the chief administrative officer.

(3) When probation services for adult and juvenile offenders are provided by a single probation office, the juvenile board shall ensure that the juvenile probation department policies, programs, and procedures are clearly differentiated.

(b) Referral ratio. The juvenile board shall employ at least one certified juvenile probation officer for each 100 referrals made to the juvenile probation department annually.

(c) Compliance with State and Federal Law. The juvenile board shall abide by and shall ensure assure that the juvenile probation department abides by all applicable state, federal and local laws including any applicable standards promulgated by the Commission.

(d) Conflict of interest. A juvenile board member shall not participate in any decision, which would create a pecuniary benefit to the individual member.

(e) Participation in Community Resource Coordination Groups. Juvenile boards shall participate in the system of community resource coordination groups and the procedures in the memorandum of understanding adopted in §341.157 of this title (relating to Coordinated Services for Multiproblem Children and Youth). The chair of the juvenile board or a judicial member of the juvenile board designated by the chair shall serve as representative to the interagency dispute resolution process described in the memorandum of understanding.

§341.3. Fiscal Responsibilities.

(a) Fiscal Policies. The juvenile board shall develop and maintain fiscal policies and procedures. These policies shall include at a minimum the following subjects: salary provisions, employee benefits, travel and reimbursement procedures, collection of probation fees and restitution funds, authorized signatures for disbursements, petty cash and bonding.

(b) Fiscal Officer. The juvenile board shall assign accounting responsibility for fiscal affairs to an appropriate county or district fiscal officer. The fiscal officer shall not be an employee of the juvenile probation department.

§341.4. Policy and Procedures.

(a) Personnel Policies. The juvenile board shall adopt written personnel policies. These personnel policies shall include but not be limited to:

(1) a salary scale for all juvenile probation department personnel. Juvenile probation department personnel shall receive all applicable benefits and allowances paid to county employees. Salary scale levels shall be reasonable and comparable with prevailing salaries in the public and private sectors for similar occupations, educational and professional requirements;

(2) an annual employee appraisal; and

(3) an employee grievance procedure.

(b) Department Policies and Procedures. The juvenile board shall adopt written department policies and procedures. These policies shall include but not be limited to:

(1) intake and preliminary investigation;

(2) detention;

(3) transportation including the use of mechanical restraint devices during transportation;

(4) deferred prosecution. The deferred prosecution policy shall at a minimum include the following policies;

(A) The maximum supervision fee for deferred prosecution cases is $15.00 per month.

(B) The monthly fee shall be determined after obtaining a financial statement from the parent or guardian. The fee schedule shall be based on total parent/guardian income.

(C) The Chief Administrative Officer, or the Chief Administrative Officer's designee shall approve in writing the fee assessed for each child including any waiver of deferred prosecution fees.

(D) A deferred prosecution fee shall not be imposed if the juvenile court does not adopt a fee schedule and rules for waiver of the deferred prosecution fee.

(5) pre-disposition reports and social history;

(6) court procedures;

(7) sex offender registration under Code of Criminal Procedure Chapter 62 and sex offender probation under Texas Family Code Section 54.0405;

(8) progressive sanctions;

(9) probation supervision including case planning and management;

(10) restitution;

(11) community service restitution;

(12) courtesy supervision;

(13) probation modification/revocation;

(14) residential placements

(15) TYC commitments and transportation;

(16) discharge procedures, exit plans and sealing information;

(17) Interstate Compact;

(18) Juvenile Justice Information System;

(19) Volunteers and Interns. If a juvenile probation department has or develops a volunteer or internship program, the juvenile board at a minimum shall adopt the following polices for the volunteer program:

(A) a description of the authority, responsibility and accountability of volunteers who work with the department;

(B) screening including performing a criminal history check in accordance with §341.40 (1) and (2) all state and federal databases;

(C) selection and termination criteria;

(D) orientation and training requirements;

(E) a requirement that volunteers meet minimum professional requirements; and

(F) a provision for a volunteer sign in log; and

(20) Mechanical Restraints Devices used for behavior intervention in Juvenile Justice Programs. The mechanical restraint devices policy shall at a minimum include the following policies:

(A) Mechanical restraints shall may only be used by a law enforcement officer, certified juvenile probation officer, certified detention officer, or certified correctional officer.

(B) Mechanical restraint devices shall not be used for punishment, discipline, or intimidation.

(C) The use of mechanical restraint devices shall be fully documented.

(D) Use of a mechanical restraint device shall be terminated as soon as the youth's behavior indicates that threat of imminent self-injury or injury to others are absent.

(21) Victims Rights. Policies and procedures shall afford victims their rights under Texas Family Code, Chapter 57.

(c) Annual Review. The juvenile board shall review all of its policies and procedures on an annual basis.

§341.5. Facilities and Support Services.

(a) Minimum facilities. Adequate office space shall be provided for all juvenile probation personnel. There shall be a private office or a place for interviewing and counseling clients. Each office shall have adequate lighting, air conditioning, heating, telephones, furniture, equipment, and square footage to provide services. The location of the juvenile probation facility and other field offices shall be reasonably accessible to children, families, and the general community.

(b) Minimum Support Services. Juvenile probation officers shall have adequate support services and staff in order to carry out their duties and responsibilities.

§341.6. Waiver to Standards.

(a) Who May Request. Unless expressly prohibited by another standard, the juvenile board, or chief administrative officer may make an application for waiver of any standard or standards adopted by the Commission. If the chief administrative officer makes a request for waiver, the chief administrative officer shall in writing notify the juvenile board of the request simultaneous with the request's submission to the Commission.

(b) Contents of Request. The written request for waiver shall:

(1) explain why said standard or standards cannot be complied with immediately;

(2) explain the impact the waiver if granted, would have on other standards; and

(3) provide a plan to ensure compliance within a period not to exceed one year including where applicable how the health and safety of juveniles would be maintained during the duration of the waiver.

(c) Length of Waiver. Waivers granted by Commission staff under this section shall not exceed one year. The juvenile board may request one subsequent waiver.

(d) Review of Request. In the event a request for waiver is denied, the juvenile board, or chief administrative officer may request a review by the Commission. The review of the waiver request shall occur at the next regularly scheduled Commission meeting.

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

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Lisa Capers
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SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §§341.13-341.17

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.13. Administrative Manual.

(a) The chief administrative officer shall maintain an administrative manual for the juvenile probation department. The administrative manual shall include:

(1) the policies, procedures, and regulations of the juvenile probation department as adopted by the juvenile board; and

(2) a current organizational chart depicting structure, lines of authority, and responsibility.

(b) The chief administrative officer shall provide ensure that all employees are provided with a copy of or access to the administrative manual, update the manual on an annual basis and enforce all policies in the manual.

§341.14. Identification.

The chief administrative officer shall furnish each juvenile probation officer with proper official identification.

§341.15. Supervision.

The chief administrative officer shall ensure that all juveniles given court ordered probation or deferred prosecution are supervised by a certified juvenile probation officer.

§341.16. Treatment and Safety.

(a) Serious Incidents. The chief administrative officer shall report the death, attempted suicide, and any serious injury that requires medical treatment by a physician or physician's assistant that occurs in a juvenile justice program or juvenile probation department within 24 hours of discovering the incident.

(b) Child Abuse and Neglect. The chief administrative officer shall ensure that any allegation of abuse or neglect occurring in a juvenile justice program or juvenile probation department is reported to the Commission within 24 hours of having cause to believe a child has been abused or neglected. The chief administrative officer shall also ensure that a report is made to local law enforcement in accordance with Texas Family Code Chapter 261.

(1) Internal Investigation. The chief administrative officer shall maintain written policy and procedure requiring an internal investigation of all allegations of child abuse or neglect in the department or any juvenile justice program.

(A) The policy shall require:

(i) all staff members to fully cooperate with any investigation of alleged child abuse or neglect in the department or program;

(ii) any person alleged to be a perpetrator of child abuse or neglect be put on administrative leave or reassigned to a position having no contact with children in the department or program until the conclusion of the internal investigation;

(iii) the alleged perpetrator have no contact with the alleged victim(s) pending the conclusions of the internal investigation.

(B) At the conclusion of the internal investigation of child abuse or neglect, the chief administrative officer shall take appropriate measures to provide for the safety of children.

(C) The chief administrative officer shall submit a copy of the internal investigation to TJPC within 2 working days following the completion of the internal investigation.

(D) In the event the chief administrative officer is alleged to be a perpetrator of child abuse or neglect, the juvenile board shall :

(i) conduct the internal investigation or appoint an individual who is not an employee of the juvenile probation department to conduct the internal investigation; and

(ii) place the chief administrative officer on administrative leave, or ensure the chief administrative officer has no contact with children in the department or juvenile justice program until the conclusion of the internal investigation.

(2) Treatment and Safety. The chief administrative officer shall ensure that juveniles under supervision of the juvenile probation department or participating in a juvenile justice program shall not be subjected to abuse or neglect as defined in Chapter 261, Texas Family Code.

§341.17. Participation in Community Resource Coordination Groups.
The chief administrative officer or the chief administrative officer's designee shall serve as the liaison to the community resource coordination group in accordance with the memorandum of understanding relating to coordinated services for multiproblem youth adopted in §341.157.

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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SUBCHAPTER D. FISCAL OFFICER RESPONSIBILITIES

37 TAC §§341.24-341.31

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.24. Accounting.
Under the guidance of the juvenile board or chief administrative officer, The fiscal officer shall oversee conduct the business affairs of the department utilizing generally accepted accounting principles and best business practices.

§341.25. Interest on State Funds.
The fiscal officer shall ensure that state funds are held in an interest bearing account that provides for necessary protection of principle. Interest earnings on state funds shall be accounted for separately and expended for the sole benefit of the juvenile probation department.

§341.26. Purchasing.

The fiscal officer shall ensure that purchases made for the juvenile probation department are made in accordance with county procurement procedures. The fiscal officer shall ensure that written contracts are executed by the juvenile board with any public and private service provider where services are purchased in whole or in part with any funds received from the Commission.

§341.27. Expenditure of State Funds.

The fiscal officer shall ensure that all program activities and expenditures of state funds are consistent with the purposes outlined in the budget documents of all applicable financial agreements with the Commission.

§341.28. Internal Controls.

The fiscal officer shall establish and maintain the internal controls for the juvenile probation department. The fiscal officer shall ensure that all employees with access to monies are bonded.

§341.29. Financial Reporting.

The fiscal officer is responsible for completion and submission of the following in accordance with Commission guidelines:

(1) quarterly expenditure reports for grant funds received from the Commission;

(2) annual certification of local expenditure reports;

(3) annual independent financial compliance audit of all funds received from the Commission; and

(4) other financial reports as requested by the Commission.

§341.30. Refunds to the Commission.

(a) The fiscal officer shall ensure that TJPC is reimbursed immediately for each dollar of unallowable costs if unallowable expenditures are discovered by any means.

(b) Unspent grant funds at the end of each contract period shall be returned to the Commission.

§341.31. Records Retention.

The fiscal officer shall ensure that financial records are retained and made available for inspection by the Commission for a minimum of three years after the end of the applicable contract 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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SUBCHAPTER E. EMPLOYMENT OF JUVENILE PROBATION OFFICERS

37 TAC §§341.38-341.42

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.38. Qualifications for Employment.

(a) Certified juvenile probation officer qualifications for employment shall adhere to the Texas Human Resources Code §141.061(a) and any additional standards promulgated by the Commission.

(b) One Year of Graduate Study Defined. The phrase "one year of graduate study," in Texas Human Resources Code §141.061(a)(3)(A), is interpreted to mean at least 18 post-graduate credit hours earned in a behavioral science field with certification from the school of enrollment attesting that the student has an acceptable scholastic standing. The fields of graduate study presently approved by the Commission are: criminology; corrections, counseling, law, social work, psychology, sociology, cultural anthropology, business management, public administration, and education.

(c) Internships. Internships may be counted toward meeting one year's experience, where the duties performed were related to the field of juvenile justice.

(d) An individual whose certification has been revoked by the Commission shall not qualify for employment as juvenile probation officer.

§341.39. Exemption from Qualifications.

(a) The juvenile board, or chief administrative officer shall apply to the Commission for exemption of the requirements of one year of experience or graduate study prior to the employment of any individual who is hired for the position of juvenile probation officer. If the chief administrative officer makes a request for exemption under this section, the chief administrative officer shall in writing notify the juvenile board of the request simultaneous with the request's submission to the Commission.

(b) The exemption request shall document that diligent efforts were made to employ a probation officer with one year of experience or graduate study and state why, in their opinion, the efforts were unsuccessful.

§341.40. Criminal Records Check.

Prior to employing a person as a certified juvenile probation officer, the chief administrative officer shall conduct and have returned a criminal history check in accordance with the following guidelines:

(1) A criminal records check shall be conducted in the following databases:

(A) Texas criminal history background search;

(B) Federal Bureau of Investigation fingerprint based criminal history background search;

(C) State criminal history background search in every state of known residence where available; and

(D) Local law enforcement sex offender registration records in the city or county where the application was made.

(2) An Internet based criminal background search shall not be used to conduct the background searches required under (a)(1) or (a) (2).

§341.41. Disqualification from Employment.

A person who within the last ten years has been convicted of or placed on deferred adjudication for a felony offense under the laws of this State, another State, or the United States, or is currently on either probation or parole, or who is registered as a sex offender under Chapter 62, Texas Code of Criminal Procedure is not eligible for employment as a juvenile probation officer. A request for waiver under §341.6 of this title may not be requested for this section unless the person received a pardon based upon proof of innocence.

§341.42. Applicability.

This subchapter applies to all individuals hired on or after the effective date of this subchapter.

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

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SUBCHAPTER F. CERTIFICATION OF JUVENILE PROBATION OFFICERS

37 TAC §§341.48-341.52

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.48. Persons Who Must be Certified.

The chief administrative officer of a juvenile probation department, and any person hired as a juvenile probation officer, or as a supervisor of to juvenile probation officers shall obtain and maintain an active juvenile probation officer certification from the Commission.

§341.49. Certification.

(a) Eligibility. A person, including the chief administrative officer, is eligible for certification as a juvenile probation officer when the person:

(1) meets the eligibility requirements under §341.38 of this title, or has received an exemption under §341.39;

(2) has completed 40 hours of certification training in accordance with §341.60 of this title;

(3) has not within the past ten years been convicted or placed on deferred adjudication for a felony against the laws of this state, another state, or the United States, or is not currently on probation or parole, or is not registered as a sex offender under Chapter 62, Texas Code of Criminal Procedure. A request for waiver under §341.6 of this title may not be requested for this requirement unless the person received a pardon based upon proof of innocence;

(4) is not currently under an order of certification suspension issued under §341.88(d)(2); and

(5) has never had juvenile probation officer certification revoked under §341.88(d)(3) or §341.103(d).

(b) Certification Procedures.

(1) Juvenile Probation Officers and Supervisors of Juvenile Probation Officers. The chief administrative officer or the chief administrative officer's designee shall submit a certification application to the Commission for all juvenile probation officers and supervisors of juvenile probation officers. The certification application shall include verification that a criminal history check conducted in accordance with 341.40 (1)and (2) has been returned within the 60 days prior to submitting the certification application. A copy of the criminal history check shall be retained in the juvenile probation department's records.

(2) Chief Administrative Officers. The chairman of the juvenile board shall submit the chief administrative officer's certification application to the Commission. The certification application shall include verification that a criminal history check conducted in accordance with §341.40 (1) and (2) has been returned of all state and federal databases was conducted within the 60 days prior to submitting the certification application. A copy of the criminal history check shall be retained in the juvenile probation department's records.

(c) Length of Certification. A certification is valid for two years from the date of approval.

(d) Reinstatement of Certification after Suspension. An individual whose certification has been suspended under §341.88(d)(2) of this title may apply for certification once the suspension period has expired and the individual meets the certification eligibility requirements listed under subsection (a) of this section.

§341.50. Recertification.

(a) Eligibility. A certified juvenile probation officer, including a supervisor of juvenile probation officers and the chief administrative officer, is eligible for recertification if the officer:

(1) has not within the past 10 years been convicted or placed on deferred adjudication for a felony offense against the laws of this state, the laws of another state or the laws of the United States, or is not currently on probation or parole, or is not registered as a sex offender under Chapter 62, Texas Code of Criminal Procedure. A request for waiver under §341.6 of this title may not be requested for this requirement unless the person received a pardon based upon proof of innocence; and

(2) has within the two years from the date of the certification's or recertification's approval completed 80 hours of recertification training in accordance with §341.61 of this title.

(3) If the person applying for re-certification is the chief administrative officer, 20 hours of the required recertification training shall be in management and supervisory skills.

(b) Recertification Procedures.

(1) Submission. The chief administrative officer or the chief administrative officer's designee shall submit a recertification application to the Commission for all certified juvenile probation officers and supervisors of juvenile probation officers. The juvenile board, or the juvenile board's designee shall submit the chief administrative officer's recertification application.

(2) Timeline for Submission. Unless a request for extension has been made under paragraph (4) of this subsection, the recertification application shall not be sent more than 30 days before or 60 days after the certification expiration date.

(3) Verification of Criminal History. All recertification applications shall include verification that a criminal history check was conducted in accordance with §341.40 (1) and (2) and returned within the 60 days prior to submitting the certification application. A copy of the criminal history check shall be retained in the juvenile probation department's records.

(4) Extension.

(A) Requests for Extension. The juvenile board, the chief administrative officer or either's designee may request an extension of time to allow a certified juvenile probation officer additional time to meet the recertification eligibility requirements listed in subsection (a) of this section or for the submission of recertification applications listed in paragraph (2) of this subsection. The request shall include an explanation showing cause why an extension is needed.

(B) Grants of Extension. Commission staff may grant an extension for a period not to exceed 90 days from the date the certification expired.

(C) Failure to complete the training or submission requirements within the extension period shall result in the Commission's denial of the recertification application. In the event the recertification application is denied, an applicant may apply for certification under §341.49.

(c) Length of Recertification. A recertification is valid for two years from the date of approval of the previous certification or recertification.

§341.51. Transfer of Certification.

(a) Notification Upon Resignation or Termination. The chief administrative officer, the juvenile board or either's designee shall notify the Commission within 7 working days after a certified juvenile probation officer, including the chief administrative officer, resigns or is terminated from employment.

(b) Inactive Certifications. Upon receipt of notice under subsection (a) of this section, the Commission shall place the probation officer's, supervisor of juvenile probation officers' or chief administrative officer's certification on inactive status. A person may not perform the duties of a juvenile probation officer, including those duties listed under §341.68 of this title, while on inactive status.

(c) Transfer of Certification. When a person with an inactive certification obtains employment as a juvenile probation officer, supervisor of juvenile probation officers' or a chief administrative officer, the juvenile board, the chief administrative officer or either's designee may request a transfer of certification to active status. The request for certification transfer shall be in writing and shall include a verification that a criminal history check was conducted in accordance with §341.40 (1) and (2) and returned within the 60 days prior to submitting the transfer request. A copy of the criminal history check shall be retained in the juvenile probation department's records.

(d) Expiration of Certification while on Inactive Status. If a juvenile probation officer's or chief administrative officer's certification expires while on inactive status, the officer will not be eligible for transfer of certification. A juvenile probation officer, supervisor of juvenile probation officers or chief administrative officer whose certification expires while on inactive status may apply for certification after obtaining employment with a juvenile probation department and meeting the eligibility requirements listed under §341.50.

(e) Transfer of Training Records. The chief administrative officer, or juvenile board shall forward a certified juvenile probation officer's, a supervisor of juvenile probation officers' or chief administrative officer's training records, upon a request from the chief administrative officer or juvenile board in the county where the certified juvenile probation officer's certification was transferred.

§341.52. Applicability.

Except for §341.50(a)(3) of this title this Section applies to all certification and re-certifications received on or after the effective date of this Section. Any felony conviction or deferred prosecution occurring before the effective date of this section will not disqualify a juvenile probation officer from receiving either certification or recertification under this section. Section 341.50(a)(3) of this title does not become effective until January 1, 2002.

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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SUBCHAPTER G. TRAINING OF JUVENILE PROBATION OFFICERS

37 TAC §§341.58-341.62

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.58. Training Hours.
In accordance with §341.60 and §341.61, all training intended to count toward certification and recertification requirements shall be approved by Commission staff. TJPC reserves the right to refuse to grant approval for training hours that do not comply with the guidelines under this subchapter. No more than 40 training hours in one topic may count toward certification or recertification. No more than 15 hours of video training may count toward certification requirements. No more than 30 hours of video training may count toward recertification requirements.

§341.59. Training Hours for Trainers.
An individual who provides approved juvenile probation officer training under §341.58 of this title may claim up to 20 hours training credit for each hour of course development. A trainer may only claim course development one time per course topic per certification or recertification period. It is not a requirement under this section that the individual claiming training hours be employed by a juvenile probation department as a trainer.

§341.60. Certification Training.
A person applying for certification as a juvenile probation officer, a supervisor of juvenile probation officers, or a chief administrative officer shall have completed 40 hours of certification training. Certification Training shall include but not be limited to the following subjects:

(1) role of the juvenile probation officer;

(2) case planning and management;

(3) officer safety;

(4) transportation;

(5) juvenile law;

(6) courtroom proceedings and presentation;

(7) law enforcement processing;

(8) local programs and services including access procedures;

(9) interagency collaborations and memoranda of understanding; and

(10) code of ethics, disciplinary and revocation hearing procedures.

§341.61. Recertification Training.

(a) Juvenile Probation Officers and Supervisors of Juvenile Probation Officers. A certified juvenile probation office or supervisor of juvenile probation officers, shall receive 80 hours of recertification training every two years.

(b) Chief Administrative Officers shall receive 80 hours of recertification training every two years. Twenty of the 80 recertification hours for shall be in management and supervisory skills.

(c) Nature of Training. Recertification training shall be related to job responsibilities or the field of juvenile justice. A three-hour graduate course in any approved field of study listed in §341.38(b) of this title shall count as 40 hours of recertification training.

(d) Training hours provided in addition to the initial 40 hours required for certification shall be counted towards the initial recertification training requirements if the certification application is complete and all deficiencies are corrected within 60 days of the date the application is first received by the Commission. In the event the Commission does not notify the juvenile probation department about a deficiency in a certification application within 30 days from the date the Commission received the application, the Commission shall give the juvenile probation department an additional 30 days from the date the department was notified by the Commission to correct any deficiency.

§341.62. Applicability.
This section applies to all training hours accrued on or after the effective date of this section. The twenty hours of management and supervisory skills training required under §341.61(c) is not applicable until January 1, 2002.

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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SUBCHAPTER H. DUTIES OF CERTIFIED JUVENILE PROBATION OFFICERS

37 TAC §341.68

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.68. Duties of Certified Juvenile Probation Officers.

In addition to any duties, responsibilities or powers granted by Title III of the Texas Family Code, the following duties and responsibilities shall be performed by only certified juvenile probation officers:

(1) representation of the juvenile probation department in all formal court proceedings;

(2) final approval preparation of written social history reports;

(3) acting as the primary supervising officer for all court ordered or deferred prosecution cases;

(4) writing and administering case plans in accordance with the Commission's Case Management Standards; and

(5) completing any assessment instrument required to be completed by law or Commission standards; and

(6) if authorized by the juvenile court under Texas Family Code Section 53.02, conducting intake interviews, investigations, and making release decisions.

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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SUBCHAPTER I. JUVENILE PROBATION OFFICER CODE OF ETHICS

37 TAC §341.75

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.75. Code of Ethics.

The people of Texas expect of juvenile probation officers, supervisors of juvenile probation officers, and chief administrative officers unfailing honesty, respect for the dignity and individuality of human beings, and a commitment to professional and compassionate service. To this end the Commission subscribes to the following principles.

(1) Juvenile Probation Officers shall endeavor to:

(A) respect the authority and follow the directives of the court, recognizing at all times that they are an extension of the court;

(B) respect and protect the civil and legal rights of all children and their parents;

(C) serve each case with concern for the child's welfare and with no purpose of personal gain;

(D) encourage relationships with colleagues of such character to promote mutual respect within the profession and improvement of its quality of service;

(E) respect the significance of all elements of the justice and human services systems and cultivate a professional cooperation with each segment;

(F) respect and consider the right of the public to be safeguarded from juvenile delinquency;

(G) be diligent in their responsibility to record and make available for review any and all case information which could contribute to sound decisions affecting a client or the public safety;

(H) report without reservation any corrupt or unethical behavior which could affect either a child or the integrity of the department;

(I) maintain the integrity of private information and not seek personal data beyond that needed to perform their responsibilities, nor reveal case information to anyone not having proper professional use for such;

(J) not discriminate against any employee, prospective employee, child, child care provider, or parent on the basis of age, race, sex, creed, disability, or national origin;

(K) respect, serve and empathize with the victims of law violations allegedly committed by children;

(L) abide by all federal, state, and local laws and Commission standards.

(2) Juvenile Probation Officers shall not:

(A) use official position to secure privileges or advantages; make statements critical of colleagues or their departments unless these are verifiable and constructive in purpose;

(B) permit personal interest to impair in the least degree the objectivity which is to be maintained in their official capacity;

(C) use their official position to promote any partisan political purpose;

(D) accept any gift or favor of a nature to imply an obligation that is inconsistent with the free and objective exercise of professional responsibilities;

(E) make appointments, promotions or dismissals in furtherance of partisan political interests; and

(F) maintain an inappropriate relationship with juveniles assigned to their caseload or supervised by the juvenile probation department. An inappropriate relationship can include but is not limited to: bribery, solicitation or acceptance of gifts, favors, or services from juveniles or their families, and the appearance of an inappropriate relationship.

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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SUBCHAPTER J. ENFORCEMENT PROCEDURES-CODE OF ETHICS

37 TAC §§341.82-341.92

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.82. Request for Disciplinary Hearing.

Unless the standards in Subchapter K relating to mandatory revocation apply, the chief administrative officer or juvenile board may forward a copy of an internal investigation based on a code of ethics violation to the Commission. The internal investigation shall serve as a request for a disciplinary hearing. If the chief administrative officer makes the request for a disciplinary hearing, the chief administrative officer shall in writing notify the juvenile board of the request simultaneous with the request's submission to the Commission.

§341.83. Notifications Made to Commission.

In the event the Commission or Commission staff receive notice from an individual or entity other than the chief administrative officer or juvenile board that a certified juvenile probation officer, or the chief administrative officer has violated the code of ethics, Commission staff shall notify in writing the chief administrative officer and the local juvenile board. Upon receipt of notification from the Commission, the chief administrative officer, or the juvenile board may conduct an internal investigation and may make a request for a disciplinary hearing in accordance with §341.82 of this title.

§341.84. Effect of Request for Disciplinary Hearing .

When the Commission receives a request for disciplinary hearing under §341.82 of this title, the Commission shall give the officer alleged to have committed an ethics violation written notice and an opportunity for a hearing conducted by the Commission in accordance with the procedures set out below.

§341.85. Procedure for Hearings.

Hearings under this section shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The Commission shall have the power to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, and conduct hearings and issue subpoenas or summons.

§341.86. Notice.

(a) The Commission shall provide a minimum of 10 days notice to the certified juvenile probation officer or chief administrative officer subject to a disciplinary hearing. Notice shall be sent by certified mail return receipt requested.

(b) The notice shall include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short plain statement of the matters asserted.

§341.87. Right to Counsel.

An individual subject to a disciplinary hearing under this subchapter is entitled to the assistance of counsel during the revocation hearing. The officer may expressly waive the right to the assistance of counsel. The officer may also be represented by a designated person. Written notice at least five days in advance of the hearing shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

§341.88. Disciplinary Hearing.

(a) The juvenile probation officer, chief administrative officer or his/her representative, shall be given the opportunity to show compliance with the code of ethics and all requirements of the law, including Commission standards.

(b) The hearing shall be conducted in executive session with only the members of the Commission, Commission staff, the officer, the chief administrative officer, their representatives and such witnesses as may be called in attendance, unless the officer requests that it be open. Witnesses may be excluded from the hearing until is it their turn to present evidence.

(c) The conduct of the hearing shall be under the Commission chairman's control, and in general, shall be conducted in accordance with the following steps:

(1) The hearing shall begin with the presentation of investigatory findings by the designated Commission staff, supported by such proof as is deemed necessary.

(2) The officer may cross-examine any witnesses for the Commission;

(3) The officer may then present such testimonial or documentary proof as desired in rebuttal or in support of the contention that the code of ethics has not bee violated;

(4) The designated Commission staff may cross-examine any witnesses for the officer and offer rebuttal testimony of the officer's witnesses;

(5) Each party may make closing arguments;

(6) The hearing shall be recorded and transcribed by means including but not limited to a stenographic record of the proceedings.

(d) Ruling by the Commission. The Commission may consider only such evidence as is presented at the hearing, if the Commission determines that the evidence presented is insufficient, the Commission may ask for additional information from the officer or chief administrative officer, or Commission staff and may ask questions on their own motion. After all the evidence has been presented, the Commission must determine whether the allegation against the officer is supported by substantial evidence. Based on the Commission's ruling the Commission may assign one of the following dispositions:

(1) Reprimand. The Commission may issue a written reprimand of the juvenile probation officer or chief administrative officer.

(2) Suspension. The Commission may suspend the certification of a juvenile probation officer for a specified period not to exceed 24 months.

(3) Revocation. The Commission may permanently revoke the certification of the juvenile probation officer or chief administrative officer.

(e) Notice of Disposition. The Commission shall notify an individual whose conduct was the subject of a disciplinary hearing. The Commission may notify the individual either in person or by certified mail return receipt requested. The notice of disposition shall include:

(1) which acts or omissions by the officer, if any violated the code of ethics;

(2) a statement of the evidence relied upon;

(3) a statement of which section or sections of the code of ethics, if any, were violated by the acts or omissions of the officer;

(4) the commission's dispositional ruling concerning the officer's certification; and

(5) the officer's right to rehearing and appeal.

§341.89. Motion for Rehearing.

An individual wishing to appeal the Commission's ruling may file a motion for rehearing with the Commission no later than the 20th day after receiving notice of the revocation. The Commission shall rule on the Motion for Rehearing no later than the 45th day after receiving the motion.

§341.90. Judicial Review.

A person whose certification has been revoked and whose motion for rehearing has been denied by the Commission is entitled to judicial review of the Commission's Action.

§341.91. Record.

The Commission shall create a record for each hearing conducted. The record shall include:

(1) the request for disciplinary hearing received under §341.82 of this title;

(2) the transcript of the hearing, which may take the form of the minutes of the Commission meeting;

(3) any documentary proof submitted during the hearing;

(4) all staff memoranda and documentation submitted to the Commission in making its decision;

(5) a copy of the final order issued by the Commission;

(6) any motions for rehearing;

(7) the Commission's ruling on any motions for rehearing.

§341.92. Release of Information.

Upon request, the Commission shall release information relating to a disciplinary hearing conducted under this subchapter.

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

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Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER K. MANDATORY CERTIFICATION REVOCATION

37 TAC §§341.98-341.108

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.98. Duty to Notify.

(a) The chief administrative officer, the juvenile board or either's designee shall in writing request a certification revocation from the Commission within 10 working days after obtaining notice that a certified juvenile probation officer, or chief administrative officer has been convicted or given deferred adjudication for any felony based on the laws of this state, the laws of another state or the laws of the United States, or who is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure. Notice provided under this section constitutes a request for certification revocation.

(b) A request for waiver under §341.6 of this title may not be requested for this section unless the certified juvenile probation officer, or chief administrative officer received a pardon based upon proof of innocence.

(c) Notifications Made to Commission. In the event the Commission, or Commission staff receive notice from an individual or entity other than the Chief administrative officer, juvenile board or their respective designees that a certified juvenile probation officer, or chief administrative officer has been convicted or given deferred adjudication for any felony based on the laws of this state, the laws of another state, or the laws of the United States, or who is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure. Commission staff shall in writing notify the Chief administrative officer or the juvenile board. Upon receiving notice from Commission staff the Chief administrative officer, or juvenile board shall request certification revocation in accordance with subsection (a) of this section.

§341.99. Effect of Notification.

Upon receipt of request for certification revocation under §341.92 of this title, the Commission shall conduct a hearing for certification revocation at the next regularly scheduled board meeting.

§341.100. Procedure for Certification Revocation Hearings.

Hearings for revocation under this section shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The Commission shall have the power to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, and conduct hearings and issue subpoenas or summons.

§341.101. Notice.

(a) The Commission shall provide a minimum of 10 days notice to the certified juvenile probation officer or chief administrative officer subject to a revocation hearing. Notice shall be sent by certified mail return receipt requested.

(b) The notice shall include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short plain statement of the matters asserted.

§341.102. Right to Counsel.

An individual subject to a revocation hearing under this subchapter is entitled to the assistance of counsel during the revocation hearing. The officer may expressly waive the right to the assistance of counsel. The officer may also be represented by a designated person. Written notice at least five days in advance of the hearing shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

§341.103. Revocation Hearing.

(a) The juvenile probation officer, chief administrative officer or his/her representative, shall be given the opportunity to show compliance with the code of ethics and all requirements of the law, including Commission standards.

(b) The hearing shall be conducted in executive session with only the members of the Commission, Commission staff, the officer, the chief administrative officer, their representatives and such witnesses as may be called in attendance, unless the officer requests that it be open. Witnesses may be excluded from the hearing until is it their turn to present evidence.

(c) The conduct of the hearing shall be under the Commission chairman's control, and in general, shall be conducted in accordance with the following steps:

(1) The hearing shall begin with the presentation of findings by the designated Commission staff, supported by such proof as is deemed necessary.

(2) The officer may cross-examine any witnesses for the Commission;

(3) The officer may then present such testimonial or documentary proof as desired in rebuttal or in support of the contention that the officer has not been convicted or placed on deferred adjudication for a felony, or has been pardoned based upon proof of innocence;

(4) The designated Commission staff may cross-examine any witnesses for the officer and offer rebuttal of t the testimony of the officer's witnesses;

(5) Each party may make closing arguments;

(6) The hearing shall be recorded and transcribed by means including but not limited to a stenographic record of the proceedings.

(d) Ruling by the Commission. The Commission may consider only such evidence as is presented at the hearing, if the Commission determines that the evidence presented is insufficient, the Commission may ask for additional information from the officer or chief administrative officer, or Commission staff and may ask questions on their own motion. After all the evidence has been presented, the Commission shall revoke the officer's certification if substantial evidence indicates the officer has been convicted or placed on deferred adjudication for a felony against this state, another state or the United States, or is registered as a sex offender under Chapter 62 Texas Code of Criminal Procedure.

(e) Notice of Disposition. The Commission shall notify an individual whose conduct was the subject of a revocation hearing of the Commission's ruling. The Commission may notify the individual either in person or by certified mail return receipt requested. The notice of disposition shall include:

(1) the Commission's dispositional ruling

(2) a statement of the evidence relied upon;

(3) a statement of which section or sections of the code of ethics, or other Commission standards, if any, were violated by the acts or omissions of the officer; and

(4) the officer's right to rehearing and appeal.

§341.104. Motion for Rehearing.

An individual wishing to appeal the Commission's disposition may file a motion for rehearing with the Commission no later than the 20th day after receiving notice of the revocation. The Commission shall rule on the Motion for Rehearing no later than the 45th day after receiving the motion.

§341.105. Judicial Review.

An individual whose certification has been revoked and whose motion for rehearing has been denied by the Commission is entitled to judicial review of the Commission's Action.

§341.106. Record.

The Commission staff shall create a record for each revocation hearing conducted. The record shall include:

(1) the initial notification received under §341.98 of this title;

(2) the transcript of the revocation meeting which may take the form of the minutes of the Commission meeting;

(3) any documentary proof submitted during the hearing;

(4) all staff memoranda and documentation submitted to the Commission in making its decision;

(5) a copy of the final order issued by the Commission;

(6) any motions for rehearing; and

(7) the Commission's ruling on any motions for rehearing.

§341.107. Release of Information.

Upon request, the Commission shall release information relating to a revocation hearing conducted under this subchapter.

§341.108. Applicability.

This section applies to all felony convictions, felony deferred adjudications, or convictions or deferred adjudications that require sex offender registration under Chapter 62 Texas Code of Criminal Procedure that occur on or after the effective date of this standard.

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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Lisa Capers
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SUBCHAPTER L. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §341.113, §341.114

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.113. Notice of Complaint Procedures.

The Commission staff shall prepare and distribute to each juvenile board with which it contracts a sign describing the procedures for filing a complaint against the juvenile board with the Commission. The juvenile board shall post the sign in a public area of the juvenile probation department and any facility operated by the juvenile board, or operated by a private entity through contract with the juvenile board.

§341.114. Complaint Process.

When Commission staff receives a written, signed complaint about a juvenile board, the Commission staff shall review the circumstances surrounding the complaint to determine whether the juvenile board has violated the rules or standards of the Commission.

(1) If the staff determines the complaint is about the juvenile services within the discretion of the juvenile board, the complaint will be referred to the juvenile board. The complainant shall be notified of the referral in writing by the Commission.

(2) If the staff determines the juvenile board has violated the Commission's rules or standards, it will inform the juvenile board in writing and give the juvenile board an opportunity to come into compliance. If, within 90 days of the date on which the juvenile board received written notice of the staff determination, the juvenile board does not propose its own means of achieving compliance which is acceptable to the staff, the staff will propose a solution to the board and attempt to negotiate a mutually agreeable solution.

(3) If the Commission's staff and the juvenile board cannot reach an agreement, the staff will give the juvenile board written notice of its intent to refuse, reduce, or suspend state aid, under authority of the Texas Human Resources Code, §141.085. The juvenile board shall have 15 days after receipt of the notice to notify the executive director how it will comply with the staff's solution, or that it appeals the staff decision.

(4) The juvenile board's appeal must be in writing, and must state specifically its differences of opinion with the Commission's staff concerning the facts in dispute and the solution necessary under the standards or rules of the commission. The appeal must state whether the juvenile board requests a hearing before the Commission.

(5) The Commission shall set the appeal on the agenda for its next regularly scheduled meeting. If the juvenile board has requested a hearing, the juvenile board and the commission's staff may appear and make oral presentations concerning the appeal. If the juvenile board does not request a hearing before the Commission, the Commission will make its decision based upon the record.

(6) The complainant shall be notified in writing of the progress of the investigation and resolution of the complaint at least quarterly until the complaint is resolved, and shall be notified of the resolution.

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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SUBCHAPTER M. CASE MANAGEMENT STANDARDS

37 TAC §§341.121-341.125

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.121. Definitions.

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

(1) Assessment-Assessment is the process by which relevant and valid information is compiled in order to determine the juvenile's needs, risk of offending, strengths, and weaknesses. The assessment process is intended to assist the supervising juvenile probation field officer in developing and implementing an effective case plan, appropriate level of supervision, and utilization of appropriate resources.

(2) Case Planning-Case planning involves the process of determining the post-adjudication needs of a juvenile. This includes all appropriate and available assessment and intake information, SJS findings, preliminary investigation information, family dynamics, school history, and victim impact statements. A written case plan outlines services to be provided during the juvenile's term of court ordered probation. Case planning also includes the reassessment, reevaluation, and review of the juvenile's risks, needs and initial case plan, in order to make any subsequent changes necessary to best meet the juvenile's status and circumstances over time.

(3) TJPC Standard Assessment Tool Comprehensive Assessment Instrument (COMPASS)-An instrument developed by the Texas Juvenile Probation Commission that assesses the juvenile's needs in the areas of mental health, education and family domains and the juvenile's risk of re-offending.

(4) Formal Intake Interview-The interview with the juvenile who is the subject of the referral and the juvenile's parent, guardian or custodian wherein the intake officer or juvenile probation officer develops a dispositional recommendation for the juvenile's case. The formal intake interview occurs subsequent to the formal referral.

(5) Formal Referral-A referral of a juvenile to the juvenile court for conduct defined in Texas Family Code Section 51.03 that results in a face to face interview between the juvenile and the authorized staff of the juvenile probation department.

(6) Progressive Sanctions Assigned Level-The level of sanctions actually assigned to a juvenile by the juvenile court that corresponds with the progressive sanctions guidelines contained in Chapter 59, Texas Family Code.

(7) Exit Plan-The exit plan is the written document developed for each juvenile that identifies the juvenile's needs for post-supervision reintegration and specifies the community resources available to meet those needs. The purpose of the exit plan is to facilitate

a continuum of community services to the juvenile and the juvenile's family after probation supervision ends.

(8) Strategies in Juvenile Supervision (SJS)-A case assessment and correctional management process designed to provide a structured method for gathering and organizing information about the juvenile and translating that information into appropriate case management strategies.

(9) Supervision-Supervision involves the case management of a juvenile by the assigned juvenile probation supervising field officer or designee through contacts (face to face, telephone, office, home, collateral) with the juvenile, juvenile's family, and other case planning participants.

(10) Title IV-E Standards-Standards promulgated by the Texas Juvenile Probation Commission as detailed in Chapter 347 of this title (relating to Title IV-E Federal Foster Care Program).

§341.122. Assessment.

(a) TJPC Standard Assessment Tool COMPASS. TJPC standard assessment tool Comprehensive Assessment Instrument (COMPASS), or an assessment tool approved by TJPC, shall be completed for all juveniles who receive a formal referral to the juvenile probation department disposition from the juvenile court or juvenile probation department. If the TJPC standard assessment tool COMPASS (or a comparable instrument approved by TJPC) has been completed within the previous six months and contained in the juvenile's case record, the department is not required to complete an additional assessment.

(1) Time of Assessment. The assessment instrument shall be administered at the formal intake interview.

(2) Administration of Instrument. The instrument shall be administered by the a certified juvenile probation officer who that conducts the formal intake interview.

(b) SJS. A Strategies in Juvenile Supervision (SJS) worksheet may be completed for all juveniles on court ordered probation. The SJS worksheet should be completed subsequent to the disposition of the juvenile's case and shall be completed prior to the formulation of the written case plan. The juvenile probation supervising field officer should administer the SJS worksheet.

§341.123. Case Planning and Review.

(a) Case Plan. A written case plan shall be developed and implemented for juveniles assigned to Progressive Sanctions levels three two through five. The written case plan shall be developed with all appropriate and available parties present and participating including, but not limited to, the juvenile,; any parent, guardian, or custodian of the child and the supervising juvenile probation field officer. A written case plan for each juvenile assigned to Progressive Sanctions level two shall be developed within thirty calendar days of the juvenile's disposition. Written case plans for juveniles assigned to Progressive Sanctions levels three through five shall be developed within 60 calendar days of the disposition. The original case plan shall be maintained in the juvenile's case file. Copies of the written case plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian.

(b) Case Review. It is recommended that written case plans be reviewed every 90 days after implementation of the initial case plan or at any time when significant changes take place in the juvenile's situation. The juvenile and at least one parent, guardian or custodian shall be present for the case review. The written case plan shall be revised to address any changes in risks and needs identified during the review process. Upon acceptance a juvenile's case from other county for courtesy supervision, a review of the current written case plan shall be conducted by the receiving county in accordance with this section. All original revised case plans shall be maintained in the juvenile's case file. Copies of the revised written case plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. This does not apply to Title IV-E cases, which shall comply with Title IV-E standards. The case review, with appropriate documentation in the case file, shall discuss and consider the following:

(1) Appropriateness of the juvenile's current level of supervision and services;

(2) Extent of compliance with the individualized case plan;

(3) Extent of compliance with the conditions of probation;

(4) Extent of progress made with the juvenile and family toward solving or reducing the factors that necessitated the juvenile's placement on probation;

(5) A projection of a likely date by which the juvenile may be ready for court-ordered release from probation supervision; and

(6) Services accessed, offered or provided to the juvenile and family to address risks and needs identified on the TJPC standard assessment tool COMPASS or equivalent assessment tool.

§341.124. Supervision.

The level of supervision provided to a juvenile by the probation department shall be defined by the results of the TJPC standard assessment tool COMPASS (or other approved assessment tool), SJS (where applicable), and the juvenile's written case plan. A minimum of one face to face contact per month with the juvenile is mandatory unless otherwise noted in the case plan.

§341.125. Exit Plan.

An exit plan is to be provided following the successful completion of a juvenile's probation period, unless the juvenile was committed to the Texas Youth Commission. A written exit plan shall be developed prior to the juvenile's scheduled release from probation. The written exit plan shall be formulated by all involved and available parties. The original exit plan shall be placed in the juvenile's case file. Copies of the exit plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. The exit plan shall include a copy of the notification given to the juveniles regarding sealing rights as required by the Texas Family Code §58.003(i).

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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SUBCHAPTER N. DATA COLLECTION STANDARDS

DIVISION 1. CASEWORKER SYSTEMS

37 TAC §§341.132-341.137

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.132. Definitions.

The following words or terms, when used during Part I of this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) CASEWORKER-A personal computer-based tracking and case management system, developed and supported by the Texas Juvenile Probation Commission (TJPC), that provides juvenile probation officers a systematic method to track and manage juvenile offender caseloads.

(2) Data Coordinator-A person employed by a juvenile probation department who is designated by the juvenile board to serve and function as the primary contact with TJPC on all matters relating to data collection and reporting.

(3) TJPC Monthly Folder Extract-An automated process to extract and submit modified case records from the department's CASEWORKER system to TJPC. The extract created by CASEWORKER follows in accordance with the Electronic Data Interchange Specifications.

(4) Comprehensive Folder Edit-A report generated in CASEWORKER that performs an extensive edit of the folder information. This report identifies incorrectly entered data, unrecoverable files, and questionable data that impact the accuracy of the reports and programs.

(5) Annual Resource Survey-A manual report designed to gather supplemental data in relation to juvenile activity and the services and/or programs that are available within the department or community. This report also captures each department's staff size, salary range and caseload.

(6) Electronic Data Interchange Specifications-document developed by TJPC outlining the data fields and file structures that each department is required to follow in submitting the TJPC monthly folder extract. The Electronic Data Interchange Specifications are published in Subchapter O, §341.150 of this title.

§341.133. Data Coordinator.

(a) Designation. Each juvenile board shall designate an employee of the juvenile probation department to serve as data coordinator to function as the primary contact with TJPC on all matters relating to data collection, reporting and the CASEWORKER system. If the designation of the data coordinator is changed by the juvenile board, TJPC shall be notified in writing within ten working days.

(b) Training Requirements. The data coordinator shall have a thorough understanding of TJPC reporting requirements and shall be trained on CASEWORKER by TJPC. Within 90 days from date of a new designation as data coordinator, the new data coordinator shall attend CASEWORKER training provided by TJPC.

(c) Duties. The data coordinator is responsible for ensuring that all data submitted to TJPC by the local juvenile probation department is accurate, timely, and consistent with TJPC reporting requirements. The data coordinator shall ensure that the TJPC Monthly Folder Extract is received on or by the applicable due date.

§341.134. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract shall be sent to TJPC via the Internet. The extract is due to TJPC on the tenth day of each month following the reporting period (example: extract of February data is due to TJPC on March 10).

§341.135. Other Reports.

(a) Annual Resource Survey. All juvenile probation departments are required to complete the Annual Resource Survey. The report must be completed in the format provided by TJPC and shall be submitted by January 31 of the following year for which the resource survey pertains.

(b) Special Requests. Information from juvenile probation departments is periodically requested by TJPC. Departments shall comply with these requests, whether on paper or electronically by e-mail or the Internet, in the format specified by TJPC.

§341.136. Accuracy of Data.

(a) Required Fields. The probation department shall fill in all applicable data fields for each referral in their CASEWORKER system to minimize missing information.

(b) Comprehensive Folder Edit. Probation departments shall run the Comprehensive Folder Edit on a monthly basis.

(c) Errors. Errors detected by the Comprehensive Folder Edit, the annual TJPC monitoring visit, or the TJPC Research and Planning Division upon analysis shall be corrected prior to the next submission of the TJPC Monthly Folder Extract.

§341.137. Security of Data.

(a) Passwords. Passwords shall be assigned by the CASEWORKER administrator or management information systems administrator for each individual user and should not be shared by employees or other persons. Each department shall have a limited number of employees that are authorized to delete information contained within CASEWORKER. Access to the department's CASEWORKER system shall be removed concurrent with the termination of the person's employment.

(b) Backup and Restoration. All juvenile probation departments shall adopt and follow a written policy for the backup and restoration procedures relating to data, requiring, at a minimum, a system backup once per week. Departments must maintain at least five generations (copies) of data backups.

(c) Off-Site Storage. All juvenile probation departments shall store a system backup off-site to be accessible in case of a disaster at the department (fire, tornado, etc). An updated backup for off-site storage must be run at a minimum of once a month, in addition to the five generations of backup.

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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DIVISION 2. NON-CASEWORKER SYSTEMS

37 TAC §§341.138-341.143

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.138. Definitions.

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

(1) Data Coordinator-A person employed by a juvenile probation department who is designated by the juvenile board to serve and function as the primary contact with TJPC on all matters relating to data collection and reporting.

(2) TJPC Monthly Folder Extract-An automated process to gather data relating to all case files in the case management system designed to analyze crime and juvenile trends, program success, and profiling of juvenile offenders. The extract shall be submitted in the format specified by the TJPC Electronic Data Specifications.

(3) Electronic Data Interchange Specifications-document developed by TJPC outlining the data fields and file structures that each department is required to follow in submitting the TJPC Monthly folder extract. The Electronic Data Interchange Specifications are published in Subchapter O, §341.150 of this title.

(4) Annual Resource Survey-A manual report designed to gather supplemental data in relation to juvenile activity and the services and/or programs that are available within the department or community. This report also captures the department's staff size, salary range and caseload.

§341.139. Data Coordinator.

(a) Designation. Each juvenile board shall designate an employee of the juvenile probation department to serve as data coordinator to function as the primary contact with TJPC on all matters relating to data collection and reporting. If the designation of the data coordinator is changed by the juvenile board, TJPC shall be notified in writing within ten working days.

(b) Training Requirements. The data coordinator shall attend training, as required and deemed necessary by TJPC, relating to updates on statistical and research-based information and requirements.

(c) Duties. The data coordinator is responsible for ensuring that the data submitted to TJPC by the local juvenile probation department is accurate, timely, and consistent with TJPC reporting requirements. The data coordinator shall ensure that the TJPC Monthly Folder Extract is received on or by the applicable due date.

§341.140. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract data shall be sent to TJPC via the internet and shall include all data fields required by the TJPC Electronic Data Interchange Specifications. The extract is due to TJPC on the tenth day of each month following the reporting period (example: extract of February data is due to TJPC on March 10).

§341.141. Other Report.

(a) Annual Resource Survey. All juvenile probation departments are required to complete the Annual Resource Survey. The report must be completed in the format provided by TJPC and shall be submitted by January 31 of the following year for which the resource survey pertains.

(b) Special Requests. Information from juvenile probation departments is periodically requested by TJPC. Departments shall comply with these requests, whether on paper or electronically by e-mail or the Internet, in the format specified by TJPC.

§341.142. Accuracy of Data.

(a) Required Fields. Departments shall fill in all applicable fields as specified in the CASEWORKER Extract File Layout. If TJPC requires additional fields, each department shall update their case management system to include such information.

(b) Maintaining Accuracy. Each department shall have a written policy and procedure to maintain accuracy of data submitted and methods of correcting errors. Each department shall report data elements that are consistent with TJPC definitions.

(c) Errors. Errors detected by the department during daily operation, or by TJPC during the annual monitoring visit or by the TJPC Research and Planning Division analysis shall be corrected prior to the next submission of the TJPC Monthly Folder Extract.

§341.143. Security of Data.

(a) Passwords. Department users shall be required to obtain a password to their case management system. Each department shall have a written policy and procedure to ensure secured access and to limit the number of employees that have access to delete information from the case management system. Access to the department case management system shall be terminated for people no longer employed by the department.

(b) Backup and Restoration. All juvenile probation departments shall adopt and follow a written policy.

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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SUBCHAPTER O. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.150

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.150. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract data shall include all data fields required by TJPC Electronic Data Interchange Specifications found in the figure below.
Figure 1: 37 TAC §341.150

Figure 2: 37 TAC §341.150

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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SUBCHAPTER P. TEXAS JUVENILE PROBATION COMMISSION

37 TAC §341.157, §341.158

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.157. Memoranda of Understanding-Coordinated Services for Multiproblem Children and Youth.

(a) The Texas Juvenile Probation Commission adopts by reference a joint memorandum of understanding with the Texas Commission for the Blind, Texas Department of Health, Texas Department of Protective and Regulatory Services, Texas Department of Mental Health and Mental Retardation, Texas Education Agency, Texas Rehabilitation Commission, and the Texas Youth Commission concerning coordinated services for multiproblem children and youth which provides for the implementation of a system of community resource coordination groups.

(b) The memorandum of understanding was published in the November 15, 1988, issue of the Texas Register (13 TexReg 5727) by the Texas Department of Human Services, 40 TAC §72.701. Copies of the memorandum of understanding are available from the Texas Juvenile Probation Commission.

§341.158. Memoranda of Understanding--Service Delivery to Dysfunctional Families

(a) The Texas Juvenile Probation Commission adopts by reference a joint memorandum of understanding with the Texas Department of Human Services and the Texas Youth Commission regarding service delivery to dysfunctional families.

(b) The memorandum of understanding was published in the Texas Register by the Texas Department of Human Services on October 29, 1991 (16 TexReg 6126). Copies of the memorandum of understanding are available from the Texas Juvenile Probation Commission.

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

Filed with the Office of the Secretary of State, on December 18, 2000.

TRD-200008755
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 424-6710

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CHAPTER 343. STANDARDS FOR JUVENILE PRE-ADJUDICATION SECURE DETENTION FACILITIES

37 TAC §343.8, §343.9

The Texas Juvenile Probation Commission proposes an amendment to §343.8 and §343.9 concerning multiple occupancy sleeping units. The amendment is being proposed in an effort to alleviate some of the problems associated with overcrowding in detention facilities while maintaining certain space and supervision requirements.

Scott Friedman, Director of Field Services, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Friedman has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement or implementation will be primarily cost savings in construction of detention facilities and an increase in approved population capacity. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the proposed amendments may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these amendments.

§343.8. Physical Plant.

(a) Written policy and procedure and practice of the following standards shall apply to all detention facilities.

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

(6) Population. The population in housing and living units shall not exceed the rated capacity of the facility. Written policies shall specify procedures to be followed in case the rated capacity is unavoidably exceeded. Such procedures shall specify steps to be taken to reduce the population to the rated capacity. [~~A facility that is chronically overcrowded shall meet TJPC policies regarding such conditions in order to be considered for a temporary waiver of this standard.~~]

(7) - (9) (No change.)

(b) The following standards shall apply to all detention facilities except for hold over detention facilities.

(1) Sleeping units. [~~Sleeping rooms shall be utilized as single occupancy, except for all juvenile detention facilities designed for multiple occupancy, and operating as such, prior to September 1, 1996. Sleeping rooms shall have a minimum ceiling height of seven~~

and one-half feet and a minimum of 60 square feet of floor space. Juveniles held in sleeping rooms shall have access to a toilet above floor level, a wash basin, drinking water, running water, and a bed above floor level. There shall be separate sleeping rooms for male and female juveniles.]

(A) Single Occupancy Sleeping Units. Sleeping rooms shall be utilized as single occupancy, except for all juvenile detention units designed for multiple occupancy and approved by TJPC. Sleeping rooms shall have a minimum ceiling height of seven and one-half feet and a minimum of 60 square feet of floor space. Juveniles held in sleeping rooms shall have access to a toilet above floor level, a wash basin, drinking water, running water, and a bed above floor level. There shall be separate sleeping rooms for male and female juveniles.

(B) Multiple Occupancy Sleeping Units. A unit designed and constructed for multiple occupancy sleeping which is self-contained and includes appropriate sleeping, sanitation and hygiene equipment or fixtures within the unit. The utilization of multiple occupancy sleeping units shall have prior written approval and authorization from the juvenile board. The following standards shall not apply to any multiple occupancy units designed and operating as such prior to the effective date of this section

(i) The capacity of multiple occupancy sleeping units shall not exceed 25% of the design capacity of the facility. No more than eight juveniles shall be housed in each multiple occupancy sleeping unit. Separate units shall be provided for male and female residents.

(ii) Multiple occupancy sleeping units shall have a minimum ceiling height of seven and one half feet with a minimum of thirty-five unencumbered square feet of floor space per resident.

(iii) Multiple occupancy sleeping units shall have one bed above floor level for every juvenile assigned to the unit. Bunk beds are not allowed in the unit.

(iv) Multiple occupancy sleeping units shall have within the unit, so that juveniles have access without having to be escorted out of the unit, to toilets (ratio of 1 toilet per 4 juveniles); wash basins (ratio of 1 wash basin per 8 juveniles); and drinking water.

(v) Juveniles are not to be admitted to multiple occupancy sleeping units directly from the intake process. Classification, screening, and behavioral observation must occur for at least 72 hours before the decision is made to admit the juvenile to a multiple occupancy sleeping unit in accordance to 343.9(c).

(vi) The ratio of detention officers to juveniles in the multiple occupancy sleeping units shall be a minimum of 1 to 8 at all times.

(vii) Juveniles in multiple occupancy sleeping units shall be under the constant personal visual supervision of a detention officer.

(viii) If the detention officer conducts his or her supervision behind the security of an architectural barrier, the barrier in question must be constructed in a way to allow the officer a complete and unobstructed view of the entire sleeping unit. The architectural barrier or other electronic devices shall allow the detention officer the ability to conduct constant auditory monitoring of the sleeping unit. Visual supervision methods may not be replaced with electronic video devices.

(2) - (7) (No change.)

(8) Common activity area. Total common activity area [space for day rooms, classrooms, dining rooms, and recreation rooms] shall encompass no less than 100 square feet of floor space per juvenile. Common activity areas are defined as areas to which juveniles have access and in which activities are conducted. These areas include but are not limited to dayrooms, dining rooms, covered recreation areas, recreation rooms, education rooms, counseling rooms, testing rooms, visitation areas, and medical or dental rooms.

(9) - (12) (No change.)

§343.9. Security and Control.

(a) Written policy and procedure and practice of the following standards shall apply to all detention facilities.

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

(3) Special Incidents. Written policy, procedure, and practice shall ensure that all[All] special incidents including, but not limited to, the taking of hostages, escapes, assaults, staff use of restraint devices[,chemical agents] and physical force shall be reported in writing to the Administrative Officer. A copy of the report shall be[is] placed in the permanent file of the juvenile concerned. Written procedure shall designate persons or officials at the local level, as deemed appropriate by the juvenile board, to whom notice of special incidents shall be provided.

(4) - (7) (No change.)

(b) (No change.)

(c) Written policy, procedure and practice of the following standards shall apply to all detention facilities that utilize multiple occupancy sleeping units.

(1) Classification Plan. Facilities with multiple occupancy sleeping units shall have a classification plan that determines how juveniles are grouped in said units. Juveniles shall be classified for grouping by age and gender, at a minimum.

(2) Screening Plan. Juveniles shall be screened by personnel with appropriate credentials, as determined and approved by the juvenile board, prior to placement in a multiple occupancy sleeping unit. Juveniles with the following indicators shall not be allowed admittance to multiple occupancy sleeping units:

(A) Medical illness which may be contagious to other residents or to staff unless they wear protective clothing and/or masks, or medical conditions which require treatment and/or equipment that would present a risk to resident or others;

(B) Mental illness, if the resident exhibits behavior dangerous to other residents or to staff;

(C) Mental retardation, if the resident exhibits behavior dangerous to other residents or to staff;

(D) Sex offenders who cannot function appropriately in a group setting;

(E) Exploitive, victimizing behavior;

(F) Violent, explosive, assaultive behavior;

(G) Chronic detention rule violators;

(H) Juvenile likely to be exploited or victimized by others;

(I) Juveniles who have other special needs for single housing; or

(J) Any other behavior or condition which could impose a threat to self or others safety and health.

(3) Administrative Approval. The placement of any juvenile into a multiple occupancy sleeping unit shall be approved by the facility administrator or other designated probation department administrators.

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 December 18, 2000.

TRD-200008773
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 424-6710

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CHAPTER 344. STANDARDS FOR JUVENILE POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES

37 TAC §344.8

The Texas Juvenile Probation Commission proposes amendments to §344.8 concerning security and control in juvenile post-adjudication secure correctional facilities. The amendment is being proposed in an effort to clarify reporting requirements regarding special incidents in juvenile post-adjudication secure correctional facilities.

Scott Friedman, Director of Field Services, has determined that for the first five year period the amendments and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcement.

Mr. Friedman has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be improved reporting of special incidents in secure juvenile facilities and increased accountability in the juvenile justice system. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

The amendments are proposed under Texas Human Resource Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other code or article is affected by the amendment.

§344.8. Security and Control.

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

(c) Special Incidents. Written policy, procedure, and practice shall ensure that all special incidents including, but not limited to, the taking of hostages, escapes, assaults, staff use of restraint devices and physical force shall be reported in writing to the administrative officer. A copy of the report shall be placed in the permanent file of the resident(s) involved in the incident. Written procedure shall designate persons or officials at the local level, as deemed appropriate by the juvenile board, to whom notice of special incidents shall be provided.

(d) - (k) (No change.)

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

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Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.7

The Texas Workforce Commission (Commission) proposes new §800.7 relating to Agency Vehicles.

Background and Purpose: House Bill 3125, 76th Legislature, 1999, (House Bill 3125), added Texas Government Code Section 2171.1045, which required the General Services Commission's (GSC) Office of Vehicle Fleet Management (OVFM) as directed by the Council on Competitive Government (CCG) to adopt a State Vehicle Fleet Management Plan (Plan). The GSC adopted the Plan on October 11, 2000.

As set forth in Texas Government Code Chapter 2162.051, the composition of the Council on Competitive Government includes representation from the Texas Workforce Commission's Commissioner of Labor. The goals of the CCG include identifying commercially available services being performed by state agencies and studying the services to determine if they may be better provided by selecting the service providers through competition with other state agency providers of the services or private commercial sources. The Plan sets forth management provisions regarding:

(1) opportunities for consolidating and privatizing the operation and management of vehicle fleets in areas where there is a concentration of state agencies, including the Capitol Complex and the Health and Human Services Complex in Austin;

(2) the number and type of vehicles owned by each agency and the purpose each vehicle serves;

(3) procedures to increase vehicle use and improve the efficiency of the state vehicle fleet;

(4) procedures to reduce the cost of maintaining state vehicles;

(5) the sale of excess state vehicles; and

(6) lower-cost alternatives to using state-owned vehicles, including using rental cars and reimbursing employees for using personal vehicles.

The Plan may be viewed on the internet at: http://www.gsc.state.tx.us/fleet. House Bill 3125 and the Plan also require that state agencies adopt rules that address the management provisions contained in the Plan and also make clear that: (1) vehicles are assigned to the agency's motor pool and may be available for checkout; and (2) the agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if there is a documented finding that the assignment is critical to the needs and mission of the agency.

The purpose of the proposed rule is to describe an approach that builds upon existing and recommended practices for cost-efficient and effective utilization of agency vehicles.

The rule also directs the agency's administrators to work with GSC to leverage any waiver or exemption provisions provided for in the Plan or by GSC, where such efforts may result in fiscal efficiencies due the unique characteristics of the TWC's vehicle fleet. Several foreseeable examples include the presence of varying percentages of federal funding associated with vehicle purchases; specially modified vehicles; the campus-like nature of TWC's physical plant in the Capitol area; and high-capacity, frequent-trip, under 7,000 mile-per-year vehicles. The Commission is encouraged by the Plan recognition of such unique circumstances and looks forward to close communication between the agency's administration and GSC during Plan implementation.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rule; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because small businesses are not required to perform under the rule.

Cindy Silberman, Procurement and Support Services Director, has determined that the public benefit anticipated as a result of the rules as proposed will be to set forth the provisions relating to the vehicle fleet management policies of the Agency to conform to the Office of Fleet Vehicle Management's State Vehicle Fleet Management Plan.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of these proposed rules.

Comments on the proposed rules may be submitted to Cindy Silberman, Procurement and Support Services, Texas Workforce Commission, 101 East 15th Street, Room 316T, Austin, Texas 78778; Fax Number (512) 305-9636; or E-mail to cindy.silberman@twc.state.tx.us Comments must be received by the Commission no later than thirty (30) days from the date this proposal is published in the *Texas Register*.

For information regarding the Texas Workforce Commission please visit our web page at www.texasworkforce.org.

The new sections are proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities, as well as Texas Government Code §2171.1045, which requires the adoption of rules, consistent with the management plan adopted under Texas Government Code §2171.104, relating to the assignment and use of the Agency's vehicles.

The proposal affects the Texas Labor Code, Title 2 and Title 4.

§800.7. Agency Vehicles.

(a) Purpose and Intent. The purpose of this rule is to implement the provisions of Texas Government Code Section 2171.1045. The intent of the Commission is to ensure that the use and management of vehicles by the Agency is consistent with the State Vehicle Fleet Management Plan as adopted by the Office of Vehicle Fleet Management of the General Services Commission. The Plan may be viewed on the internet at: http://www.gsc.state.tx.us/fleet, or a copy may be requested from the Texas Workforce Commission.

(b) The Commission adopts by reference and shall implement the provisions contained in the State Vehicle Fleet Management Plan as referenced in subsection (a) of this section including the following general provisions on use of vehicles by the Agency.

(1) Vehicles, with the exception of vehicles assigned to field employees, are assigned to the Agency motor pool and may be available for checkout.

(2) The Agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if there is a documented finding that the assignment is critical to the needs and mission of the Agency.

(3) The Agency will work with GSC to identify, apply for, and if possible, utilize any waiver or exemption provisions where the recognition of conditions specific to the Agency would further the general purpose of fiscal efficiency and good business practices.

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 December 14, 2000.

TRD-200008668
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 463-2573

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 5. FINANCE

SUBCHAPTER D. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES

43 TAC §5.43, §5.44

The Texas Department of Transportation proposes amendments to §5.43 and §5.44, concerning the payment of fees for department goods and services.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §201.208 authorizes the commission to adopt rules regarding the method of payment of a fee for any goods sold or services provided by the department or for the administration of any department program. Pursuant to that authority, the commission has adopted §§5.41-5.44 to include a requirement that a person paying a fee by credit card also pay a $1.00 service charge.

Section 23.27 of the department's rules prescribes requirements for the sale of travel promotional materials by the department through *Texas Highways*, including requirements relating to payments. Section 23.27 does not require the payment of a service charge for a credit card payment. Fees for subscriptions to *Texas Highways* and single issues of *Texas Highways* also do not include a service charge, and are processed directly by the magazine. Payments by check or money order are made payable to Texas Highways, instead of the department. Payments by credit card may be for a lesser or greater amount than the minimum and maximum amounts prescribed by §5.43.

The cost of *Texas Highways* and products sold through *Texas Highways* are publicized to readers and customers through *Texas Highways* and other methods. Charging an additional service charge to customers will increase the publicized price of those products and the magazine, which may result in an adverse impact on sales and revenues.

Section 5.43 is amended to clarify the requirements for payments for subscriptions to and single issues of *Texas Highways*. The amendments specify that minimum and maximum charges for payments by credit card do not apply, nor is there a requirement for a $1.00 service charge if paying by credit card. Payments by check or money order for subscriptions to or single issues of the magazine are payable to Texas Highways.

Section 5.44 is amended to specify that the requirements of Subchapter D of Chapter 5 (§§5.41-5.44) do not apply to the payment of fees for products sold through *Texas Highways*. That section is also restructured to improve its readability.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. There were approximately 1000 credit card transactions processed by the department's Travel Division for the sale of *Texas Highways* and ancillary products in Fiscal Year 2000. Although there currently is no requirement for a service charge in Chapter 23 of the department's rules, failure to charge one for these products could result in a loss of revenue of approximately $1000 each year of the first five-year period the amendments are in effect. However, charging a service charge may have an adverse effect on sales and revenues. This adverse effect cannot be quantified with any specificity, as it will depend on how many products and magazine subscriptions and single issues are sold. There are no fiscal implications for local government as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the section as proposed.

Mr. Bass has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Bass has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to prevent any unwarranted decrease in revenue available to the department to advertise state highways and attract travelers to the state. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Mr. James Bass, Director, Finance Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 29, 2001.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, §201.208, which authorizes the commission to adopt rules regarding the method of payment of a fee for any goods sold or services provided by the department.

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

§5.43. Methods of Payment.

(a) Except as provided in §5.44 of this title (relating to Exceptions), all fees for department goods and services and any fees required in the administration of any department program may be paid to the department:

(1) with a valid credit card issued by a financial institution chartered by a state or the United States;

(2) by electronic funds transfer;

(3) with a personal check, business check, cashier's check, or money order, payable to the Texas Department of Transportation; or

(4) by cash in person at locations made available for that purpose by the department.

(b) Fees may be paid by credit card only if the transaction involves a charge of at least five dollars, except for transactions involving VTR goods and services. Payments by credit card may not be made if a transaction involves a charge of more than $2,000.

(c) Persons paying by credit card will pay a service charge of one dollar per transaction along with the applicable fee.

(d) Subsections (b) and (c) of this section do not apply to payments for subscriptions to and single issues of *Texas Highways*. Payments by check or money order for subscriptions to and single issues of the magazine are payable to Texas Highways.

§5.44. Exceptions.

This subchapter does not apply to the payment of:

(1) motor carrier registration fees under §18.15 of this title (relating to Payment of Fees); [,]

(2) motor transportation broker fees under §18.42 of this title (relating to Fees); [,]

(3) oversize and overweight permit fees under §28.11 of this title (relating to Permit Issuance Requirements and Procedures); [, ~~and~~]

(4) fees required for Internet motor vehicle registration under Chapter 17 of this title (relating to Vehicle Titles and Registration); and

(5) fees for products sold through *Texas Highways* under §23.27 of this title (relating to Magazine Ancillary Products).

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 December 15, 2000.

TRD-200008699
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 463-8630

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CHAPTER 9. CONTRACT MANAGEMENT
SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §§9.31, 9.33 - 9.38, 9.41 - 9.43

The Texas Department of Transportation proposes amendments to §9.31, §§9.33-9.38, and §§9.41-9.43, concerning contracting for architectural, engineering, and surveying services.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments are needed to streamline procedures for selection, negotiation, management, and evaluation of contracts with architects, engineers, and surveyors. Accordingly, §9.31, §§9.33-9.38, and §§9.41-9.43 are amended for readability and substance.

An amendment to §9.31 adds a definition for "Interview and Contract Guide."

Amendments to §9.33(a) require that initial notices advertising the contract include the selection criteria used by department selection committees to reduce the long list to the short list.

Amendments to §9.33(b) revise letter of interest requirements by limiting its length to no fewer than three pages and no more than five pages plus attachments. The Consultants Review Committee (CRC) chair or his designee may authorize a variance from this restriction, and the notice must specify the number of pages. The CRC chair may designate approval authority to a staff member having a title of office director or higher. Attachments are to be used only to provide precertification information. The contents of the letter of interest are revised to eliminate the team capabilities information and to require information addressing selection criteria as well as the name and contact information for provider references.

Amendments to §9.34 address how the short list is determined. The composition of a Consultant Selection Team (CST) is revised to allow a managing officer to designate at least one other (instead of only one) department employee. Amendments to this section also allow a CST to compile a long list of providers based upon letters of interest meeting precertification requirements of §9.33. The CST then determines the short list of providers by evaluating each letter of interest on the long list using the advertised evaluation criteria. Amended evaluation criteria include project understanding and approach; the project manager's experience with similar projects; major work categories' task leaders' experience with similar projects; and other criteria approved by the CRC chair or designee not below an office director title. Criteria using past performance, team capabilities, and general project-related experience have been eliminated.

Amendments to §9.34(f) enhance readability of instructions for individual and multiple contract selections.

Section 9.34(g) is amended to instruct the department to furnish an Interview and Contract Guide to short-listed firms along with any additional required information and the deadline for submission.

In addition to enhancing readability, amendments to §9.35 provide guidance on the use of an interview in place of a proposal. The amendments give contract managers flexibility to proceed with written proposals or interviews or both. If a written proposal will be required, the managing office will give an RFP to the short list of providers. The RFP will specify if interviews will also be conducted and include the interview format and requirements. Proposal evaluation criteria are revised to allow a CST to use performance scores from other department contracts or references from department or other sources if interviews are not required. This amendment also eliminates "unique or innovative methods of approaching the proposed work" as an evaluation criterion.

Section 9.36 is amended to introduce the required use of an Interview and Contract Guide when interviews are used instead of written proposals. This guide describes the interview format and the content and subject matter of any required presentation. The contract scope of services is described and other contract documents identified. The CST is authorized to evaluate the provider as a whole rather than just the interview. Evaluation criteria are revised to allow a CST to use performance scores from other department contracts or references from department or other sources and to consider responses to interview questions. "Unique or innovative methods of approaching the proposed work" is no longer an evaluation criterion.

Section 9.37 is amended to allow the CRC chair rather than the committee to approve a 10-day extension of the negotiation process. It is also amended to allow the CRC chair rather than the executive director or deputy executive director to approve a unique negotiating schedule for multiple contract selections. The

stipulation that large corridor development projects be the sole requirement for unique negotiating status is deleted.

Section 9.37(g)(3) is amended to address situations where the department cannot negotiate a satisfactory contract with the selected provider within the allotted time period. The amendment enhances readability and allows managing officers involved in a single contract selection to end unsuccessful negotiations with the selected provider and to begin negotiations with the next highest ranked provider through the third highest ranked provider. If a contract still cannot be negotiated, the contract will be canceled subject to readvertisement. Managing officers involved in multiple contract selections will begin negotiations with the next highest provider within the acceptable range of scores as required by §9.39. If a contract cannot be negotiated with any of the providers included in the acceptable range of scores, the contract will be canceled, subject to readvertisement.

Section 9.38 is revised for readability and to authorize the CRC chair, rather than the committee, to authorize a subprovider to perform a higher percentage of work than the prime provider. Instead of being the person requesting the contract, the department's project manager is identified as being designated by the managing officer.

Amendments also revise the provider performance evaluation requirements of §9.38(g). The original section is amended in its entirety to allow the department to document a prime provider's demonstrated competence and qualifications through required and optional performance evaluations of the project manager as well as the firm. The project manager will be evaluated in the categories of management, innovation, quality, and timeliness. The firm will be evaluated in the categories of cost administration and the firm's expertise. Evaluation of a subprovider's performance is optional but may be conducted upon completion of work by the subprovider, exemplary performance, if it is delaying progress or completion of the work, or if work is not being performed in accordance with the terms of the contract.

Section 9.41 is revised to eliminate the annual renewal of provider and subprovider precertification and to allow providers and subproviders to report changes 45 days after the change occurs.

Section 9.42 is revised to clarify that a provider/subprovider may submit information for administrative qualification before or after selection but before contract execution. The 8th floor location of the Audit Office is deleted in light of a pending move and because it is not critical to the address. The amendment also specifies that the time period covered by an overhead rate audit can include the 18 months prior to selection rather than the most recently completed fiscal year. The amendment further specifies that the department will consider current salary ranges as well as salaries by classification.

Section 9.43 is revised to add subsurface utility engineering to the work categories in the precertification process.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

Robert L. Wilson,P.E., Director, Design Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Wilson has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing or administering the amendment will be a reduction in paperwork and resource commitments due to improvements in the contracting process and the elimination of the annual renewal of precertification. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Robert L. Wilson, P.E., Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 29, 2001.

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Government Code, Chapter 2254, Subchapter A, which sets forth requirements governing the procurement of professional services.

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

§9.31. Definitions.

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

(1) AASHTO - American Association of State Highway and Transportation Officials.

(2) Administrative qualification - A department process conducted to determine if a prime provider or subprovider meets the requirements of 23 Code of Federal Regulations (CFR) 172.5(c) concerning the administration of engineering and design related service contracts.

(3) Available personnel - The total number of personnel employed by the provider proposed to be used on the advertised contract.

(4) Border district - One of the geographical areas of the department managed by a district engineer that is headquartered in El Paso, Laredo, or Pharr.

(5) Business opportunity programs section of the Construction Division (CSTB) - The department section that certifies DBEs and administers the DBE and HUB programs.

(6) CCIS - Consultant Certification Information System.

(7) Close out - The actions required to close out or complete the contract, including receipt and acceptance of deliverables, resolution of audit findings, receipt of outside approvals if applicable, resolution of other contract-related issues, and issuance of final payment.

(8) Constructability - The ability of a project to be accurately constructed from information presented in plans and specifications.

(9) Construction engineering - The interpretation of plans and specifications and formulation of engineering decisions during the period that the project is under construction.

(10) Construction inspection - Inspection of construction methods and materials by inspectors who report directly to the department's project manager.

(11) Construction management - Construction engineering performed by the professional engineer in responsible charge of the construction project to direct the contractor concerning changes, additions, or deletions to the project.

(12) Consultants review committee (CRC) - The department committee that oversees the provider review process.

(13) Consultant selection team (CST) - The department's managing office team that selects the long list and short list and evaluates proposals and interviews.

(14) Disadvantaged business enterprise (DBE) - Any business certified by the department in accordance with 49 CFR Part 26.

(15) DBE/HUB goal participation - The participation goal for DBE/HUB providers expressed as a percentage of the total cost of the contract.

(16) DBE/HUB special provision - A special provision to the provider contract that identifies DBE/HUB program requirements.

(17) Debarment certification - A certification that the provider and its principals are not debarred from participation and not under consideration for debarment anywhere, and are eligible to perform the contract.

(18) Department - The Texas Department of Transportation.

(19) Department project manager - The department employee designated in the contract as the official contact for all correspondence between the department and the provider.

(20) FHWA - The Federal Highway Administration.

(21) FONSI - Finding of No Significant Impact.

(22) Good faith effort - A provider must demonstrate to the department's satisfaction, that sufficient effort on its part was made to obtain DBE/HUB participation. Good faith effort is identified in the DBE/HUB Special Provision to the contract.

(23) Graduate engineer - An individual who meets the educational requirements for registration as provided in the Texas Engineering Practice Act.

(24) Historically underutilized business (HUB) - Any business so certified by the General Services Commission.

(25) IESNA - The Illuminating Engineering Society of North America.

(26) Indefinite delivery contract - A contract that contains a general scope of services, maximum contract amount, and contract termination date in which contract rates are negotiated prior to contract execution and work is authorized as needed.

(27) Interview and Contract Guide (ICG) - An instructional document furnished to providers on the short list when a Request for Proposals is not used.

(28) [~~(27)~~] ITS - Intelligent Transportation System.

(29) [~~(28)~~] Long list - The list of qualified providers submitting a letter of interest for a contract.

(30) [~~(29)~~] Lower tier debarment certification (form 1734) - A debarment certification form that is completed by subproviders or other lower tier participants.

(31) [~~(30)~~] Lower tier participant - A subprovider or other participant in the contract, other than the state, that is not the prime provider.

(32) [~~(31)~~] Managing office - The division, office, or district with the responsibility for awarding and managing the contract.

(33) [~~(32)~~] Managing officer - The division director, office director, or district engineer of the managing office.

(34) [~~(33)~~] Metropolitan district - One of the geographical areas of the department managed by a district engineer that is headquartered in Austin, Dallas, Fort Worth, Houston, or San Antonio.

(35) [~~(34)~~] Overhead guidelines - Instructions prepared by the department's Audit Office to assist the provider in administrative qualification.

(36) [~~(35)~~] Prime provider - The provider awarded a department provider contract.

(37) [~~(36)~~] Professional engineer - An individual licensed to practice engineering in the state or states that he or she performs professional services.

(38) [~~(37)~~] Professional services provider (provider) - An individual or entity that provides engineering, architectural, or surveying services.

(39) [~~(38)~~] Project specific contract - A contract that contains a specific scope of services, maximum contract amount, and contract termination date and authorizes the provider to perform the entire scope of work.

(40) [~~(39)~~] Registered architect - An individual licensed to practice architecture in the state or states that he or she performs professional services.

(41) [~~(40)~~] Registered professional land surveyor - An individual licensed to perform land surveying in the state or states that he or she performs professional services.

(42) [~~(41)~~] Request for proposal (RFP) - A request for submittal of a technical proposal from a provider that demonstrates competence and qualifications to perform the requested services, and shows an understanding of the specific contract.

(43) [~~(42)~~] Relative importance factor (RIF) - The numerical weight of each evaluation criterion as it relates to a particular contract.

(44) [~~(43)~~] Short List - The list of providers from the long list, selected by the CST, that best meet the requirements indicated by the letter of interest.

(45) [~~(44)~~] Short list meeting - A meeting held with the providers on the short list to answer questions regarding the contract and distribute the RFP prior to submittal of proposals or interviews.

(46) [~~(45)~~] Small business concern - A small business as defined in the Small Business Act, codified in 15 United States Code §632, and relevant regulations.

(47) [~~(46)~~] Subprovider - A provider proposing to perform work through a contractual agreement with the prime provider.

(48) [~~(47)~~] Team - The provider and all proposed subproviders who will be working on a particular contract.

(49) [~~(48)~~] Technical precertification - A review process conducted by the department to determine if a prime provider or subprovider meets the technical requirements to perform work identified in a work category.

§9.33. Notice and Letter of Interest.

(a) Notice.

(1) Electronic notice. Not less than 21 days before the letter of interest due date, the department will post on an electronic bulletin board a notice identifying:

(A) the proposed contract or RFP number;

(B) work category codes;

(C) type of selection in accordance with §9.39 of this title (relating to Selection Types);

(D) the general description of the project and work to be done;

(E) the due date for providers to send letters of interest to the department;

(F) qualification information if the work type is not listed as a category in §9.43 of this title (relating to Qualification Requirements by Work Group); [~~and~~]

(G) whether the department has waived the precertification requirement of §9.41 of this title (relating to Precertification) when the total contract fee for professional services is anticipated to be less than $250,000 on an individual contract; and

(H) selection criteria to be used to determine the short list.

(2) Newspaper notice. Not less than 21 days before the letter of interest due date, the department will publish a notice in a local newspaper within the geographical area of the district, division, or office in which the work will be performed. If the newspaper fails to print the notice, the department will consider the notice posted. The notice will contain:

(A) the proposed contract or RFP number;

(B) the general description of the project and work to be done;

(C) the due date for providers to send letters of interest to the department;

(D) the contact person;

(E) the location of the electronic bulletin board that contains more information;

(F) the type of work needed and its minimum qualifications, if the work category is not listed in §9.43 of this title (relating to Qualification Requirements by Work Group);[~~and~~]

(G) the department's determination as to whether to waive the precertification requirement of §9.41 of this title (relating to Precertification) when the total contract fee for professional services is anticipated to be less than $250,000 on an individual contract; and

(H) selection criteria to be used to determine the short list.

(3) Organizations. The department will publish quarterly a statewide list of projected contracts for consulting engineering, architectural, and surveying services and will provide upon request, or make available on the department's Web site, a copy of each list to community, business, and professional organizations for dissemination to their membership.

(b) Letter of interest (LOI).

(1) The provider shall send a letter of interest to the department notifying the department of the provider's interest in the contract not later than the deadline published in the notice.

(2) The letter of interest will consist of a minimum of three and a maximum of five [~~be limited in length to three~~] pages plus attachments, unless otherwise approved by the CRC chair or designee not below an office director title. The maximum page length will be stated [~~otherwise~~] in the notice. Attachments will be restricted to precertification information required in subsection (b)(3) of this section. The department will accept a letter of interest by electronic facsimile.

(3) To be considered:

(A) a prime provider or a subprovider, that will be performing work in any individual work category which is 5.0% or more of the contract, must be precertified by the deadline for receiving the letter of interest in accordance with §9.41 of this title (relating to Precertification) unless the work category is not listed in §9.43 of this title (relating to Qualification Requirements by Work Group);

(B) a prime provider or subprovider must demonstrate in an attachment to the LOI how it meets the minimum qualifications for work that does not fall within any work category outlined in §9.43 (The attachment may be in addition to the maximum pages allowed for the LOI.);

(C) if the work in any individual work category as shown in the notice is less than 5.0% of the contract, a provider or subprovider that is not precertified must demonstrate in an attachment to the LOI how it meets the minimum requirements specified in §9.43(b) of this title (relating to Qualification Requirements by Work Group) or how it possesses the knowledge and skill to perform the work in those categories (The attachment may be in addition to the maximum pages allowed for the LOI.);

(D) if the total contract fee for professional services is anticipated to be less than $250,000 on an individual contract and the department has waived the precertification requirement of §9.41 of this title (relating to Precertification), then a provider or subprovider that:

(i) is not precertified must submit an attachment with the LOI which describes how the firm meets the minimum requirements specified in §9.43(b) of this title (relating to Qualification Requirements by Work Group) or how it possesses the knowledge and skill to perform the work in those categories (The attachment may be in addition to the maximum pages allowed for the LOI.); or

(ii) is precertified must submit a LOI, but is not required to submit an attachment describing its qualifications in precertified categories (If the firm proposes to do work in categories in which it is not been precertified, then it must submit an attachment describing how the firm meets the minimum requirements or how it possesses the knowledge and skill to perform the work in those categories); and

(E) the proposed team must demonstrate that they have a professional engineer, architect, or surveyor registered in Texas who will sign and/or seal the work to be performed on the contract.

(4) The letter of interest shall include;

(A) the contract or RFP number;

(B) an organizational chart containing:

(i) names of the prime provider's and any subprovider's key personnel proposed for the team and their contract responsibilities by work category; and

(ii) the prime provider's project manager (who may not be changed during the selection and the award process);

(C) information addressing the criteria stated in the notice [team capabilities];

(D) evidence of compliance with the assigned DBE/HUB goal through the prime provider or subproviders identified on the team, or a written commitment to make a good faith effort to meet the assigned goal;

(E) similar project related experience that is not already included in the precertification database; [and]

(F) name and contact information for references; and

(G) [(F)] other pertinent information addressed in the notice.

§9.34. Determination of the Short List.

(a) Composition of the Consultant Selection Team. The CST shall be composed of:

(1) the managing office staff member [who reports directly to the managing officer and who has been] designated by the managing officer to be the chair;

(2) the department project manager; and

(3) at least one other department employee [one department employee] designated by the managing officer.

(b) Qualification for long list. The CST will evaluate each team submitting a letter of interest to see if it meets the precertification requirements of §9.33 (b)(3) of this subchapter.

(c) [(b)] Long list evaluation. The CST will evaluate each team on the long list to determine the short list based on the criteria described in subsection (d) [(c)] of this section and as listed in the notice. The department will review the information submitted in the letter of interest [along with data contained in the precertification database identified in §9.41 of this title (relating to Precertification)].

(d) [(c)] Criteria. The CST will consider the following criteria in its review of all interested providers:

(1) project understanding and approach; [past performance scores contained in the database for contracts completed for the department or references from other entities including the ability of the prime provider to meet deadlines over the past three years;]

(2) the project manager's experience with similar projects; [project requirements as specified in the notice versus the team capabilities identified in the letter of interest and contained in the database;]

(3) similar project related experience of the task leaders responsible for the major work categories identified in the notice; [identified in the letter of interest or contained in the database;] and

(4) other [CRC approved] criteria approved by the CRC chair or designee not below an office director title and listed in the notice.

(e) [(d)] Score. The CST will assign a RIF weight to each criterion. The RIF total for all criteria will equal 100. Each criterion will be scored separately on a 0-10 point scale with 10 considered the best qualified. The maximum possible score that a CST member may give is 1000 points.

(f) [(e)] Contract selection. For individual contract selections, the [The] CST will prepare a short list containing a minimum of three of the most highly qualified providers [for further consideration on an individual contract selection,] unless fewer than three qualified providers submitted a letter of interest. For multiple contract selections, the short list shall contain a minimum number of providers equal to the desired number of contracts plus three [for further consideration on multiple contract selections,] unless fewer than the desired minimum [three qualified providers] submitted a letter of interest.

(g) [(f)] Notification. The department will notify a firm submitting a letter of interest that it was or was not selected for the short list. If a firm is selected for the short list, the department will either notify it that a meeting will be held, or if a meeting is not held, the department will provide an [a] RFP or an Interview and Contract Guide (ICG) [information packet]. The department will also notify selected firms of any additional required reference information and the deadline for submission.

§9.35. Short List Meeting, Proposals, and Evaluation.

(a) Short list meeting. The managing office may require, or offer the opportunity to conduct, a short list meeting which will include an explanation of the proposal and/or the interview format and requirements. The department will furnish a Request for Proposal (RFP) or an Interview and Contract Guide (ICG) [RFP packet will be furnished by the department] to providers on the short list either prior to or at the short list meeting. If a short list meeting is held, the department will not accept proposals from or conduct interviews with providers that did not have a representative at the short list meeting.

(b) Request for proposals. If a written proposal is required, the managing office will provide an RFP to the short listed providers. The RFP [packet] will include:

(1) instructions for [a]:

(A) a written proposal preparation and/or the interview process; and

(B) submittal of the proposal[RFP packet];

(2) [detailed]scope of services to be provided by the department;

(3) [detailed] scope of services to be provided by the provider;

(4) proposed contract duration;

(5) proposed method of payment;

(6) a debarment certification form;

(7) a lower tier debarment certification form;

(8) a lobbying certification/disclosure form;

(9) any special contract requirements; and

(10) the interview format and requirements if interviews are conducted subsequent to the proposal [no short list meeting will be held].

(c) Proposal format. When a written proposal is required, the proposal shall be limited to the specific length and information outlined in the RFP [packet].

(d) Receipt of proposals. A proposal must be received by the date, time, and place specified in the RFP [packet]. The department will not accept a proposal by electronic facsimile.

(e) Proposal evaluation criteria. The CST will evaluate proposals based on the following criteria:

(1) understanding of scope of services;

(2) experience of the project manager and project team;

(3) ability to meet the project schedule;

(4) if no interview is required, past performance scores included in the database for department contracts or references from the

department or other entities; and [~~unique or innovative methods of approaching the proposed work that may save time or money, or result in a better quality product; and~~]

(5) other CRC approved criteria listed in the RFP [~~packet~~].

(f) Proposal evaluation scale. The CST will assign a RIF weight to each criterion. The RIF total for all criteria will equal 100. Each criterion will be scored separately on a 0-10 point scale with 10 considered the best qualified. The maximum possible score that a CST member may give is 1000 points.

§9.36. Interviews and Evaluation.

(a) Interviews. The CST may conduct interviews with the providers on the short list if a written proposal is required. If a written proposal is not required, then an interview will be conducted, and the managing office will give participating providers an Interview and Contract Guide. If proposals and interviews will be required, proposal and interview requirements can be included in the RFP. The CST may elect to perform telephone interviews. In order for a member of the CST to score a provider, the member must be present for all interviews. The prime provider's project manager is required to be present for the interview. Lack of attendance by the project manager may be reason to consider the provider nonresponsive, and dropped from further consideration.

(b) Interview and Contract Guide. The ICG includes:

(1) a description of the interview format;

(2) instructions for content and subject matter for a provider's presentation, if required;

(3) the scope of services to be provided by the department;

(4) the scope of services to be delivered by the provider;

(5) the proposed contract duration;

(6) the proposed method of payment;

(7) a debarment certification form;

(8) a lower tier debarment certification form;

(9) a lobbying certification/disclosure form; and

(10) any special contract requirements.

(c) [~~(b)~~] Interview structure. The interview allows [~~the~~] providers to demonstrate their understanding of the project and knowledge of applicable rules, regulations, codes, and special information to be gathered. The CST may allow a provider team to make a presentation with written material for the CST to reference in evaluating the interview. The CST may require a provider team to answer a predetermined written set of questions in the interview.

(d) [~~(c)~~] Evaluation criteria. The CST will consider the following criteria in its evaluation of the provider [~~provider's interview~~]:

(1) understanding of the scope of services;

(2) experience of the project manager and project team;

(3) ability to meet the proposed contract schedule;

(4) responses to interview questions;[~~unique or innovative methods of approaching the proposed work that may save time or money, or result in a better quality product;~~]

(5) if no proposal is required, past performance scores included in the database for department contracts or references from the department or other entities [~~responses to interview questions~~]; and

(6) other CRC approved criteria listed in the RFP or ICG [~~packet~~].

(e) [~~(d)~~] Interview evaluation scale. The CST will assign a RIF weight to each criterion. The RIF total for all criteria will equal 100. Each criterion will be scored separately on a 0-10 point scale with 10 considered the best qualified. The maximum possible score that a CST member may give is 1000 points.

§9.37. Selection.

(a) Basis of final selection.

(1) If a proposal and interview are both required, the final selection will be made by using the CST proposal score for 30% of the total score and the interview score for 70% of the total score.

(2) If an interview is not required, the final selection will be made by using the written proposal score.

(3) If a written proposal is not required, the final selection will be made by using the interview score.

(b) Tie scores. In the event of a tie, the managing officer will break the tie using the following method.

(1) The first tie breaker, if needed, will be the score for the experience of the project manager and the project team.

(2) The second tie breaker, if needed, will be the score for ability to meet the proposed project schedule.

(3) If there is still a tie, the provider will be chosen by random selection.

(c) DBE/HUB Goals. The department may assign individual contract DBE or HUB goals pursuant to 49 CFR Part 26 and Title 1, Texas Administrative Code, §111.13, respectively.

(d) Selection summary. The CST will prepare a contract evaluation summary containing the scores of the prime providers on the short list, for consideration by the managing officer.

(e) Submittal of selection. The managing officer will submit the contract evaluation summary, evaluation documentation, certification that the procedures provided by this subchapter were used and recommendation for selection to the CRC for review. If the procedural review is acceptable, the executive director or the director's designee will concur with the selection.

(f) Notification. The department will:

(1) prepare a letter to notify the provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(2) prepare a letter to each of the providers remaining on the short list that were not selected, naming the provider that was selected; and

(3) publish the short list and the provider selected for a contract on an electronic bulletin board.

(g) Negotiations.

(1) Selected provider. The department will enter into negotiations with the selected provider. The provider shall submit the information required for the contract, including a work outline, work schedule, list of all suppliers and subproviders contacted relative to this project in accordance with 9.53(d)(5) [~~§9.56(e)~~] of this title (relating to Disadvantaged Business Enterprise (DBE) Program [~~DBE Certification~~]), and cost proposal. Any information necessary to meet the administrative qualification requirements found in §9.42 of this title (relating to Administrative Qualification), that has not been submitted

to the department prior to selection shall be submitted so that the department may determine the fairness and reasonableness of the contract price. State funded architectural contracts are based on percentage of construction cost as provided in the General Appropriations Act. Pursuant to 23 CFR §172.9, federally funded contracts are not based on percentage of construction cost.

(2) Contract execution. The provider shall sign the contract within 30 working days from the date of notification to the provider. An extension must be authorized before the expiration of the negotiation period or previous extension. Extensions or schedules will be used as provided in this paragraph.

(A) Automatic extensions. Automatic extensions for multiple contracts selected under one advertisement in which negotiations will be conducted at the same time are entitled to an automatic extension of the initial negotiating period. For each individual contract that has been awarded as part of a multiple contract package and that is anticipated to be valued at:

(i) $1 million or more each, the initial negotiating period is extended by five working days for each contract; or

(ii) less than $1 million each, the initial negotiating period is extended by five working days for every two contracts.

(B) Discretionary extensions. Discretionary extensions of the initial negotiating period may be granted to providers.

(i) Upon submission by the managing officer of sufficient written justification indicating that adequate progress is being made to conclude successful negotiations, the CRC chair will grant an extension not to exceed 10 working days.

(ii) Upon submission by the managing officer of sufficient written justification indicating that adequate progress is being made to conclude successful negotiations, the executive director or the deputy executive director will grant an additional extension not to exceed 10 working days.

(iii) Upon submission by the managing officer of sufficient written justification indicating that adequate progress is being made to conclude successful negotiations in the case of multiple contracts selected under one advertisement, the executive director or the deputy executive director will grant a final extension not to exceed 5 working days per contract.

(C) Unique negotiating schedules. The CRC chair [~~executive director or deputy executive director~~] may approve a unique negotiating schedule submitted by the managing officer prior to the start of negotiations for multiple contract selections [~~involving large corridor development projects with $500 million or more anticipated construction costs~~].

(3) Selection of alternative providers. If the department and the selected provider are [~~is~~] unable to execute a satisfactory contract containing a fair and reasonable price within the allotted time period [~~with the selected provider~~], the managing officer shall end negotiations with that provider and commence negotiations with alternative providers [~~negotiations shall, formally end with that provider and negotiations shall, upon written approval of the managing officer, begin with the provider ranked next highest. Negotiations shall be undertaken in this sequence through the third highest ranked provider. If a contract is not awarded to any of the three highest ranked providers within the time frame specified in this section, the contract will be canceled. If the project is canceled, it may be readvertised~~].

(A) Single contract selection. If negotiations are ended, the department shall negotiate with the next highest ranked provider on the short list and shall follow in this sequence through the third highest ranked provider. If a satisfactory contract containing a fair and reasonable price is not negotiated with any of the three highest-ranked providers within the time frame specified in this section, the proposed contract shall be canceled. If the proposed contract is canceled, it may be readvertised.

(B) Multiple contract selection. Beginning with the next highest ranked provider within the acceptable range of scores as required by §9.39 of this subchapter (relating to Selection Types), negotiations shall be undertaken until a satisfactory contract containing a fair and reasonable price is agreed upon. If a satisfactory contract is not negotiated with any of the providers within the acceptable range of scores within the time frame specified in this section, the proposed contract shall be canceled. If the proposed contract is canceled, it may be readvertised.

(4) DBE/HUB goal documentation. The selected provider shall provide information to the department documenting its satisfaction or attempts to satisfy the DBE/HUB goal. The department will cease negotiation with the provider and enter into negotiation with the next provider in the order of preference for this contract if the selected provider fails to submit the required documentation. The selected provider shall submit to the managing officer, through the department's project manager, for review and acceptance:

(A) names and addresses of DBE/HUB firms that will participate in the contract;

(B) a description of the work that each DBE/HUB will perform;

(C) the dollar amount of the participation of each DBE/HUB firm participating;

(D) written documentation of the providers commitment to use a DBE/HUB subprovider whose participation it submits to meet a contract goal;

(E) written confirmation from the DBE/HUB that they will participate; and

(F) when applicable, evidence of good faith efforts.

(h) Appeal. A provider may file a written complaint concerning the selection process with the executive director or the director's designee.

§9.38. Contract Management.

(a) DBE/HUB participation.

(1) HUB program goals may be satisfied by a HUB prime provider as long as the HUB prime provider performs at least 25% of the work with its own forces. DBE prime providers may receive DBE credit for work performed by its own forces or performed by a DBE subprovider.

(2) If the prime provider or the subprovider is a DBE/HUB, the DBE/HUB provider and subprovider may subcontract in accordance with §9.56 [~~§9.58(g)(2)~~] of this title (relating to Contract Compliance). If the DBE prime provider subcontracts a portion of the work to a non-DBE subprovider on a federal-aid contract, the value of the work performed by the non-DBE subprovider will not count towards the DBE goal.

(b) Subcontracts.

(1) A prime provider shall perform at least 30% of the contracted work with its own work force. No subprovider may perform a higher percentage of the work than the prime provider, unless approved by the CRC chair when the work is so specialized that the prime provider cannot perform at least 30% of the work.

(2) The department will review subcontracts for compliance with the requirements of this subsection. Subcontracts shall incorporate by reference all of the provisions of the prime contract.

(3) Subcontracts shall:

(A) refer to the prime contract and have the same purpose;

(B) include nondiscrimination attachment;

(C) include DBE/HUB special provision;

(D) include lower tier debarment certification (negotiated contracts); and

(E) provide clear payment terms.

(4) Subcontracts shall not include:

(A) multipliers, such as supplies plus 10%; and

(B) the state as a party to the subcontract.

(c) Operations.

(1) Management responsibility. The department's project manager will be designated by the managing officer [~~who requested the provider contract will manage the contract~~].

(2) Project manager. The prime provider's project manager may not be changed without prior consent of the department.

(3) Commencement of work. The provider shall not proceed with any contract work until advised in writing by the department to proceed.

(4) Suspension of work. The department may suspend the work by:

(A) verbally notifying the provider; and

(B) providing written notification of the suspension, including:

(i) identifying the reason for suspension; and

(ii) identifying approximate length of suspension and payment based on actual work completed as of the date of suspension.

(5) Payment on provider contracts. Payment for eligible costs will be made within 30 days after receiving a correct invoice. Payment may be withheld pending verification of satisfactory work performed. To receive payment for services, the provider shall submit to the department project manager:

(A) a monthly progress report;

(B) an itemized and certified invoice (department form 132 or other acceptable format); and

(C) a DBE/HUB report (The CSTB may require proof of DBE/HUB use, including submittal of canceled checks that are properly identified by department project number or contract number).

(6) Interim audit. The department may perform interim audits.

(d) Supplemental agreements.

(1) The original executed contract will require a supplemental agreement if:

(A) additional funding is required in accordance with terms of the contract;

(B) additional time is needed to complete work in progress; or

(C) changes in scope of services are necessary.

(2) The supplemental agreement will be executed:

(A) prior to the expiration date of the original contract;

(B) prior to exceeding the contract amount; and

(C) prior to performance of unauthorized work.

(e) Errors and omissions.

(1) Policy. It is the department's policy to require providers to correct errors or omissions in the providers' services which are required under the contract without undue delay and without additional cost to the department.

(2) Procedure.

(A) Notification. The department will notify the provider of the errors and omissions.

(B) Resolution. A dispute involving errors and omissions shall be resolved in accordance with §9.2 of this title (relating to Contract Claim Procedure).

(f) Contract close out.

(1) Final audit. The department audit office will perform an audit of the provider's records in accordance with the terms of the contract.

(2) Time. A contract is ready for close out when:

(A) services have been provided;

(B) products have been received and accepted;

(C) approval has been received from the U.S. Department of Transportation, when federally funded;

(D) payments have been made;

(E) audit findings have been resolved;

(F) the contract expires unless extended by supplemental agreement; and

(G) the final DBE/HUB report has been submitted.

(g) Provider performance evaluations.

(1) The department will document a prime provider's demonstrated competence and qualifications by evaluating the project manager's performance in the categories of management, innovation, quality, and timeliness. [~~project manager will evaluate the prime provider or subprovider's performance upon completion of a phase, on an interim basis, and on completion of the contract. The interim basis evaluation will occur at least once every 12 months, or when the managing office determines that the work is behind schedule or not being performed according to the contract. An evaluation of constructability will be performed on an interim basis at least every 12 months and upon completion of the construction contract, if applicable.~~]

(A) The evaluation shall be conducted annually at twelve month intervals during ongoing contract activity, upon completion of a contract, or when the managing office determines that the work is behind schedule or not being performed according to the contract.

(B) Optional evaluations may be conducted upon completion of a contract phase or to document exemplary performance.

(2) The department will evaluate the prime provider in the categories of cost administration and the firm's expertise as further demonstration of qualifications and competence.

[(2) The department will evaluate a prime provider using a numerical score, in the categories of management, cost administration, quality, innovation, firm expertise, and timeliness. The prime provider will also receive an overall contract evaluation in each of the evaluation categories.]

(3) The department may evaluate project constructability every 12 months during the contract period and upon completion of the construction contract [will evaluate a subprovider's quality of performance using a numerical score].

(4) The department may evaluate a subprovider's performance when it has completed its work, upon exemplary performance, or if the managing office determines that the subprovider is delaying the progress or completion of the work or that work is not being performed according to the contract.

[(4) These performance evaluations will be entered into the CCIS database identified in §9.41 of this title (relating to Precertification), and will be used in determining the qualifications of the prime provider or subprovider in accordance with §9.34 of this title (relating to Determination of the Short List).]

(5) The department will give a copy of the performance evaluation to the prime provider or subprovider for review and comment. If the prime provider or subprovider responds with comments on its evaluation, the department will include the comments in the CCIS database identified in §9.41 of this title (relating to Precertification).

[(5) The evaluations will be given to the prime provider or subprovider for review and comment. Prime provider or subprovider comments, if submitted to the department, will be noted in the database.]

(6) Evaluation scores will be entered into the CCIS database and used in determining the qualifications of the prime provider or subprovider in accordance with §9.35 (relating to Short List Meeting, Proposals, and Evaluation) or §9.36 (relating to Interviews and Evaluation) of this subchapter.

§9.41. Precertification.

(a) Eligibility. To be eligible to perform work in the categories described in §9.43 of this title (relating to Qualification Requirements by Work Group), a prime provider and a subprovider must be precertified in accordance with this section unless:

(1) the anticipated work in an individual work category is less than 5.0% of the contract; or

(2) the department has waived the precertification requirements for a contract that is less than $250,000.

(b) Application.

(1) Registered architects, professional engineers, and registered professional surveyors or their related subproviders who desire to be precertified by the department to perform work on architectural, engineering, or surveying contracts shall submit a completed precertification questionnaire to the CRC for review and determination of precertification status.

(2) A questionnaire, in a form prescribed by the department, or a precertification information packet may be obtained by contacting the Texas Department of Transportation, Design Division - Consultant Review Committee, 125 East 11th Street, Austin, Texas 78701-2483.

(3) The questionnaire will include information concerning the experience of the prime provider or subprovider.

(4) The precertification information packet will include:

(A) a copy of the questionnaire;

(B) instructions regarding the format and length restrictions for data to be submitted;

(C) the requirements for precertification in each category as described in §9.43 of this title (relating to Qualification Requirements by Work Group);

(D) copies of the department's standard contracts, with attachments;

(E) instructions for administrative qualification; and

(F) department overhead guidelines.

(5) The submittal date for review deadlines as described in subsection (g) of this section shall be the date the precertification questionnaire is received by the CRC.

(6) The precertification of a prime provider or subprovider by the department does not guarantee that work will be awarded to that prime provider or subprovider.

(c) Instructions. The department will publish instructions concerning submittal of information for precertification annually in the Texas Register and daily on an electronic bulletin board.

(d) Precertification deadline. When precertification is required as described in subsection (a) of this section, prime providers and subproviders must be precertified in the technical categories by the deadline for receipt of the letter of interest to be eligible for selection. The department will not delay the consultant selection process or contract execution for a prime provider or subprovider that has not been precertified.

(e) CCIS. The department will maintain the CCIS containing qualification information submitted in the precertification questionnaire by the prime provider or subprovider.

(f) Technical precertification.

(1) A prime provider or subprovider may be precertified in a technical category if the firm has current employees possessing the skills and experience to meet the requirements. A prime provider or subprovider is not precertified based on the firm's experience.

(2) A precertification will transfer with the employee if the employee leaves the firm.

(3) The department will review a prime provider or subprovider to evaluate whether the support, equipment, and other resources necessary to do the work are provided to the employee.

(4) A prime provider or subprovider with one employee who meets the appropriate requirements of multiple technical categories may be precertified in those categories. When required, prime providers and subproviders must be precertified in the categories of work they will be performing; however, a provider or subprovider is not required to be precertified in every category of work involved in the contract, unless it will be performing all of the work.

(5) The department will not precertify joint ventures.

(g) Precertification review.

(1) A prime provider or subprovider will be precertified within 60 days of receipt of complete and accurate information for the submittal or notified in writing within the same time period that they

did not meet the requirements for precertification or that additional submittals will be required for review.

(2) If the submittal is incomplete, a prime provider or subprovider will be requested to submit additional information for review. The prime provider or subprovider shall submit such information within 30 days of receipt of the department's request for such information. If the information is not provided within 30 days after receipt of the request, the application for precertification will be processed with the information available. The department will make a determination on precertification status within 60 days of receipt of the additional information.

(3) The department will consider the following factors in reviewing the precertification questionnaires as specified in §9.43 of this title (relating to Qualification Requirements by Work Group):

(A) current license or registration;

(B) personal experience and training; and

(C) other requirements of §9.43 of this title (relating to Qualification Requirements by Work Group).

(h) Updates. A prime provider or subprovider must report any change in the information included in the original questionnaire no later than 45 days after the change occurs.

~~[(h) Annual renewal. Prime providers and subproviders will be assigned an annual renewal date by the department. Prime providers and subproviders must apply for renewal of precertification between 90 and 30 days prior to their annual renewal date. The precertification of a prime provider or subprovider that fails to submit an application for renewal at least 30 days prior to its annual renewal date will expire and the prime provider or subprovider will be ineligible to submit a letter of interest for new contracts until it is precertified.]~~

(i) Appeal. A prime provider or subprovider may appeal denial of precertification by submitting additional information within 30 days of receipt of written notification of denial to the CRC in Austin. This information shall justify why the prime provider or subprovider meets the requirements for precertification. The CRC will review the information and make a determination regarding precertification. A provider may file a written complaint regarding selection for precertification with the executive director or his or her designee.

§9.42. Administrative Qualification.

(a) Exception. Administrative qualification is not necessary for provider services included in Group 6 - bridge inspection, Group 12 - materials inspection and testing, Group 14 - geotechnical services, Group 15 - surveying and mapping, and/or Group 16 - architecture of §9.43 of this title (relating to Qualification Requirements by Work Group). Providers compensation for these services is based on units of service rates or a lump sum contract.

(b) Time to provide information. Prime providers and subproviders may provide information described in this section prior to selection. If the information is not furnished before selection, it must be provided after selection and before contract execution. [~~This information must be provided after selection.~~] The administrative qualification submittal is a separate submittal from the precertification submittal, and is submitted to the Texas Department of Transportation, Audit Office, [~~8th Floor,~~] 125 E. 11th Street, Austin, Texas 78701-2483. Administrative qualification submittals will not be received by the CRC. Submission prior to selection is encouraged to facilitate timely contract execution requirements.

(c) Evaluation factors. The department will consider the following factors in determining qualifications of prime providers or subproviders.

(1) Adequate accounting system. The prime provider or subproviders must demonstrate the existence of an adequate accounting system that meets the department's audit requirements, as evidenced by certification by an independent certified public accountant or governmental agency. The system must be adequate to support all billings made to the department and other clients.

(2) Overhead rate audit. The prime provider or subprovider must submit an overhead rate audit for the time period specified in subparagraph (D) of this paragraph [~~most recently completed fiscal year~~] performed by an independent certified public accountant, an independent audit organization, or governmental agency except as provided in subparagraphs (E) and (F) of this paragraph

(A) The audit report shall include statements that the audit was performed in accordance with the criteria required by the department and generally accepted auditing standards including:

(i) Federal Acquisition Regulations, 48 CFR 31; and

(ii) department overhead guidelines, a copy of which will be included in the precertification information packet.

(B) The audit report shall describe the estimating system used by the prime provider or subprovider, and state whether estimates are prepared in accordance with the accounting system.

(C) The department may perform overhead rate audits of any prime provider or subprovider under contract to, or desiring to do business with the department. These audits will be conducted consistent with the criteria outlined in this subsection.

(D) The end of the fiscal period of the audit report must be within eighteen months of the provider selection.

(E) The department may contract with a prime provider or allow utilization of a subprovider lacking an approved overhead rate audit if:

(i) the value of the contract is less than $250,000;

(ii) the prime provider or subprovider can adequately document and support all proposed costs; and

(iii) all other qualification requirements of this subsection are met.

(F) Prime providers or subproviders who have been in business for less than one complete fiscal year of the provider, have reorganized to the extent that the most recent overhead rate audit does not reflect a currently valid overhead rate, or have established and operated an accounting system acceptable to the department for a period of less than one year shall prepare a projected overhead rate which will be supported by estimated expenditures in accordance with the department's overhead rate audit guidelines for the first fiscal year's operations since organization, reorganization, or implementation of the acceptable accounting system. The department's audit office shall review the estimate and establish a provisional combined overhead rate for use in contract negotiations.

(3) Salary rates. The department will consider current salaries and salary ranges by classification.

(4) Direct costs. The department will consider other direct costs such as copies, Computer Aided Design and Drafting (CADD), or other direct costs.

(d) Provision of administrative qualification information. The department's Audit Office will provide administrative qualification information when requested by a managing office upon selection of a provider for the contract, for use in negotiations as identified in §9.37 of this title (relating to Selection).

(e) Prohibited actions. Administrative qualification information obtained through this section will not be made available to the CST by the Audit Office prior to contract selection.

§9.43. Qualification Requirements by Work Group.

(a) Requirements.

(1) Eligible employees. Prime providers and subproviders may be precertified in the technical groups and categories in accordance with subsection (b) of this section by providing the listed requirements. A firm may only use an individual who is employed by that firm at the time of submittal for precertification.

(2) Experience. The experience used to meet requirements may be either prior to or after licensure unless otherwise stated in a specific category. For the purpose of experience for precertification, the professional provider may be licensed to practice in any state for which that experience is recognized by the:

(A) Texas Board of Professional Engineers for engineers;

(B) Texas Board of Architectural Examiners for architects; or

(C) Texas Board of Professional Land Surveying for land surveyors.

(3) Contract execution. For the purposes of executing a contract and doing work in the state, the professional provider must be licensed by the:

(A) Texas Board of Professional Engineers for engineers;

(B) Texas Board of Architectural Examiners for architects; or

(C) Texas Board of Professional Land Surveying for land surveyors.

(b) Work Categories.

(1) Group 1 - transportation systems planning.

(A) Category 1.1.1 - policy planning. This category includes the investigation and development of transportation planning and strategies to meet current or future needs at the state or local level. The firm must employ:

(i) one professional engineer with training and experience in areas directly related to policy planning; or

(ii) one planner with training and experience in areas directly related to policy planning.

(B) Category 1.2.1 - systems planning. This category includes development of state or local transportation plans to create complete integrated systems to support movement of people and goods. The firm must employ:

(i) one professional engineer with training and experience in areas directly related to systems planning; or

(ii) one planner with training and experience in areas directly related to systems planning.

(C) Category 1.3.1 - subarea/corridor planning. This category includes the study of the feasibility of all modes of transportation corridors at the state or local level to determine the cost effectiveness of the various alternatives to meet specific goals and may include actual route location as a final product. The firm must employ:

(i) one professional engineer with training and experience in areas directly related to subarea/corridor planning; or

(ii) one planner with training and experience in areas directly related to subarea/corridor planning.

(D) Category 1.4.1 - land planning/engineering. This category includes planning and engineering in support of assessing the impacts that proposed transportation improvements may have on public and private property. The firm must employ:

(i) one professional engineer with training and experience in comprehensive planning or areas directly related to assessing impacts to private property; or

(ii) one planner with training and experience in comprehensive planning or areas directly related to assessing impacts to private property.

(E) Category 1.5.1 - feasibility studies. This category includes investigation of programs or specific projects to determine if they are cost effective and meet the department's desired goals. The firm must employ one professional engineer who has:

(i) proficiency in civil engineering; and

(ii) completed a minimum of two feasibility studies.

(F) Category 1.6.1 - major investment studies. This category includes the investigation of modal and financing alternatives for major transportation projects at the state or local level. The firm must employ:

(i) one professional engineer with proficiency in civil engineering and experience or education in urban planning and economic, or environmental impact assessment; and

(ii) one person with a bachelor's degree in a physical or a natural science with related experience.

(2) Group 2 - environmental studies.

(A) Category 2.1.1 - traffic noise analysis. This category includes the performance of a traffic noise analysis for a roadway project. The firm must employ one person with:

(i) a bachelor's degree or equivalent experience in environmental studies, urban planning, civil or environmental engineering, or a related field; and

(ii) demonstrated experience in use/application of Traffic Noise Guidelines, traffic noise modeling software, and appropriate sound measuring equipment through the accurate completion of a traffic noise analysis for a minimum of two highway projects at the FONSI level or above.

(B) Category 2.2.1 - air quality analysis. This category includes the performance of an air quality analysis for a roadway project. The firm must employ one person with:

(i) a bachelor's degree or equivalent experience in environmental studies, urban planning, civil or environmental engineering, or a related field; and

(ii) demonstrated experience in use/application of air quality guidelines and air quality modeling software through the accurate completion of an air quality analysis for a minimum of two highway projects at the FONSI level or above.

(C) Category 2.3.1 - wetland delineation. This category includes the performance of a wetland delineation according to the U.S. Army Corps of Engineers requirements. The firm must employ one person with:

(i) a minimum of one year of field experience in wetland delineation; and

(ii) completion of a Wetland Training Institute or an equivalent one week wetland delineation class.

(D) Category 2.4 - U.S. Army Corps of Engineers permits. This category includes the following permits:

(i) Category 2.4.1 - nationwide permit. The firm must employ one person with working knowledge of the nationwide permit process and a minimum of one year of experience in nationwide permit determination.

(ii) Category 2.4.2 - §404 (Title 33, United States Code, §1344) individual permits (including mitigation and monitoring). The firm must employ one person with working knowledge of the individual §404 permit process, with one year of experience, and who has applied for and received one individual permit.

(iii) Category 2.4.3 - U.S. Coast Guard and U.S. Army Corps of Engineers §10 (Title 33, United States Code, §403) permits. The firm must employ one person with one year of experience and working knowledge of the Rivers and Harbors Act, §10 who has applied for and received one navigation-related permit.

(E) Category 2.5.1 - water pollution abatement plan. This category includes geologic field assessment and the preparation of pollution abatement plans as they relate to the Edwards Aquifer Rules. The firm must employ one person with:

(i) a background in geology, environmental studies, civil or environmental engineering or a related field; and

(ii) working knowledge of the Edwards Aquifer Rules.

(F) Category 2.6 - protected species coordination. This category includes the following types of biological issues and coordination.

(i) Category 2.6.1 - protected species determination (habitat). This category involves the determination of the potential presence or absence of a protected species or important habitat. The firm must employ one person with knowledge of currently protected species and/or habitats, and a demonstrated ability to perform basic inventory work sufficient to comply with FHWA National Environmental Protection Act (NEPA) requirements.

(ii) Category 2.6.2 - impact evaluation assessments. This category requires demonstrated ability to use habitat and species determination and biological survey data to analyze impacts to biological resources. The firm must employ one person with demonstrated ability to prepare a biological impact analysis for NEPA documentation or to support the Federal Endangered Species Act (ESA) Section 7 consultations, including the preparation of a biological assessment, or ESA Section 10.a. permit applications.

(iii) Category 2.6.3 - biological surveys. This category requires demonstration of ability to conduct biological resource field studies. The firm must employ one person:

(I) with demonstrated ability to survey the project site and classify the vegetation community, list animal species associated with that community, and identify special habitat features within the community;

(II) who has required state and federal permits; and

(III) with experience in appropriate survey protocols for specific protected species.

(G) Category 2.7.1 - §4(f) (Title 23, United States Code of Federal Regulations, §771.135) and/or §6(f) (Title 49, United States Code, §303) evaluations. This category includes §4(f) evaluations, identified in the Department of Transportation Act of 1966, which are conducted when right of way is acquired from publicly owned parks, recreation areas, wildlife or waterfowl refuges, or historic sites, and §6(f) evaluations which apply when federal land and water conservation funds are used for improvements to the site. The firm must employ one person:

(i) with a minimum of one year of experience in applying §4(f) and/or §6(f) requirements;

(ii) who has completed a minimum of one successful evaluation; and

(iii) who has received FHWA or other federal agency approval.

(H) Category 2.8.1 - surveys, research and documentation of historic buildings, structures, and objects. This category includes surveys, research, and documentation efforts carried out in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Volume 48 of the Federal Register, 44716) to comply with §106 (Title 16, United States Code, §470f) of the National Historic Preservation Act of 1966, as amended, and other state and federal historic preservation related laws and regulations. Associated activities include: delineation of the area of potential effects for projects with the potential to affect historic properties; field surveys and photographic and written documentation on historic properties located within a project's area of potential effects; development of historic contexts that provide an organizational and thematic format for evaluating historic properties; determination of National Register eligibility for identified historic properties; preparation of historic documentation on affected properties in accordance with the documentation requirements of the Historic American Buildings Survey and the Historic American Engineering Record; evaluation of the effect of projects on significant properties; and the development of management and preservation plans for historic properties. The firm must employ one person with experience working with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Volume 48 of the Federal Register, 44716), 36 CFR Part 800, and documentation requirements of the Historic American Buildings Survey and Historic American Engineering Record and:

(i) a master's degree in architectural history, historic preservation or a closely-related field, with course work in American architectural history and a minimum of one year of direct experience performing surveys, research or documentation of historic buildings, structures, and objects;

(ii) a bachelor's degree in architectural history, historic preservation or a closely-related field, with course work in American architectural history and a minimum of two years of direct experience performing surveys, research or documentation of historic buildings, structures, and objects; or

(iii) a minimum of ten years of direct experience performing surveys, research, or documentation of historic buildings, structures, and objects, including scholarly publications and presentations at professional meetings.

(I) Category 2.9.1 - historic architecture. This category includes architectural work to ensure compliance with the Secretary of the Interior's Standards for Historic Preservation projects (Volume 48 of the Federal Register, 44716). Associated activities include detailed investigations of historic structures, preparation of historic structure research reports, preparation of plans and specifications for historic

preservations projects, development of management plans for individual properties, and preparation of measured drawings for affected historic properties. The firm must employ a registered architect:

(i) with a minimum of two years of full-time experience managing historic preservation projects; or

(ii) with a minimum of one year of full-time experience managing historic preservation projects and completion of a minimum of one year of graduate study in preservation architecture.

(J) Category 2.10.1 - archeological surveys, documentation, excavations, testing reports and data recovery plans. This category includes: reconnaissance or intensive archeological surveys performed in accordance with the criteria listed in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (1982), Reports Relating to Archeological Permits in the Rules of Practice and Procedure for the Antiquities Code of Texas, and performance standards as outlined in the Council of Texas Archaeologists (CTA) Guidelines; documentation of operations that use archeological techniques to obtain and record evidence of human activity or behavior important in history or prehistory; testing and preparation of testing reports to describe the results of work following the investigation and evaluation of archeological sites and/or other historic properties; and data recovery plans that address appropriate strategies and methodologies for excavation and data recovery. The firm must employ a principal investigator:

(i) with a master's degree in archeology, anthropology, or closely-related field, who has a minimum of one year of full-time professional experience or equivalent specialized training in archeological research or administration;

(ii) who has a minimum of one year of supervised field and analytic experience in archeology;

(iii) who is a professional archeologist who meets the standards of a principal or co-principal investigator, as defined by state standards, with a minimum of one year of full-time professional experience at a supervisory level in archeological resources;

(iv) who has served as principal or co-principal investigator on a minimum of five archeological projects, of equivalent scope that were successfully completed under the jurisdiction of the National Historical Preservation Act, the Antiquities Code of Texas, or an equivalent law in another state; and

(v) who has the equipment and personnel necessary to perform the work.

(K) Category 2.11.1 - historical and archival research. This category includes historical and archival research on historic properties or historic archeological sites, the development of research designs to guide historical research efforts, and the development of historic contexts to provide an organizational and thematic format for further research and evaluation of historic properties and historic archeological sites. The firm must employ one person with:

(i) a master's degree in history or a closely related field with a minimum of one year of full-time experience in historical research, writing, teaching, or other demonstrated professional historical activity and archival research and documentation; or

(ii) a bachelor's degree in history or a closely related field with a minimum of two years of full-time experience in research, writing, teaching, interpretation, or other demonstrated professional activity with an academic institution, historical organization or agency, museum, or other professional institution, and a minimum of one year of experience managing historical and archival research.

(L) Category 2.12.1 - socio-economic and environmental justice analyses. This category includes: analyzing U.S. Census data for the affected area; identifying changes in land use, land values, and the local tax base; identifying impacts to the business environment to include relocations, construction period impacts, accessibility issues, and effects to employees and customers; estimating the number and type of residential relocations; identifying the availability of comparable replacement housing in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970; identifying impacts to community cohesion and the effects to public facilities and services; and identifying and addressing disproportionately high and adverse health and environmental impacts to minority populations and low-income populations in accordance with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (February 11, 1994). The firm must employ one person with:

(i) a bachelor's degree in sociology, economics, urban planning, engineering, or a related field described in this category;

(ii) a minimum of one year of full-time experience performing socio-economic analysis for environmental documents; and

(iii) knowledge of applicable federal, state, and local regulations.

(M) Category 2.13.1 - hazardous materials initial site assessment. This category includes the performance of an initial site assessment to identify known or possible hazardous materials and determine the potential for encountering them during project development. The assessment shall be in general accordance with the American Society for Testing and Materials Environmental Site Assessment standard practices, ASTM 1528 and ASTM 1527, or satisfy due diligence and appropriate inquiry requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The appropriate level of inquiry for assessing existing and previous land use, regulatory databases (list search) and files, site visit and/or field surveys, and interviews shall be made with consideration of project design and right of way requirements. This category also includes the determination of whether additional research or investigation is necessary during subsequent stages of project development. The firm must employ one person with:

(i) a minimum of one year of experience performing Phase I environmental site assessments/hazardous material assessments; and

(ii) working knowledge of pertinent federal, state and local environmental laws and regulations, ASTM standard practices for environmental site assessments, and hazardous material assessments/investigations.

(N) Category 2.14.1 - environmental document preparation. This category includes the preparation of environmental documents for transportation projects as identified in §2.43(c), (d) and (e) of this title (relating to Highway Construction Projects - State Funds). The firm must employ one person:

(i) with a bachelor's degree or equivalent experience in environmental studies, urban planning, civil or environmental engineering, or a related field, and with knowledge of pertinent federal, state, and local environmental regulations;

(ii) in responsible charge of the review and preparation of, and/or participation in any management that developed five or more moderate to large projects which were approved as environmental assessment-FONSI; or

(iii) in responsible charge of the review and preparation of, and/or participation in any management that developed 10 or more small to moderate projects which were approved as environmental assessment-FONSI; or

(iv) in responsible charge of the review and preparation of, and/or participation in any management that developed one project which was approved as an environmental impact statement .

(3) Group 3 - schematic development. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 3.1.1 - route studies & schematic design - minor roadways. This category includes the preliminary alignment and layout of minor roadways as described in Category 4.1.1. The firm must employ one professional engineer with a minimum of three years experience in:

(i) design of minor roadways; and

(ii) capacity and level of service analysis.

(B) Category 3.2.1 - route studies & schematic design - major roadways. This category includes the preliminary alignment and layout of major roadways as described in Category 4.2.1. The firm must employ one professional engineer with a minimum of three years experience in:

(i) design of major roadways; and

(ii) capacity and level of service analysis.

(C) Category 3.3.1 - route studies & schematic design - complex highways. This category includes the preliminary alignment and layout of complex highways as described in Category 4.3.1. The firm must employ one professional engineer with a minimum of:

(i) five years experience in the area of complex highway design; and

(ii) one year of experience in capacity and level of service analysis.

(D) Category 3.4.1 - minor bridge layouts. This category includes the preliminary alignment and layout of minor bridges as described in Category 5.1.1. The firm must employ one professional engineer with a minimum of three years experience in:

(i) design of minor roadways; and

(ii) capacity and level of service analysis.

(E) Category 3.5.1 - major bridge layouts. This category includes the preliminary alignment and layout of major bridges as described in Category 5.2.1. The firm must employ one professional engineer with a minimum of:

(i) three years experience in design of major roadways; and

(ii) one year of experience in capacity and level of service analysis.

(F) Category 3.6.1 - multi-level interchange and exotic bridge layout. This category includes the preliminary alignment and layout of multi-level interchanges as described in Category 5.3.1 and 5.4.1. The firm must employ one professional engineer with a minimum of:

(i) five years experience in complex highway design; and

(ii) one year of experience in capacity and level of service analysis.

(4) Group 4 - roadway design. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 4.1.1 - minor roadway design. This category includes the design of small urban and rural roadways involving repair, resurfacing, and rehabilitation that do not include major reconstruction, and urban and rural roadways that involve substantial capacity improvements. Associated activities include utility relocation and miscellaneous minor design services. The firm must employ one professional engineer with a minimum of three years of roadway design experience on two projects.

(B) Category 4.2.1 - major roadway design. This category includes design of urban and rural roadways that involve major reconstruction or substantial capacity improvements through a developed area. Associated activities include utility relocation plans, stormwater permits, maintenance of traffic plans, and traffic engineering applications. The firm must employ one professional engineer with a minimum of three years of roadway design experience on two separate projects.

(C) Category 4.3.1 - complex highway design. This category includes the design of expressways, limited access facilities, diamond interchanges, freeways, and new roadway and reconstruction work on complex projects including complex geometrics. Associated activities include substantial drainage evaluation and design features, traffic engineering applications, utility relocation plans, and maintenance of traffic plans. The firm must employ one professional engineer with a minimum of four years experience in complex highway design on two separate projects.

(D) Category 4.4.1 - major freeway interchanges and direct connectors. The firm must employ one professional engineer with a minimum of five years experience in design of a minimum of two separate projects involving major freeway interchanges and direct connectors.

(5) Group 5 - bridge design. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 5.1.1 -minor bridge design. This category includes the design of conventional, non-complex bridges, bridge replacements, simple bridge widening, railroad overpasses, non-standard retaining walls, and pedestrian bridges. The firm must employ one professional engineer with a minimum of two years structural bridge design experience after licensure as a professional engineer.

(B) Category 5.2.1 - major bridge design. This category includes the design of bridges with complex geometry, complexity of design, spans less than 350 feet, non-conventional substructures, substructures requiring ship impact design, design of dolphins for bridge pier protection, railroad underpasses, complex bridge widening, steel truss spans, and concrete arch bridges. The firm must employ one professional engineer with a minimum of five years of structural bridge design experience after licensure as a professional engineer.

(C) Category 5.3.1 - multi-level interchange design. This category includes design of bridges with three levels or more. The firm must employ one professional engineer with a minimum of seven years of structural bridge design experience in multi-level interchanges after licensure as a professional engineer.

(D) Category 5.4.1 - exotic bridge design. This category includes the design of bridges with spans greater than 350 feet,

suspension bridges, cable-stayed bridges, precast, post-tensioned segmental bridges, bridges requiring unique analytical methods, and movable bridges. The firm must employ one professional engineer with a minimum of seven years of structural bridge design experience in exotic bridge design after licensure as a professional engineer.

(6) Group 6 - bridge inspection. The firm must employ sufficient National Highway Institute (NHI) trained bridge inspectors and other technical personnel as required to perform inspection of bridges included in this category.

(A) Category 6.1.1 - routine bridge inspection. This category includes the inspection of on-system and off-system bridges, inspection and load rating for culverts, prestressed beam bridges, cast-in-place concrete bridges, steel girder bridges, steel truss bridges, and timber bridges. The firm must employ:

(i) a project manager who is a registered professional engineer, is qualified for registration as a professional engineer under the laws of a state, or has a minimum of 10 years experience in bridge inspection assignments in a responsible capacity and has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges;" and

(ii) a team leader who has the qualifications specified for the project manager in subdivision (i) of this subparagraph, or a minimum of five years of experience in bridge inspection assignments in a responsible capacity and has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges," or is currently certified as a Level III or IV Bridge Safety Inspector under the National Institute for Certification in Engineering Technologies (NICET).

(B) Category 6.2.1 - complex bridge inspection. This category includes the inspection of on-system and off-system bridges, inspection and load rating for precast segmental structures, steel arch structures, cable stayed structures, fracture critical inspections, and movable bridges. The firm must employ:

(i) one professional engineer, to serve as project manager, with a minimum of seven years of bridge inspection or design experience, including one year of inspection or design of bridges included in this category, and who has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges;" and

(ii) a person to serve as the inspection team leader who has a minimum of six years of experience in bridge inspection or design, including one year of inspection or design of bridges included in this category, and who has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges."

(7) Group 7 - traffic engineering and operations studies.

(A) Category 7.1.1 - traffic engineering studies. This category is defined as the study of the traffic operations of a roadway. Associated activities include preparation of or performance of traffic counts, signal warrants, collision diagrams, travel time and delay, capacity and level of service analysis, intersection analysis, signing, and pavement marking. The firm must employ one professional engineer with demonstrated experience performing traffic engineering studies.

(B) Category 7.2.1 - highway-rail grade crossing studies. This category includes the study of the operations of highway-rail grade crossings. Associated activities include preparation of or performance of corridor analysis, diagnostic inspections to determine appropriate type and location of active warning devices, advance warning signs and pavement markings, and other geometric or operational improvements. The firm must employ one professional engineer with demonstrated experience performing highway-rail grade crossing studies.

(C) Category 7.3.1 - traffic signal timing. This category includes analysis, development, and implementation of timing for traffic signals. Associated activities include data collection, intersection analysis, computerized timing programs (development of phase intervals and sequence), and timing implementation. A firm must employ:

(i) one professional engineer with demonstrated experience in traffic signal timing and the application and interpretation of traffic flow and signal timing models; and

(ii) sufficient personnel with experience using traffic engineering software applications, loading timings into field equipment, and loading databases into central computers for retiming.

(D) Category 7.4.1 - traffic control systems analysis, design and implementation. This category includes the use of electrical engineering, electronics engineering, computer science and traffic engineering to analyze, design, and implement real-time traffic control systems. The firm must employ:

(i) one professional engineer with experience in activities associated with traffic control systems; and

(ii) sufficient production staff to perform these activities.

(E) Category 7.5.1 - Intelligent Transportation System. This category includes conducting ITS planning studies. Associated activities include the study of transportation systems, identification of ITS applications to mitigate transportation problems, development of short term and long term ITS implementation plans, and assessment of the impact of ITS projects on the transportation system. The firm must employ:

(i) one professional engineer with a background in transportation engineering and experience in activities associated with the development of ITS; and

(ii) sufficient production staff to perform these activities.

(8) Group 8 - traffic operations design.

(A) Category 8.1.1 - signing, pavement marking and channelization. This category includes the design and preparation of plans for signing, pavement marking, and channelization. The firm must employ one professional engineer with a minimum of two years experience in this category.

(B) Category 8.2.1 - illumination. This category includes the design and preparation of plans for continuous roadway lighting, safety lighting, underpass lighting, tunnel lighting, and high mast lighting. The firm must employ one professional engineer with:

(i) a minimum of two years experience in design and production of illumination plans meeting IESNA and AASHTO guidelines; and

(ii) demonstrated experience in electrical engineering and the National Electric Code.

(C) Category 8.3.1 - signalization. This category includes the design and preparation of plans for traffic signalization. The firm must employ one professional engineer with a minimum of two years experience in the design and production of traffic signalization.

(D) Category 8.4.1 - ITS control systems analysis, design, and implementation. This category of work includes the use of

transportation engineering, electronics engineering, and computer science to analyze, design and implement transportation control systems. Associated activities include system performance and cost analysis, system hardware and software design, communication system design, development of management plans, supervision of system installation and operation, system testing and debugging, preparation of system documentation, and the training of operations personnel. The firm must employ:

(i) one professional engineer, with a background in electrical engineering, system engineering, or software engineering, with a minimum of two years experience in either the design and production of ITS plans or the operation of ITS; and

(ii) sufficient personnel with experience in systems engineering, communications, system integration, or software development for ITS applications and ITS equipment.

(E) Category 8.5.1 - highway-rail grade crossings. This category includes the design and preparation of plans for active warning devices, advance warning signs, pavement markings, and other geometric or operational improvements at highway-rail crossings. The firm must employ one professional engineer with a minimum of two years experience in this category.

(9) Group 9 - bicycle and pedestrian facilities. Category 9.1.1 - bicycle and pedestrian facility development includes the design of bicycle and pedestrian facilities. The firm must employ:

(A) one professional engineer with a minimum of one year experience in the design of bicycle and pedestrian facilities, and with knowledge of drainage design; and

(B) sufficient production staff to perform these activities.

(10) Group 10 - hydraulic design and analysis.

(A) Category 10.1.1 - hydrologic studies. This category includes rainfall, runoff determination, reservoir routing, and channel routing. The firm must employ one professional engineer with a minimum of two years experience in analysis of complex watersheds.

(B) Category 10.2.1 - basic hydraulic design. This category includes storm drain systems, culverts, sedimentation filtration systems, and detention/retention ponds. The firm must employ one professional engineer with a minimum of two years experience in hydrologic analysis, hydraulic design, and storm water quality evaluation.

(C) Category 10.3.1 - complex hydraulic design. This category includes hydraulic design of bridges over waterways, flood plain analysis, and channel modifications. The firm must employ one professional engineer with a minimum of two years experience in river geomorphology, sediment transport and scour analysis, flood plain analysis, river training techniques, and federal and state regulations and permit compliance.

(D) Category 10.4.1 - pump stations-hydraulics. This category includes the design of pump stations for conveyance of storm waters. The firm must employ one professional engineer with a minimum of two years experience in hydrologic analysis and storm drain and pump station design.

(E) Category 10.4.2 - pump stations-electrical. This category includes the design of pump motor control centers, controls, generators, and large distribution equipment stations for conveyance of storm water. The firm must employ one professional engineer with a minimum of five years experience in the design of large motor control centers and generating equipment, the National Electrical Code, and control systems.

(F) Category 10.4.3 - pump stations-structures. This category includes the structural design of walls, roofs, foundations, and wells of pump stations for conveyance of storm water. The firm must employ one professional engineer with a minimum of two years of structural pump stations design experience.

(G) Category 10.5.1 - bridge scour evaluations and analysis. This category includes hydrologic analysis, channel and bridge hydraulic analysis and sediment transport modeling for evaluating the potential for scour of bridges. The firm must employ one professional engineer with a minimum of two years experience, after licensure as a professional engineer, in river geomorphology, sediment transport and scour analysis, and flood plain analysis.

(11) Group 11 - construction management. The firm must employ sufficient technical personnel with construction engineering inspection experience to staff projects under this category of work.

(A) Category 11.1.1 - roadway construction management and inspection. This category includes the performance of construction management duties for all categories of roadways and highways, and minor bridges as described in Category 5.1.1. The firm must employ one professional engineer with a minimum of two years of responsible charge experience as a project engineer on roadway and bridge construction projects.

(B) Category 11.2.1 - major bridge construction, management, and inspection. This category includes the performance of construction management duties for major bridges, multi-level interchanges, and exotic bridges as described in Category 5.2.1. The firm must employ one professional engineer with a minimum of two years demonstrated major bridge construction experience, after licensure as a professional engineer.

(12) Group 12 - materials inspection and testing.

(A) Category 12.1 - material testing. The firm must have available in-house equipment and employ qualified, certified staff necessary to perform the work specified in this category.

(i) Category 12.1.1 - asphaltic concrete. This category includes testing of asphaltic concrete material. The firm must employ one professional engineer with a minimum of three years of experience in testing roadway construction materials and a minimum of one person with the proper Hot Mix Asphalt Specialist Certification (Level 1A minimum).

(ii) Category 12.1.2 - portland cement concrete. This category includes testing of portland cement concrete. The firm must employ one professional engineer with a minimum of three years of experience in testing roadway and bridge construction materials, and one person with the proper concrete certification (ACI certification Grade 1).

(B) Category 12.2.1 - plant inspection and testing. This category includes inspection of the following types of facilities and inspection of materials and finished products within these facilities: fabrication plants, mines and quarries, mills, refineries, processors, and producers. The firm must employ:

(i) one professional engineer with a minimum of three years of responsible experience in inspection and testing bridge and roadway construction materials; and

(ii) sufficient technical personnel with construction engineering experience to properly staff this type of work.

(13) Group 14 - geotechnical services.

(A) Category 14.1.1 - soil exploration. This category includes acquisition and reporting of subsurface material to be used for

the planning, design, construction, and performance of transportation facilities. The field classification of materials and acquisition of soil and rock samples is also included. The firm must:

(i) employ one professional engineer with a minimum of one year demonstrated experience in the activities normally associated with the category under consideration; and

(ii) have available the equipment necessary to perform the work.

(B) Category 14.2.1 - geotechnical testing. This category includes sampling and conducting tests on soil and rock according to the department's approved procedures for the purpose of classifying materials and/or identifying their physical properties. The firm must:

(i) employ one professional engineer with a minimum of one year demonstrated experience in the activities normally associated with the category under consideration; and

(ii) have available in-house equipment and employ qualified staff necessary to perform the work.

(C) Category 14.3.1 - transportation foundation studies. This category includes producing reports which contain selection of the type and depth of foundation for bridges, retaining walls, signs, and other types of transportation foundations. Working with bearing capacity, predicted settlement, stabilization, and construction on soft ground will be required. The firm must employ one professional engineer with a minimum of three years demonstrated experience in the activities normally associated with this category.

(D) Category 14.4.1 - building foundation studies. This category includes producing reports which contain selection of the type and depth of foundation for buildings. Working with bearing capacity, predicted settlement, stabilization and construction on soft ground will be required. The firm must employ one professional engineer with a minimum of three years demonstrated experience in the activities normally associated with this category.

(14) Group 15 - surveying and mapping.

(A) Category 15.1 - right of way surveys. This category includes the performance of on the ground surveys and preparation of parcel maps, legal descriptions, and right of way maps. The firm must employ one registered professional land surveyor and two technical personnel, all with demonstrated experience in the applicable category of work and the following subcategories:

(i) Category 15.1.1 - survey;

(ii) Category 15.1.2 - parcel plats;

(iii) Category 15.1.3 - legal descriptions; and

(iv) Category 15.1.4 - right of way maps.

(B) Category 15.2.1 - design and construction survey. This category includes performance of surveys associated with the gathering of survey data for topography, cross-sections, and other related work in order to design a project, or during layout and staking of projects for construction. The firm must:

(i) employ one registered professional land surveyor with a minimum of one year experience in roadway construction staking;

(ii) employ sufficient staff to undertake the requirements normally associated with this type of work; and

(iii) have available the proper equipment to perform the work.

(C) Category 15.3.1 - aerial mapping. This category involves the collection and reduction of aerial survey data, and preparation of site maps and topographic maps. Associated activities include category 15.4.1. The firm must:

(i) employ sufficient lead technical personnel with a minimum of five years of experience each in aerial mapping;

(ii) have available the proper equipment meeting national mapping standards and other equipment required to perform the work; and

(iii) employ sufficient technical production staff to perform this type of work.

(D) Category 15.4.1 - horizontal and vertical control for aerial mapping. This category involves the establishment of the horizontal and vertical control for aerial mapping. The firm must:

(i) employ one registered professional land surveyor;

(ii) have available the proper equipment to perform the work; and

(iii) employ sufficient staff to undertake the requirements normally associated with this type of work.

(E) Category 15.5.1 - state land surveying. This category includes the performance of land surveying associated with "the location or relocation of original land grant boundaries and corners; the calculation of area and the preparation of field note descriptions of both surveyed and unsurveyed land or any land in which the state or the public free school fund has an interest; the preparation of maps showing such survey results; and the field notes and/or maps of which are to be filed in the General Land Office," as quoted in the Surveyors Act. The firm must employ one registered professional land surveyor with demonstrated experience in state land surveying as defined in the category description.

(15) Group 16 - architecture. Category 16.1.1- buildings and other structures. This category includes architectural services for buildings and other related structures such as, but not limited to, radio towers, fuel island canopies, equipment slabs, equipment and/or material storage structures. The firm must employ sufficient project management and technical staff to provide services normally associated with this type of work. The firm must employ one registered architect with a minimum of two years experience in the areas identified.

(16) Group 18 - miscellaneous.

(A) Category 18.1.1 - value engineering. This category includes the study of transportation-related [~~transportation related~~] projects or selected processes by multidisciplined teams to determine the most cost effective use of resources to accomplish the given functions. The firm must employ:

(i) [~~(A)~~] one professional engineer who:

(I) [~~(i)~~] is a certified value specialist with experience in the value engineering process and team leadership related to transportation projects as evidenced by having conducted a minimum of five transportation-related [~~transportation related~~] value engineering studies, including one freeway project exceeding $20 million initial estimated cost;

(II) [~~(ii)~~] has taught a minimum of two transportation-related [~~transportation related~~] value engineering classes in the last five years; and

(III) [~~(iii)~~] has knowledge of and experience with federal, state, and local regulations, public involvement, professional engineering standards, project management, and cost estimating related to transportation projects; and

(ii) [~~(B)~~] sufficient production staff to perform transportation-related [~~transportation related~~] value engineering team leadership, produce final value engineering study reports, and teach classes on the principles and practices of value engineering.

(B) Category 18.2.1 - subsurface utility engineering. This category involves the determination of vertical and horizontal locations of subsurface utilities by non-destructive methods. The firm must:

(i) employ one professional engineer with at least two years experience in subsurface utility engineering;

(ii) have available the proper equipment to accomplish non-destructive investigation methods to obtain horizontal and vertical locations of subsurface utilities and related subsurface utility engineering tasks.

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 December 15, 2000.

TRD-200008700
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 463-8630

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CHAPTER 21. RIGHT OF WAY
SUBCHAPTER C. UTILITY ACCOMMODATION

43 TAC §§21.31, 21.43, 21.44, 21.48, 21.50, 21.51, 21.53, 21.54

The Texas Department of Transportation proposes amendments to §§21.31, 21.43, 21.44, 21.48, 21.50, 21.51, 21.53, and 21.54, concerning utility accommodation.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §21.31 delete certain definitions that relate to manager titles that are no longer used in this department. Other changes to this section are strictly grammatical in nature.

The remaining amendments to §§21.43, 21.44, 21.48, 21.50, 21.51, 21.53, and 21.54 reflect changes in the department's organizational structure and grammatical corrections.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

John P. Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

John P. Campbell has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a more accurate and orderly organization of the rules. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to John P. Campbell, Director, Right of Way Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 29, 2001.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

§21.31. Definitions.

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

(1) Active project - A highway project for which any phase of development has been programmed or an investigation and planning expense (IPE) authorization issued. A project is considered active until construction is completed and the project is placed under maintenance.

[~~(2) Administration - The state engineer-director for highways and public transportation, state deputy engineer-director, and deputy directors of the State Department of Highways and Public Transportation.~~]

(2) [~~(3)~~] American Association of State Highway and Transportation Officials (AASHTO) - An association of state highway and transportation officials.

[~~(4) Bridge engineer - The bridge engineer for the State Department of Highways and Public Transportation.~~]

[~~(5) Chief engineer of highway design - The chief engineer of highway design for the State Department of Highways and Public Transportation.~~]

[~~(6) Chief engineer of maintenance and operations - The chief engineer of maintenance and operations for the State Department of Highways and Public Transportation.~~]

(3) [~~(7)~~] Clear roadside policy - A policy to increase safety, improve traffic operation, and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from physical obstructions above the ground and travelway such as trees, drainage structures, massive sign supports, utility poles, and other ground-mounted obstructions.

(4) [~~(8)~~] Common carrier - A person who owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or from the public for hire, or engages in the business of transporting crude petroleum by pipeline. A

common carrier may transport oil, oil products, gas, salt brine, fuller's earth, sand, clay, liquefied minerals or other mineral solutions.

(5) [~~(9)~~] Controlled access roadway - A highway on which owners or occupants of abutting lands and other persons are denied access to or from the highway [~~same~~] except [~~at such points only and in such manner~~] as authorized by the department [~~may be determined by the State Department of Highways and Public Transportation~~].

(6) [~~(10)~~] Department - The Texas [~~State~~] Department of [~~Highways and Public~~] Transportation [~~(SDHPT)~~].

(7) [~~(11)~~] Design vehicle load (HS-20) - A design load designation used for bridge design analysis representing a three-axle truck loaded with four tons on the front axle and 16 tons on each of the other two axles. The HS-20 designation is one of many established by [~~the~~] AASHTO for use in the structural design and analysis of bridges.

(8) [~~(12)~~] District engineer - The chief administrative officer in charge of one of the 25 districts of the department. [~~The department is divided into districts with district offices throughout the State of Texas. The district engineer (DE) is the chief executive officer of a district of the SDHPT. The DE acts as the representative of the state engineer-director for the SDHPT at the district level.~~]

(9) Executive director - The executive director of the Texas Department of Transportation.

(10) [~~(13)~~] Frontage roads - A street or road auxiliary to, and located on the side of, an expressway or freeway that segregates local traffic from high-speed through traffic and provides service to abutting property and control of access.

(11) [~~(14)~~] High and low pressure gas lines - High pressure gas lines are pipelines that carry a gaseous substance and that [~~which~~] are operated or may reasonably be expected in the future to operate at a pressure of over 60 pounds per square inch. Conversely, low pressure gas lines are those with an operating pressure not expected to exceed 60 pounds per square inch.

(12) [~~(15)~~] Low volume highways and low volume farm-to-market roads - Any roadways other than controlled access highways which carry a traffic volume of 750 vehicles per day or less and upon which projected traffic volume at the design year is not anticipated to exceed 1,500 vehicles per day.

(13) [~~(16)~~] Noncontrolled access roadway - A highway on which owners [~~owner~~] or occupants of abutting lands or other persons have access to or from the highway [~~same~~].

(14) [~~(17)~~] Outer separation - The area between the traveled way of a roadway for through traffic and a frontage road or street.

(15) [~~(18)~~] Pavement structure - The combination of the surface, base course, subbase, and a minimum eight inches of stabilized subgrade material which supports the traffic load and distributes it to the roadbed. A minimum of eight inches of subgrade stabilization is to be considered a part of the pavement structure.

[~~(19) Right-of-way engineer - The right-of-way engineer for the State Department of Highways and Public Transportation.~~]

(16) [~~(20)~~] TMUTCD - The most recent edition of Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

(17) [~~(21)~~] Utilities - All lines and/or their accessories within the highway rights of way [~~rights-of-way~~] except those for highway-oriented needs. Such utilities may involve underground, surface, or overhead facilities either singularly or in combination. Accessories are any attachments, appurtenances, or integral parts of the utility (i.e., fire hydrants, valves, gas regulators, etc.). The placing of accessories within the highway right of way [~~right-of-way~~] will be determined by such factors as type, size, safety, availability of space, etc.

§21.43. High Pressure Gas and Liquid Petroleum Lines.

(a) Depth of cover.

(1) For encased high pressure gas or liquid petroleum lines, the minimum total clear depth of cover for casing pipe shall be 30 inches. For that portion of the carrier line outside of the casing pipe, including longitudinal portions, the minimum depth of cover within the highway right of way [~~right-of-way~~] shall be 36 inches. Exceptions may be authorized to permit existing lines to remain in place with a reduction of six inches in the above specified depths of cover. All lines normally shall be a minimum of 18 inches or one-half the diameter of the pipe, whichever is greater, beneath the bottom of the pavement structure. Where materials and other conditions justify, such as on existing lines with encasement that [~~which~~] are to remain in place, a minimum depth under the pavement structure of 12 inches or one-half the diameter of the pipe, whichever is greater, may be permitted.

(2) For unencased high pressure gas or liquid petroleum lines, the minimum depth of cover shall be 60 inches under the pavement surface or 18 inches under the pavement structure, whichever is greater. Under ditches, the minimum depth of cover shall be 48 inches. Exceptions may be authorized to permit a reduction in the specified depths of cover where the pipeline is protected by a reinforced concrete slab. As used herein, depth of lines is the depth to top of carrier (if unencased) or casing (if required).

(b) Crossings.

(1) Pipeline installations across highways may be encased or unencased. Where encasement is to be employed, the [~~such~~] encasement shall be provided under center medians and from top of backslope to top of backslope for cut sections (or five feet beyond the toe of slope for fill sections, or face of curb) of all roadways including side streets, and five feet beyond any overpass or other structure where the line passes under it. Encasement may be omitted under center medians where their width is appreciably greater than normal rural standards.

(2) Where encasement is not employed the welded steel carrier pipe shall provide sufficient strength to withstand the internal design pressure and the dead and live loads of the pavement structure and traffic. Additional protective measures should include [~~the following~~]:

(A) heavier wall thickness and/or higher factor of safety in design;

(B) adequate coating and wrapping;

(C) cathodic protection; and

(D) other measures as required by Title 49, Code of Federal Regulations, Part 192 or Part 195.

(3) The minimum length of the additional protection as set forth in paragraph (2) of this subsection shall be the same as that required by encasement.

(4) Existing lines under low volume farm-to-market roads and low volume highways may be permitted to remain in place without encasement or extension of encasement if they are protected by a reinforced concrete slab or equivalent protection or if they are located at a depth of five feet under the pavement surface and not less than four feet under the roadway ditch. If a reinforced concrete slab is to be used, it should meet the following standards:

(A) width - three times the diameter of the pipe or five foot minimum, whichever is greater;

(B) thickness - six inch minimum;

(C) reinforcement - #4 bars at 12 inch centers each way or equivalent wire mesh;

(D) cover - the cushion between the bottom of slab and top of pipe shall be not less than six inches.

(c) Vents. One or more vents shall be provided for each casing or series of casings. For casings longer than 150 feet, vents should be provided at both ends. On shorter casings a vent should be located at the high end with a marker placed at the low end. Vents shall be placed at the right of way [~~right-of-way~~] line immediately above the pipeline, situated so as not to interfere with highway maintenance or concealed by vegetation. Ownership of the lines shall be shown on the vents.

(d) Markers. The utility company shall place a readily identifiable and suitable marker at each right of way [~~right-of-way~~] line where it is crossed by any high pressure gas or liquid petroleum line except where marked by a vent. Readily identifiable and suitable markers in sufficient number as determined by the district engineer [~~DE~~] shall be placed at the right of way [~~right-of-way~~] line for lines installed longitudinally within the right of way [~~SDHPT right-of-way~~].

(e) Above-ground appurtenances. Above-ground appurtenances, except vents, for gas lines shall not be permitted within the highway right of way [~~right-of-way~~].

(f) Exceptions to location requirements. In urban areas, existing longitudinal lines that [~~which~~] are not under the pavement or shoulder of any roadway or in the center median of a controlled access highway may be permitted to remain in place provided all other requirements are met.

§21.44. Low Pressure Gas Lines.

(a) Depth of cover. For low pressure gas lines the minimum depth of cover within the right of way [~~right-of-way~~] and under highway ditches, but outside the pavement structure, including longitudinal portions, shall be 24 inches for either encased or unencased installations. Exceptions may be authorized to permit existing lines to remain in place with a reduction of six inches in the above specified depth. Low pressure gas lines shall be a minimum of 18 inches or one-half the diameter of the pipe, whichever is greater, beneath the bottom of the pavement structure. Where materials and other conditions justify, such as on existing lines to remain in place, a minimum depth under the pavement structure of 12 inches or one-half the diameter of the pipe, whichever is greater, may be permitted. As used herein, depth of lines is the depth to the top of carrier pipe or casing as applicable.

(b) Encasement. Low pressure gas lines shall be encased as required for high pressure gas and liquid petroleum lines or they may be placed without encasement if they are of welded steel construction and are protected from corrosion by adequate and approved cathodic protective measures, with specific agreement that the pavement will not be cut for repairs to the pipeline at any time in the future.

(c) Vents. Reference should be made to §21.43 of this subchapter [~~title (relating to High Pressure Gas and Liquid Petroleum Lines)~~].

(d) Markers. The utility company shall place a readily identifiable and suitable marker at each right of way [~~right-of-way~~] line where it is crossed by a low pressure gas line except where marked by a vent. Readily identifiable and suitable markers in sufficient number as determined by the district engineer [~~DE~~] shall also be placed at the right of way [~~right-of-way~~] line for lines installed longitudinally within the [~~SDHPT~~] right of way.

(e) Plastic lines. Plastic lines may be used provided the internal pressure will not exceed 60 pounds per square inch, they are encased right of way [~~right-of-way~~] line to right of way [~~right-of-way~~] line on crossings, and have at least 30 inches of cover. The maximum size of plastic lines for crossings shall not exceed 24 inches. The maximum size of plastic lines placed longitudinally shall not exceed six inches. Where plastic pipe is installed longitudinally a durable metal wire shall be concurrently installed or other means shall be provided for detection purposes.

(f) Above-ground appurtenances. Above ground appurtenances, except vents, for gas lines shall not be permitted within the highway right of way [~~right-of-way~~].

(g) Exception to location requirements. In urban areas, existing longitudinal lines which can be maintained without violating access control and that [~~which~~] are not under the pavement or shoulder of any proposed roadway or existing roadway that [~~which~~] is scheduled for a major improvement may remain in place provided all other requirements are met and provided further that measures are taken to minimize any future need for cutting pavement to make service connections on any high traffic roadway.

§21.48. Traffic Structures.

(a) The attachment of utility lines to bridges and separation structures is discouraged, since the proliferation of such lines and their maintenance constitute a hazard to traffic as well as complicating the widening or repair of such structures. Attaching utility lines to a highway structure can materially affect the structure, the safe operation of traffic, the efficiency of maintenance, and the overall appearance. Therefore, when it is feasible and reasonable to locate utility lines elsewhere, attachment to bridge structures will not be allowed.

(b) Where other arrangements for a utility line to span an obstruction are not feasible, the department may consider the attachment of such line to a bridge structure. Any exceptions which are permitted shall be handled in accordance with the conditions set forth in §21.47 of this subchapter [~~title (relating to Utility Structures)~~] and other pertinent requirements contained herein. Each such attachment will be considered on an individual basis, and permission to attach will not be considered as establishing a precedent for granting of subsequent requests for attachment. The following guides are established for attachment of utilities to bridges.

(1) When it is impractical to carry a self-supporting communication line across a stream or other obstruction, department policy is to permit the attachment of the line to its bridges. On existing bridges the state generally requires that the line be enclosed in conduits and so located on structures as not to interfere with stream flow, traffic, or routine maintenance operations. When a request is made prior to construction of a bridge, suitable conduits will be provided in the structure if the utility company bears the cost of all additional work and materials involved.

(A) When a line is attached to a bridge, the state will enter into a special agreement or contract with the utility company.

(B) In urban areas where it is the state's responsibility to provide for the adjustment of telephone lines or telephone conduits to accommodate the construction of a highway, and the adjustment provides for the placement of telephone conduits in a highway grade separation structure, the department will allow a reasonable number of spare telephone conduits in the structure provided the spares are placed at the time of construction and the telephone company bears the cost of these spare conduits.

(C) Where the construction of a highway makes it necessary to relocate telephone conduits and the proper adjustment, in the opinion of the department, provides for the placement of telephone conduits in the highway grade separation structure, the department will

permit the telephone company to install replacement telephone conduits and a reasonable number of spares in the structure provided such conduits are placed at the time of construction and provided the company bears any extra structure cost occasioned by the presence of the telephone conduits.

(2) No gas or liquid fuel lines shall be attached to a bridge or grade separation structure without the specific approval of the executive director [~~state engineer-director~~].

(3) Power lines are not permitted on bridges under any condition with the exception of low-voltage distribution lines where the cost of independent facilities to carry these lines would be prohibitive.

(4) When a municipality or utility company requests permission to attach a pipeline to a proposed bridge prior to construction, and the added load is sufficient to require an increase in the strength of the structure, or use of more costly materials or type of construction, the utility owner is required to pay for the increase in cost.

(5) When a utility company requests permission to attach a pipeline to an existing bridge, sufficient information should be furnished to allow a stress analysis to determine the effect of the added load on the structure. Other details of the proposed attachment as they effect safety and maintenance should also be presented. If the bridge structure is not of adequate strength to carry the increased weight or forces with safety, permission will not be granted.

(6) All requests for attachments to bridges or structures should originate with the utility company by its making application to the appropriate district engineer.

(A) For attachments to structures within active projects, requests for attachment along with the district engineer's recommendation should be forwarded to the director of the Bridge Division [~~bridge engineer~~] for review and concurrence. Adequate justification, including details and an estimate for an independent utility crossing, should accompany the submission. If the attachment is allowed, the director of the Bridge Division [~~bridge engineer~~] will prepare a suitable agreement and forward it to the district for handling with the utility company for execution. Modification of the structural details to accommodate the utility and the responsibility of cost thereof will be developed by the director of the Bridge Division [~~bridge engineer~~]. Where applicable, the director of the Bridge Division [~~bridge engineer~~] will coordinate the submission with the director of the Right of Way Division [~~right-of-way engineer~~]. In addition, use and occupancy agreement forms shall be required as cited in §21.52 [~~of this title (relating to Forms - General)~~] and §21.53 of this subchapter [~~title (relating to Use and Occupancy Agreement Forms)~~].

(B) For attachments to structures not within active projects, requests for attachment along with the district engineer's recommendation should be forwarded to the director of the Maintenance Division [~~chief engineer of maintenance and operations~~] for review and concurrence. Adequate justification, including details and an estimate for an independent utility crossing, should accompany the submission. The proposal will then be forwarded to the director of the Bridge Division [~~bridge engineer~~] for review and determination of the effect of the proposed attachment on the existing structure. If the attachment is allowed, the director of the Bridge Division [~~bridge engineer~~] will prepare a suitable agreement and forward it to the district for handling with the utility company for execution. In addition, notice forms shall be required as cited in §21.52 [~~of this title (relating to Forms - General)~~] and §21.54 of this subchapter [~~title (relating to Notice Forms)~~].

§21.50. Underground Power Lines.

(a) Longitudinal. All underground power lines placed within the right of way [~~SDHPT right-of-way~~] may be directly buried at depths according to the voltages of power lines as follows.
Figure: 43 TAC §21.50(a) (No change.)

(b) Crossings. Power lines shall be encased (placed in conduit) and buried a minimum of 36 inches under roadway ditches, and 60 inches below the pavement surface.

(c) Encasement. Encasement shall be provided under center medians and from top of backslope to top of backslope for cut sections (or five feet beyond the toe of slope for fill sections, or face of curb) of all roadways including side streets and beneath and five feet beyond any overpass or other structure where the line passes under it. Encasement may be omitted under center medians where their width is appreciably greater than normal rural standards (76 feet). Existing lines under low-volume farm-to-market roads and low-volume highways may be permitted to remain in place without encasement or extension of encasement if they are protected by a reinforced concrete slab or equivalent protection or if they are located at a depth of six feet under the pavement surface and not less than four feet under the roadway ditch. If a reinforced concrete slab is to be used, it should meet the following standards:

(1) width - five foot minimum;

(2) thickness - six inch minimum;

(3) reinforcement - #4 bars at 12 inch centers each way or equivalent wire mesh;

(4) cover - the cushion between the bottom of slab and top of cable shall be not less than six inches.

(d) Markers. Readily identifiable and suitable markers in sufficient number as determined by the district engineer [~~DE~~] shall be placed at the right of way [~~right-of-way~~] line for lines installed longitudinally within the [~~SDHPT~~] right of way. Where an underground power line crosses, a marker shall be placed at each right of way [~~right-of-way~~] line.

(e) Location. Longitudinal underground power lines may be placed by plowing or open trench method and shall be located as set forth in §21.37 of this subchapter [~~title (relating to Location)~~].

(f) Aboveground appurtenances. Aboveground utility appurtenances installed as a part of an underground power line shall be located at or near the right of way [~~right-of-way~~] line, well outside the highway maintenance operation area.

(g) Manholes. Requirements for manholes shall be the same as cited in §21.38 of this subchapter [~~title (relating to Design)~~].

§21.51. Underground Communication Lines.

(a) Longitudinal. The minimum depth of cover for cable television and copper cable communications lines shall be 24 inches. The minimum depth of cover for a fiber optic facility shall be 42 inches; provided, however, that said minimum depth of cover may be not less than 36 inches if the owner/operator of a fiber optic facility waives damages and fully indemnifies the department in a form acceptable to the department.

(b) Crossings. Lines should be located at approximate right angles to the highway to the extent feasible and practicable. Reasonable latitude may be exercised as regards the crossing angle of existing lines which are otherwise qualified to remain in place.

(1) The minimum depth of cover for cable television and copper cable communication lines shall be 24 inches under ditches or 18 inches beneath the bottom of the pavement structure, whichever is greater.

(2) The top of a fiber optic facility shall be placed a minimum of 42 inches below the ditch grade or 60 inches below the top of the pavement structure, whichever is greater; provided, however, that said minimum depth of cover below the ditch grade may be not less than 36 inches or 60 inches below the top of the pavement structure whichever is greater if the owner/operator waives damages and fully indemnifies the department in a form acceptable to the department.

(3) Lines crossing highways do not require encasement except where in the judgment of the district engineer such encasement is necessary for the protection of the highway facility. Consideration should be given to encasement or other suitable protection for any communication facilities:

(A) with less than minimum bury;

(B) near footings of bridges or other highway structures; or

(C) near other locations where there may be hazards.

(4) When the installation of the line is to be accomplished by boring a hole the same or about the same diameter as the line and pulling it through, then encasement is not necessary. Where such conditions cannot be met, encasement should be provided. The annular void between the drilled hole and the line or casing should be filled with a satisfactory material to prevent settlement of any part of the highway facility over the line or casing.

(5) Encasement may be of metallic or nonmetallic material. Such encasement material shall be designed to support the load of the highway and superimposed loads thereon, including that of construction machinery. The strength of the encasement material shall equal or exceed structural requirements for drainage culverts and it shall be composed of materials of satisfactory durability under conditions to which it may be subjected. The length of any encasement shall be provided under center medians and from top of backslope to top of backslope for cut sections (or five feet beyond the toe of slope for fill sections, or face of curb) of all roadways including side streets. Encasement may be omitted under center medians where their width is appreciably greater than normal rural standards (76 feet). Where encasement is not installed, specific agreement should be reached with the utility company that the pavement will not be cut for repairs any time in the future.

(c) Markers. The utility company shall place a readily identifiable and suitable marker at each right of way [~~right-of-way~~] line where it is crossed by an underground communication line. Readily identifiable and suitable markers in sufficient number as determined by the district engineer [~~DE~~] shall be placed at the right of way [~~right-of-way~~] line for lines installed longitudinally within the right of way [~~SDHPT right-of-way~~]. Where fiber optic lines are installed without a metal sheath or a metal casing, a durable metal wire shall be concurrently installed or other means shall be provided for detection purposes.

(d) Placement. Lines may be placed by plowing or open trench method and shall be located on uniform alignment as near as practical to the right of way [~~right-of-way~~] line to provide space for possible future highway construction and for possible future utility installations. Distance from the right of way [~~right-of-way~~] line will depend upon the terrain involved and obstructions such as trees and other existing underground utility lines. On highways with frontage roads, such installation will be located between the frontage roads and the right of way [~~right-of-way~~] line. Unless authorized by the director of the Bridge Division, director of the Design Division, or director of the Maintenance Division [~~bridge engineer, chief engineer of highway design, or chief engineer of maintenance and operations~~], lines shall not be placed or remain in the center median, or beneath through-traffic roadways or connecting roadways (including shoulders).

(e) Above-ground pedestals. Above-ground pedestals or other utility appurtenances installed as a part of an underground communication line shall be located at or near the right of way [~~right-of-way~~] line, well outside the highway maintenance operation area.

(f) Manholes. Requirements for manholes shall be the same as cited in §21.38 of this subchapter [~~title (relating to Design)~~].

(g) Large equipment housings. Structures that are significantly larger in plan view than single poles may be placed on highway right of way [~~right-of-way~~] with the following stipulations.

(1) The installation will not significantly hinder highway maintenance operations. This will include consideration of the height of the supporting slab above groundline.

(2) The housing will be placed at or near the right of way [~~right-of-way~~] line.

(3) The installation will not reduce visibility and sight distance of the traveling public to the extent of creating an unsafe condition. This will be a particular item of consideration where such housings are proposed for placement at or near highway intersections.

(4) Assurance will be made that the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement and accommodation of other utility lines are apparent. Outside depth, length, and height dimensions of the above-ground portion of the housing should not exceed 36 inches, 60 inches, and 54 inches respectively. The supporting slab should not project more than three inches above groundline.

(5) The installation shall be compatible with adjacent land uses.

§21.53. Use and Occupancy Agreement Forms.

(a) Use and occupancy agreement forms are to be used when in connection with active highway projects an adjusted or relocated utility facility occupies part of the highway right of way [~~right-of-way~~] or when a utility facility is retained within the highway right of way [~~right-of-way~~] without adjustment unless the utility has a previously approved department use and occupancy agreement or approved notice form covering the right of way [~~right-of-way~~] limits and which includes provisions for control of access when applicable. Such forms are used also when a utility has a prior property interest which is being retained within the highway right of way [~~right-of-way~~].

(b) These forms shall include such terms and conditions as may be prescribed by the director of the Right of Way Division [~~right-of-way engineer~~] to convey necessary information in order to protect and preserve the state highway system and the safety, health, and welfare of its use by the traveling public.

§21.54. Notice Forms.

(a) Notice forms are provided for use for new utility installations after highway construction is completed. They are also provided for new utility installation placed before or during highway construction except:

(1) where the utility has a compensable property interest; or

(2) the state is participating in the adjustment or relocation cost of the utility installation.

(b) These forms shall include such terms, conditions, and utility location plans, as may be prescribed by the director of the Maintenance Division [~~chief engineer of maintenance and operations~~] to convey necessary information and to protect and preserve the state highway system and the safety, health, and welfare, of its use by the traveling public. Utility location plans shall be in accordance with the requirements contained in this undesignated head concerning utility accommodation.

(c) In addition to the requirements in subsection (b) of this section, the district engineer may prescribe special district requirements which will be justified based on the specific soil, terrain, weather, vegetation, trees, traffic characteristics, type of utility line, or other factors unique to the area.

(d) The district engineer is authorized to approve all notice forms except those on utility bridges, attachments to highway structures, or those which include exceptions as cited in §21.35 of this subchapter [~~title (relating to Exceptions)~~].

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 December 15, 2000.

TRD-200008701
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 28, 2001
For further information, please call: (512) 463-8630

♦ ♦ ♦

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 16. ECONOMIC REGULATION

PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 105. ADVERTISING

16 TAC §§105.10, 105.18, 105.21, 105.28

The Texas Motor Vehicle Board has withdrawn from consideration proposed amendments to §§105.10, 105.18, 105.21, and 105.28 which appeared in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7290).

Filed with the Office of the Secretary of State on December 18, 2000.

TRD-200008746
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: December 18, 2000
For further information, please call: (512) 416-4899

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 164. PHYSICIAN ADVERTISING

22 TAC §164.4

The Texas State Board of Medical Examiners has withdrawn from consideration the proposed action of §164.4, which appeared in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11230). The section is being reproposed elsewhere in this issue of the *Texas Register.*

Filed with the Office of the Secretary of State on December 18, 2000.

TRD-200008734
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: December 18, 2000
For further information, please call: (512) 305-7016

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendment to §341.1 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

Filed with the Office of the Secretary of State on December 18, 2000.

TRD-200008790
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2 - 341.6

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.2-341.6 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

Filed with the Office of the Secretary of State on December 18, 2000.

TRD-200008789
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §§341.13 - 341.17

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.13-341.17 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

Filed with the Office of the Secretary of State on December 18, 2000.

TRD-200008788
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER D. FISCAL OFFICER RESPONSIBILITIES

37 TAC §§341.24 - 341.31

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.24 - 341.31 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008787
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER E. EMPLOYMENT OF JUVENILE PROBATION OFFICERS

37 TAC §§341.38 - 341.41

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.38 - 341.41 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008786
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER F. CERTIFICATION OF JUVENILE PROBATION OFFICERS

37 TAC §§341.48 - 341.51

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.48 - 341.51 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008785
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER G. TRAINING OF JUVENILE PROBATION OFFICERS

37 TAC §§341.58 - 341.61

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.58 - 341.61 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008784
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER H. DUTIES OF CERTIFIED JUVENILE PROBATION OFFICERS

37 TAC §341.68

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendment to §341.68 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008783
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER I. JUVENILE PROBATION OFFICER CODE OF ETHICS

37 TAC §341.75

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendment to §341.75 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008782
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER J. ENFORCEMENT PROCEDURES - CODE OF ETHICS

37 TAC §§341.82 - 341.91

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.82 - 341.91 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008781
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER K. CERTIFICATION REVOCATION

37 TAC §§341.98 - 341.106

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.98 - 341.106 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008780
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER L. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §341.113, §341.114

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §341.113, §341.114 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008779
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER M. CASE MANAGEMENT STANDARDS

37 TAC §§341.121 - 341.125

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.121 - 341.125 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008778
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER N. DATA COLLECTION STANDARDS

DIVISION 1. CASEWORKER SYSTEMS

37 TAC §§341.132 - 341.137

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.132 - 341.137

which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008777
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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DIVISION 2. NON-CASEWORKER SYSTEMS

37 TAC §§341.138 - 341.143

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §§341.138 - 341.143 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008776
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER O. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.150

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendment to §341.150 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008775
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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SUBCHAPTER P. TEXAS JUVENILE PROBATION COMMISSION

37 TAC §341.157, §341.158

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §341.157, §341.158 which appeared in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8340 - 8354).

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TRD-200008774
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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CHAPTER 343. STANDARDS FOR JUVENILE PRE-ADJUDICATION SECURE DETENTION FACILITIES

37 TAC §343.8, §343.9

The Texas Juvenile Probation Commission has withdrawn from consideration proposed amendments to §343.8, §343.9 which appeared in the August 18, 2000, issue of the *Texas Register* (25 TexReg 8008).

Filed with the Office of the Secretary of State on December 18, 2000.

TRD-200008791
Lisa Capers
Deputy Executive Director & General Counsel
Texas Juvenile Probation Commission
Effective date: December 18, 2000
For further information, please call: (512) 424-6710

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ADOPTED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.309

The Texas Health and Human Services Commission (HHSC) adopts new §355.309 without changes to the proposed text published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9302).

Justification for the new section is to establish procedures for nursing facility providers to obtain additional funds based on specific criteria, regulatory compliance, and assessments of resident outcomes. It is the intent of this rule to promote superior resident care by providing a tangible reward to those facilities that provide it. By rewarding superior performance regardless of how it is achieved, this rule stimulates innovation and cost-effective quality improvement.

The department received one written comment from the Texas Health Care Association. A summary of the comments and the department's responses follow:

Comment: Concerning §355.309(f), the commenter emphasized the importance of a reliable and valid survey process to the success of the proposed performance assessment methodology.

Response: The department agrees with the comment and is committed to continuous quality improvement in all of its activities including the survey process. The purpose of a broadly based quality assessment process that uses both regulatory performance and resident outcome measures is to reduce the impact of variations in the survey process as well as in provider reporting of resident outcomes on the department's final determination of overall provider performance. No changes were made in response to this comment.

Comment: Concerning §355.309(j), the commenter recommended that the department develop methodology adjustments for facilities with special resident populations. The underlying concern is that special populations may be more prone to specific negative outcomes.

Response: The department appreciates the recommendation and acknowledges that the risk-adjustments that are part of outcomes measurement system are limited. The states have limited access to the outcomes measurement system and the resident assessment data itself because these are under the close control of the Health Care Financing Administration (HCFA). Therefore, the department looks to HCFA for the development of a nationally recognized risk adjustment methodology. If such a methodology becomes available, the department will work with all stakeholders to integrate it into the performance measurement system. No changes were made in response to this comment.

Comment: Concerning §355.309(u)(2), the commenter expressed that deficiencies under dispute through the Informal Dispute Resolution (IDR) process should not be included in the determination of regulatory compliance.

Response: The department disagrees with this comment. The regulatory compliance accountability period ends on August 31, and the final calculation of compliance will be based on deficiencies recorded as of November 30. Thus, facilities should have adequate time to request and complete the IDR process. No changes were made in response to this comment.

Comment: Concerning the evaluation of the Performance-based Add-on Payment model, the commenter expressed that high performing facilities should be compared with facilities participating in the enhanced staffing program, and that additional analyses should be performed in an effort to identify the variables that are associated with high performance and to ensure that the payment incentives are appropriate and effective.

Response: The department agrees that evaluation is an important part of public programs including this one, and it will perform evaluation of the general kinds suggested. However, it is crucial to note that neither the Performance-based Add-on Payment model nor the Enhanced Direct Care Staff Rate is a controlled, randomized trial of payment methodologies. Participation in the former applies to all facilities, and participation in the latter is a matter of facility self-selection. Therefore, no analysis can be expected to show cause and effect relationships relating to payment methodology or its incentives and actual facility performance. No changes were made in response to this comment.

The new section is adopted under the Government Code, §531.033, which authorizes the commissioner of the Health and Human Services Commission to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees,

charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The new section implements the Government Code, §§531.033 and 531.021(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 December 14, 2000.

TRD-200008682
Paul Leche
General Counsel, Legal Services
Texas Health and Human Services Commission
Effective date: January 3, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 438-3108

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §1.1307

The Finance Commission of Texas (the commission) adopts an amendment to 7 TAC §1.1307 concerning model provisions for motor vehicle installment sales contracts. The amendment to 7 TAC §1.1307 adopts a model disclosure for the itemization of amount financed. The amendment is adopted with non-substantive changes to the proposal as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9304).

The agency received one comment requesting a clarification on the proposal.

The purpose of the amendment is to promote compliance with the requirements of the Texas Finance Code, Chapter 348 by creditors. Compliance with the rules is optional.

The new section is adopted under the Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §14.108 grants the Consumer Credit Commissioner and the Finance Commission the authority to interpret the provisions of Title 4, Subtitle B, in which Chapter 348 is located.

These rules affect Chapter 348, Texas Finance Code.

§1.1307. Model Clauses.

(a) Generally.

(1) The model clauses refer to the buyer and co-buyer as "you," or "buyer or "co-buyer." The seller is referred to as "seller, "creditor, "we" or "us."

(2) Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the buyer than those that would result from the use of a model clause.

(3) A retail installment contract need not be contained in a single document.

(b) Consumer warning. The following notices satisfy the requirements of Texas Finance Code §348.102(d) if printed in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(1) For contracts using the sum of the periodic balances (Rule of 78s) or the accrual method or a permissible combination of the methods. The notice may read: "Notice to the Buyer-Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to a copy of the contract you sign. Under the law, you have the right to pay off in advance the full amount due and under certain conditions may obtain a partial refund of the finance charge. Keep this contract to protect your legal rights."

(2) For contracts using the true daily earnings method. The bracketed portion of the notice may be included at the creditor's option. The notice may read: "Notice to the Buyer- Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to a copy of the contract you sign. Under the law you have the right to pay off in advance the full amount due (and under certain conditions save a portion of the finance charge). Keep this contract to protect your legal rights."

(c) Buyer's acknowledgment of contract receipt. The following acknowledgment conforms to the requirements of Texas Finance Code §348.112 if it appears directly above the place for the buyer's signature in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(1) If the buyer's signature is dated. If the bracketed clause is chosen, the copy must be mailed within a reasonable period of time. A reasonable period of time would ordinarily be three days, excluding Sundays and holidays. The model clause reads as follows: "You agree to the terms of this contract and received a completed copy when you signed it (or a copy will be mailed to you)."

(2) If the buyer's signature is not dated. If the second option is chosen, the copy must be mailed within a reasonable period of time. The model acknowledgment may read as follow: "You agree to the terms of this contract and received a completed copy on _____. (Mo.) (Day) (Yr.)" or "You signed this contract on _____ and a copy will be mailed to you."

(d) True daily earnings contract clauses.

(1) Method of computing earned finance charge.

(A) Description of Method. The following clause is sufficient to explain the method for earning finance charges: "We figured the Finance Charge using the daily rate on the unpaid principal balance."

(B) Prepayment. The following clause is sufficient to explain the buyer's prepayment rights: "If you pay off all your debt early, you will not have to pay a penalty."

(2) Optional Additional Description of Method. The creditor has the option to add the following additional explanations:

(A) Application of Payments. The model clause reads as follows: "We will apply each payment first to the earned and unpaid part of the Finance Charge, and then to the unpaid balance owed under this contract."

(B) Calculation of daily rate. The model clause reads as follows: "The daily rate is 1/365th of the equivalent contract rate."

(C) Effect of early and late payments. The model clause reads as follows: "We based the Finance Charge, Total of Payments, and Total Sale Price on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment."

(3) Model clause for late charges. The following sufficiently discloses the late charge for contracts using the true daily earnings method so long as the blanks are completed so as to result in a late charge that does not exceed that permitted by law. The blank in this disclosure may be completed with a rate permissible under Texas Finance Code §§303.201 or 303.202 or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104. If the late charge rate is the same as the annual percentage rate, no disclosure is required. The model clause reads as follows: "Late Charge. If a payment is not received in full on its due date, you will pay interest on the amount of the payment that is late at the rate of __% per annum."

(e) Contracts using the sum of periodic balances method, or the accrual method or a permissible combination of these methods.

(1) Refund upon prepayment. The following clause is sufficient to explain the buyer's right to a finance charge refund upon prepayment in full of the buyer's contract obligations. The model clause reads as follows: "You may prepay all of your debt and get a refund of part of the Finance Charge."

(2) Refund upon acceleration. The following clause is sufficient to explain the buyer's right to a finance charge refund upon acceleration of the contract: "If the creditor demands that you pay all you owe on this contract at once, the creditor will give you a credit of part of the Finance Charge as if you had prepaid in full."

(3) Contracts using the sum of the periodic balances method.

(A) Name of the method. The following clause is sufficient to identify the method of refunding finance charge: "We will figure the Finance Charge refund by the sum of the periodic balances method as defined by the Finance Commission of Texas rule."

(B) Optional description of the method. The creditor may include the following additional description of the method. The creditor may insert any amount up to $25 (or up to $150 for a heavy commercial vehicle) at the location indicated by the first set of brackets. The words in the second and third bracketed portions are optional. The model clause reads as follows: "We will figure your refund by first subtracting (insert an amount not exceeding $25)((insert an amount not exceeding $150) if you are buying a heavy commercial vehicle) from the Finance Charge. Then we will multiply the difference by the refund percentage. We will figure the refund percentage by dividing the sum of the unpaid monthly balances in the payment schedule by the sum of all of the monthly balances in the payment schedule. (We will figure the sum of the unpaid monthly balances based on the due date of the next scheduled payment after you prepay, unless you prepay before the date the first scheduled payment is due. If you prepay before the date the first scheduled payment is due, we will figure the sum of the unpaid monthly balances based on the due date of the second scheduled payment.) You will not get a refund if the refund would be less than $1.00."

(C) At the creditor's option, a contract for a heavy commercial vehicle, as defined in the Texas Finance Code, may include the following description of the method. The words in the first bracketed portion are optional. The creditor may insert any amount up to $150 at the location indicated by the second set of brackets. The model clause reads as follows: "We will figure your refund by dividing the sum of the unpaid monthly balances in the payment schedule by the sum of all of the monthly balances in the payment schedule. (We will figure the sum of the unpaid monthly balances based on the due date of the next scheduled payment after you prepay, unless you prepay before the date the first scheduled payment is due. If you prepay before the date the first scheduled payment is due, we will figure the sum of the unpaid monthly balances based on the due date of the second scheduled payment.) From the result of that multiplication, we will then subtract (creditor insert an amount not exceeding $150). You will not get a refund if the refund would be less than $1.00."

(4) Contracts using the accrual method.

(A) Name of the method. The following clause is sufficient to identify the method of refunding the finance charge: "We will figure the Finance Charge refund by the accrual method as defined by the Finance Commission of Texas rule."

(B) Optional description of the method. The creditor may include the following additional description of the method: "We will figure your refund by deducting earned finance charges from the Finance Charge. We will figure earned finance charges by applying a daily rate to the unpaid principal balance as if you paid all your payments on the date due. If you prepay between payment due dates, we will figure earned finance charges for the partial payment period. We will do this by counting the number of days from the due date of the prior payment through the date you prepay. We will then multiply that number of days times the daily rate. The daily rate will be the annual rate divided by 365. We will also add (an amount not exceeding $25)) ((an amount not exceeding $150) if you are buying a heavy commercial vehicle) to the earned finance charge. You will not get a refund if the refund would be less than $1.00."

(C) Flexible contract forms designed to accommodate alternative methods. Creditors may use a flexible contract form with alternative earnings methods, so long as the method used on a particular contract is permissible for that contract. The following illustrates one way that this may be done: "The creditor will figure the Finance Charge refund using the applicable method described below. We will figure the finance charge rebate using the sum of the periodic balances method as defined by the Finance Commission of Texas rule if two things are true. First, this contract must have a regular payment schedule. Second, it must not have a term greater than 61 months. A regular payment schedule is one with substantially equal monthly payments and a first scheduled payment due no later than one month plus 15 days from the date of this contract. If this contract does not have a regular payment schedule or if it has a term greater than 61 months, we will figure the Finance Charge refund using the accrual method as defined by the Finance Commission of Texas rule. You will not get a refund if the refund would be less than $1.00."

(5) Model clause for late charges. The following sufficiently discloses the late charge for contracts using the sum of the periodic balances method or accrual earnings method so long as the blanks are completed so as to result in a late charge that does not exceed that permitted by law. The blank in this disclosure should be completed with a rate permissible under Texas Finance Code §§303.201 or 303.202 or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104. The model clause reads as follows: "Late Charge. If a payment is not received in full within 15 days after it is due (10 days if you are buying a heavy commercial vehicle), you will pay a late charge of:

(A) __% of the part of the payment that is late.

(B) Interest on the part of the payment that is late at the rate of _____% per annum."

(f) Required physical damage insurance.
Figure: 7 TAC §1.1307(f) (No change.)

(g) Optional insurance coverages.
Figure 1: 7 TAC §1.1307(g) (No change.)
Figure 2: 7 TAC §1.1307(g) (No change.)

(h) Right to Refinance.

(1) Right to refinance balloon payment contracts. The following is sufficient to describe a buyer's right to refinance a balloon installment under Texas Finance Code §348.123(a), when applicable: "A balloon payment is a scheduled payment that is more than twice the average of your earlier scheduled payments. If you are purchasing the vehicle primarily for personal, family or household use, you have the right to refinance the amount of a balloon payment when it is due without being charged a refinancing fee. If you refinance a balloon payment, you have the right to enter into a new written agreement with a payment schedule with periodic payments that are not larger or more frequent than the average amount or frequency of your earlier scheduled payments. The annual percentage rate on the new written agreement will not exceed the Annual Percentage Rate of this contract. This provision does not apply if your payment schedule has been adjusted to your seasonal or irregular income."

(2) Special right to refinance where creditor offers to repurchase the vehicle for the scheduled balloon amount. The following is sufficient to describe the buyer's right to refinance in a transaction that is referred to in Texas Finance Code §348.123(b)(5): "If you are not in default, you may enter into a new written agreement with us to refinance the last installment. You have the right to refinance at an annual percentage rate that does not exceed the annual percentage rate shown on the front of this contract plus 5 percentage points. The rate will not exceed the maximum lawful rate applicable to the refinancing. You have the right to refinance the last installment for at least 24 months with equal monthly payments. You and we may also agree to refinance the last installment over another time period or on a different payment schedule."

(i) Model clause for liability insurance. If liability insurance coverage is not included in the contract, either of the following notices are sufficient to satisfy the requirements of Texas Finance Code §348.205 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous: "Any insurance referred to in this contract does not include coverage for personal liability and property damage caused to others." Or "Liability insurance coverage for bodily injury and property damage caused to others is not included in this contract." Or "Unless a charge for liability insurance is included in the Itemization of Amount Financed, (liability insurance coverage for bodily injury and property damage caused to others is not included in this contract) or (any insurance referred to in this contract does not include coverage for personal liability and property damage caused to others.)"

(j) Model clause for agreement to keep vehicle insured.

(1) Agreement to keep vehicle insured. The model clause reads as follows: "You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle."

(2) Agreement to allow creditor to purchase required insurance if buyer fails to keep the vehicle insured. The model clause reads as follows: "If you fail to provide us reasonable evidence that you have this insurance, we may, if we decide, buy physical damage insurance. If we decide to buy this insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. The amount you must pay will be the premium for the insurance and a finance charge at the Annual Percentage Rate shown on this contract."

(k) Model clause for consumer credit commissioner notice. The following notice satisfies the requirements of Texas Finance Code §14.104 and §1.901 of this title (relating to Consumer Notifications). The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The consumer credit commissioner notice reads: "To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Phone 800-538-1579; 512/936-7600, and can be contacted relative to any inquiries or complaints."

(l) Model clause for documentary fee.

(1) The following notice satisfies the requirements of Texas Finance Code §348.006 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The bracketed insert may be inserted at the dealer's option or the disclosure may be made without the bracketed portion if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."

(2) The following notice is a sufficient Spanish translation of the documentary fee disclosure required by Texas Finance Code §348.006. The bracketed insert may be inserted at the dealer's option or the disclosure may be made without the bracketed portion if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read: "Un honorario de documentación no es un honorario official. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comparador como gastos de manojo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder $50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehiculo comercial pesado). Esta notificación es requerida por la ley." Or "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de $50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehiculo comercial pesado). Esta notificación se exige por ley."

(m) Model clause for grant of a security interest. The following are samples of permissible descriptions of a security interest granted in a typical motor vehicle installment sale. The model clause reads as follows: "You give us a security interest in: 1. The vehicle and all parts or goods now or later attached to it; and 2. all insurance or service contracts we finance for you and any refunds of charges for them. This secures payment of all amounts you at any time owe on this contract. You agree to have the certificate of title show our security interest in the vehicle." Or "You give us a security interest in: 1. The vehicle and all parts or goods installed in it; 2. All money or goods received (proceeds) for the vehicle; 3. All insurance or service contracts the creditor finances for you; and 4. All proceeds from insurance or service contracts we finance for you (this includes any refunds of premiums). This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You agree to have the certificate of title show our security interest (lien) in the vehicle."

(n) Model clauses for default rights and repossession provisions. The following provisions are samples of permissible descriptions of some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(1) Acceleration and default. The model clause reads as follows: "If you default on any of your obligations in this contract or if we in good faith believe the prospect of payment or performance of this contract is impaired, we may demand that you pay all you owe on this contract at once." Or "If you break any of your promises (default) or if we in good faith believe the prospect of payment or performance of this contract is impaired, we may demand that you pay all you owe on this contract at once. Default means: 1. You do not pay any payment on time; 2. You start a proceeding in bankruptcy or one is started against you or your property; or 3. You break any agreements in this contract."

(2) Collection costs. The model clause reads as follows: "If we hire an attorney who is not our salaried employee to collect what you owe, you will pay any reasonable attorney's fee and court costs, as the law allows."

(3) Repossession. The model clause reads as follows: "If you default, we may take (repossess) the vehicle from you if we do so peacefully. Any accessories, equipment or replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you and will give you written notice at your last address shown on our records within 15 days of discovering that we have such items. If you do not ask for these items back within 31 days from the notice, we may dispose of them as the law allows."

(4) Buyer's right to redeem. The model clause reads as follows: "If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle."

(5) Disposition of collateral. The model clause reads as follows: "If you do not redeem, we may sell the vehicle. We will send you written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to any amount you owe under this contract. If any money is left (surplus), we will pay it to you. If the money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at the highest lawful rate until you pay." Or "If you do not redeem, we will (may) sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left over (surplus), we will pay it to you. If the money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at the highest lawful rate until you pay."

(6) Cancellation of optional insurance or service contracts. The model clause reads as follows: "This contract may contain charges for optional insurance or service contracts. If you default, you agree that we may claim benefits under these contracts, to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle."

(o) Warranty Disclaimer. A disclaimer of express and implied warranties, such as the following, is permitted by Article 2, Section 3 of the Business and Commerce Code: "Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide."

(p) Promise to Pay. The following is an appropriate description of a buyer's obligation to pay: "By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the creditor the Amount Financed and Finance Charge according to the payment schedule shown in this contract."

(q) Other Agreements regarding the use, encumbrance, and transfer of the vehicle. The contract may obligate the buyer to keep the vehicle free of liens and encumbrances, require the buyer to keep the vehicle in good working order and repair, prohibit the buyer from transferring any interest in the vehicle without the creditor's written permission, and prohibit the buyer from allowing the vehicle to be exposed to seizure, confiscation, or other involuntary transfer. For example, the following is permissible: "You agree not to remove the vehicle from the U.S., or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it."

(r) Returned Insurance Premiums and Service Contract Charges. The contract may authorize a creditor to apply charges returned to the creditor for canceled insurance, service contract, and extended warranty charges to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

(1) The following is permissible for contracts using the true daily earnings method: "If we obtain a refund on insurance or service contracts, we will subtract the refund from what you owe.

(2) For contracts using the accrual or sum of the periodic balances method, the creditor may substitute the following: "If we obtain a refund of insurance or service contract charges, we will apply the refund and the unearned finance charges on the refund to as many of your payments as they will cover beginning with the final (next) payment. We will tell you of what we do."

(s) Integration Clause. The contract may include an integration clause indicating that the parties to the contract intend it to be final written expression their agreement, such as: "This contract contains the entire agreement between you and us relating to this contract."

(t) Prohibition against oral modifications. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Subchapter C of Chapter 349. The following prohibition

on oral modifications is permissible: "Any change to this contract must be in writing, and both you and we must sign it. No oral changes to this contract are binding."

(u) Severability. The contract may include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The following clause is permissible: "If any part of this contract is not valid, all other parts stay valid."

(v) No waiver of creditor's rights. A clause such as the following is permissible to prevent a creditor's delay in enforcing rights under the contract from effecting a waiver of those rights: "We may delay or refrain from enforcing any of our rights under this contract without losing them."

(w) Waiver of Notice of Intent to Accelerate and Notice of Acceleration. A clause such as the following is permissible to waive the buyer's or co-buyer's common law right to notice of intent to accelerate, notice of acceleration, or both: "You give up (waive) your common law rights to receive notice of intent to accelerate and notice of acceleration. This means that you give up the right to receive notice that we intend to demand that you pay all that you owe on this contract at once (accelerate) and notice that we have accelerated."

(x) Applicable law. A clause such as the following is permissible to establish the law that will apply to the contract: "Federal law and Texas law apply to this contract."

(y) Itemization of Amount Financed
Figure: 7 TAC §1.1307(y)

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 December 15, 2000.

TRD-200008710
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: January 4, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 936-7640

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TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 31. AGENCY PROCEDURES

The Texas Commission on the Arts adopts amendments to §§31.2, 31.4, 31.5, 31.6,31.8 and 31.10, concerning Agency Procedures, without changes to the proposed text as published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11359) and will not be republished. The Texas Commission on the Arts also adopts the repeal of §31.7, concerning Advisory Councils, without changes to the proposed text as published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11360) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts the review of Chapters 31, 35 and 37.

The amendments are necessary as a result of the rule review process.

No comments were received regarding adoption of the rules.

13 TAC §§31.2, 31.4 - 31.6, 31.8, 31.10

The amendments are adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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 December 18, 2000.

TRD-200008749
John Paul Batiste
Executive Director
Texas Commission on the Arts
Effective date: January 7, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 463-5535

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13 TAC §31.7

The repeal is adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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 December 18, 2000.

TRD-200008750
John Paul Batiste
Executive Director
Texas Commission on the Arts
Effective date: January 7, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 463-5535

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CHAPTER 37. APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE

13 TAC §§37.22 - 37.24, 37.26, 37.28

The Texas Commission on the Arts adopts amendments to §§37.22-37.24, 37.26 and 37.28, concerning Application Forms and Instructions for Financial Assistance. without changes to the proposed text as published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11360) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts the review of Chapters 31, 35 and 37.

The amendments are necessary as a result of the rule review process.

No comments were received regarding adoption of the rules.

The amendments are adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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 December 18, 2000.

TRD-200008751
John Paul Batiste
Executive Director
Texas Commission on the Arts
Effective date: January 7, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 463-5535

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 23. SUBSTANTIVE RULES SUBCHAPTER H. TELEPHONE

16 TAC §23.105

The Public Utility Commission of Texas (commission) adopts the repeal of §23.105, relating to Services Provided to Other Telecommunications Utilities with no changes to the proposal as published in the October 6, 2000 *Texas Register* (25 TexReg 10079). Section 23.105 was implemented to address unbundled network elements, interconnection services and transport and termination issues. It has been determined that these provisions would be better addressed in individual arbitration proceedings conducted pursuant to the federal Telecommunications Act of 1996. The rule is therefore unnecessary. This repeal is adopted under Project Number 17709.

The commission received no comments on the proposed repeal.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

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

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

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

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS SUBCHAPTER O. UNBUNDLING AND MARKET POWER DIVISION 3. CAPACITY AUCTION

16 TAC §25.381

The Public Utility Commission of Texas (commission) adopts new §25.381, relating to Capacity Auctions, with changes to the text as published in the September 15, 2000, *Texas Register* (25 TexReg 9139). This rule implements the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.153 (Vernon 1998, Supplement 2000), as it relates to the establishment of procedures by which affected affiliated power generation companies (PGCs) will auction entitlements to 15% of their Texas jurisdictional installed generation capacity beginning 60 days before the implementation of customer choice. PURA Chapter 39, Restructuring of the Electric Industry, became effective September 1, 1999, as part of Senate Bill 7, 76th Legislative Session, to effectuate a competitive retail electric market that allows each retail customer to choose its provider of electricity and encourages full and fair competition among all providers of electricity. This new section is adopted under Project Number 21405.

The commission received written comments and/or reply comments on the proposed new section from American Electric Power Company (AEP), Competitive Power Advocates (CPA), Reliant Energy, Inc. (Reliant), TXU Electric Company (TXU), Office of Public Utility Counsel (OPC), Consumers Union (Consumers), AES NewEnergy, Inc. (NewEnergy), Entergy Gulf States, Inc. (EGSI), Southwestern Public Service Company (SPS), PG&E National Energy Group (PG&E), Texas-New Mexico Power Company (TNMP), Steering Committee of Cities Served By TXU and the Steering Committee of Cities Served By CPL (Cities), El Paso Merchant Energy (EPME), Oxy USA, Inc. (Oxy), City of Austin doing business as Austin Energy (Austin Energy), El Paso Electric Company (EPE), Texas Industrial Energy Consumers (TIEC), and Alliance for Retail Markets (ARM).

A public hearing was held at the commission's offices on October 20, 2000. Representatives from TXU, TNMP, AEP, and OPC attended the hearing and provided comments. To the extent these oral comments differ from the submitted written comments, such comments are summarized herein.

Comments on specific questions posed in the rule:

The commission requested specific comments with respect to ten questions related to the development of the final rule. The

parties' responses to those questions are summarized below. Several parties also provided redlined versions of the proposed rule suggesting rule language that should be used to incorporate their recommendations and comments. To the extent that language is duplicative of the comments received, such language is not repeated here.

Question Number 1: Does the rule reflect an appropriate level of firmness for the products?

OPC stated that the products will have relatively little value in the market because of their interruptibility and are inferior to capacity purchased in the market. Cities stated that requiring the products to be firm will increase the number of interested market participants and encourage more realistic prices. NewEnergy suggested that the products should be financially firm with liquidated damages. PG&E generally stated that the rule should provide for greater firmness than currently contemplated due to the slice of system approach embodied in the rule. PG&E argued that in order for retail electric providers (REPs) to provide reliable, consistent service, REPs and wholesalers must be able to purchase firm capacity in the marketplace.

EGSI, TXU, and Reliant noted that the proposed rule creates a new breed of firm product, not available in the market today and recommended that the commission not create a product that is more firm than the overall system. Reliant also noted that the sale of a product more firm than the system will lead to an inaccurate result in the excess cost over market (ECOM) true-up. Reliant recommended that all outages be shared pro-rata among the affiliated PGCs and entitlement holders. Reliant also proposed that a separate "firmness" hedge product could be sold at the time of auction, thus providing firmness to those entities that want it at a market price. AEP suggested that dispatch rights could be set at 85% of the entitlement as a solution to the firmness problem. PG&E responded that the utilities neglected to recognize that part of their system is firm, as the utility retains flexibility in dispatching their units to meet entitlements and utilities today use their system to provide firm service to their current customers. PG&E also noted that the affiliated PGCs will be able to offer firmer products that those that are available through the capacity auctions, if the utility's proposal is adopted.

Austin Energy recommended that the terms planned outage and forced outage be defined in a way to limit subjective interpretation by PGCs. Austin Energy also suggested that a credit against the capacity charge be applied whenever the cumulative duration of outages exceeds 10% of the entitlement period, in order to prevent gaming by PGCs.

TXU proposed that the entitlements be 100% financially firm, but that utilities auction fewer entitlements in the off-peak months to reflect the reduced availability due to maintenance. TXU suggested that this would eliminate the need for notice of outages and provide a firm product to the market. In reply comments, Austin Energy also stated that there should be no planned outages for entitlements, but the amount of capacity offered in a month should take into account the planned outage schedule. Austin Energy suggested that this would simplify the auctions and minimize the opportunity for market manipulation by PGCs tinkering with outage schedules. Cities and OPC also agreed with TXU in reply comments and suggested a formula that could be used to determine the amount of capacity to be sold within each product type and time period. Cities also suggested that such an approach would eliminate potential disputes about why and when actual outages occur. PG&E concurred that TXU's proposal provided a reasonable compromise, provided that the maximum outage rate for non-peak months is limited to 10%.

TNMP suggested that the level of firmness seemed appropriate.

Planned outages:

EGSI, TXU and AEP stated that the requirements for affiliated PGCs to provide planned outage notification requires the release of competitively sensitive information to the market that would put certain entities at a disadvantage in the market. EGSI further noted that outage scheduling is a dynamic process, and it may be impossible to predict such outages with accuracy on a six-month basis. EGSI proposed a three-month notice schedule provided in aggregate for each group of units. AEP suggested that the commission should require all PGCs to make maintenance schedules public to eliminate any competitive advantage. TXU suggested that the products could be made "financially firm" to resolve this concern.

PG&E stated that the current rule fails to provide adequate certainty, and recommended that no planned maintenance should be scheduled for the peak months of June through September and December through February, and that a schedule be provided in the auction notice for planned outages in the other months. PG&E recommended that the commission require that planned maintenance be scheduled in off-peak periods to minimize potential price spikes and that the products be financially firm in the on-peak months. PG&E also stated that a purchaser should be held harmless from a change in planned maintenance schedules because purchasers will be unable to plan for such unilateral alterations in the schedules, and that the utilities are in the best position to manage the risk associated with any outages. TXU responded that provision of outage schedules would require affiliated PGCs to disclose competitively sensitive information. EGSI also noted that it is unrealistic and imprudent to require that the entitlement dictate the planned outage schedule for the entire fleet. PG&E noted in reply comments that it is common in market transactions today for the supplier to notify buyers of planned maintenance schedules.

Forced outages:

EGSI and TXU recommended that forced outages be shared proportionately by the affiliated PGC and entitlement holders to reflect the reality of outages. PG&E recommended firm products with at least 98% guaranteed availability with liquidated damages for forced outages in excess of the 2.0%, as this arrangement is common in tolling agreements. TXU agreed that such forced outages should be limited to no more than 2.0% of the hours. Reliant responded that PG&E's proposal failed to recognize the realities of operating a generating system, which do not usually operate at a 98% availability rate.

The commission generally finds that the capacity auction products will have the most value to the market as firm products, however, it recognizes that PURA contemplates availability subject to outages. The commission finds that TXU's proposal provides the best solution to the firmness issue. Requiring 100% financial firmness will provide potential buyers of the entitlements certainty in the products they are buying, while reducing the amount of entitlements to be sold in off-peak months will recognize the reduced availability of units due to maintenance requirements. As such, the commission finds that it is appropriate to require affiliated PGCs to auction entitlements at 100% of the required capacity in the peak months, and authorizes utilities to auction an amount of entitlements in off-peak months that recognizes the

reduced availability of capacity due to planned outages. Language has been added to subsection (e)(1) to incorporate this concept. Subsection (f)(3)(A)(v) has been added to clarify that the reduction in available entitlements in off-peak months will be in the entitlements sold as discrete months. The commission also finds that it is appropriate to retain the existing language with respect to forced outages, but further limits such outages to not more than 2.0% of the hours of the entitlement, consistent with PG&E's recommendation. Language has been added to subsection (e)(2) to incorporate this limitation. Utilities will therefore be required to file historical outage information with the commission, but will not be required to provide prospective outage information to the marketplace. This requirement has been added to subsection (e)(3).

Question Number 2: The heat rates specified in the "fuel price" sections of the gas product descriptions are intended to be standardized across the state in order for the products to be more tradable in a secondary market. Are the heat rates set at an appropriate level to be used as a statewide standard?

OPC stated that to the extent heat rates are based on historical operation, the heat rates will be too high. As a result, revenues will be based on inefficient heat rates that do not correspond to the newer, more efficient heat rate units that will displace older generation, resulting in windfall profits to the utilities. Cities did not object to standardized heat rates, but expressed concern that the proposed rule assumes heat rates derived from Reliant with little support. Cities also stated that the energy sold under the peaking entitlements will more often than not be produced when gas-fired steam capacity is at the margin. TXU responded that no rational market participant would dispatch an entitlement when the market price for energy is less than the cost of energy from the entitlement. NewEnergy recommended products that are not specified by heat rate, and instead be designed to be similar to products that exist in the wholesale market.

PG&E stated that the heat rates in the proposed rule are consistent with those seen in the marketplace and stated that no adjustments were needed. However, PG&E noted that the "slice of system" approach utilized in the rule means that a utility could in fact use lower heat rate units to provide a particular product, raising the net revenues to the utility. PG&E and Cities suggested that it was therefore appropriate to reconcile fuel revenues with actual fuel costs, as proposed in the rule. TNMP agreed in reply comments. AEP and Reliant argued that this went far beyond the command of PURA, which already has detailed methods for determining market value and such a prudence review is beyond the scope of this rule and not supported by the statute. Reliant argued that the products have been designed such that the fuel cost paid by the entitlement holder mirrors the fuel cost incurred by the asset holder and a reconciliation was therefore unnecessary.

PG&E and Reliant supported standardized products across the state in order to enhance liquidity and tradability. TXU responded by noting that regardless of the heat rates used for the entitlements, entitlement holders may sell the energy available from an entitlement without selling the entitlement itself.

EGSI, TXU, EPE, OPC and AEP disagreed that the heat rates should be standardized, as it may create arbitrary loses and gains for PGCs. EGSI and AEP both suggested the adoption of company specific heat rates, or the establishment of average heat rates by congestion zone or power pool. Cities agreed in reply comments with AEP that the heat rates should be based on the actual weighted average heat rate for each capacity type offered at auction. Cities also stated that the energy charge for baseload energy should be set at the 1999 statewide weighted average fuel cost for coal, lignite and nuclear generation. Cities stated that a reconciliation of actual fuel cost and actual revenues would address EGSI, TXU, and AEP's concerns about inequities among utilities. TNMP stated that the heat rates should correspond as closely as possible to the actual rate the individual investor owned utilities (IOUs) maintain on their systems as such rates will be used by the market in the valuation of the products. TXU suggested that the heat rates could be provided in a filing with commission staff in advance of the first auction. CPA agreed with TXU in its reply comments. Reliant noted in its reply comments that use of a heat rate curve can address some of the concerns of the various parties.

The commission recognizes that the use of a standard heat rate for the gas products will naturally result in heat rates that are not representative of all (or any) utilities. However, the commission agrees with PG&E that the competitive market is best served through the establishment of standard products and agrees with PG&E that the heat rates specified in the rule are fairly representative of the marketplace. No change to the rule has been made.

Question #3: Are fuel service costs and start-up fees appropriate? Should these costs be standardized across the state and if so, are the appropriate values included in the proposed rule?

Cities argued that no evidence exists to justify such adders, and adoption of such adders is inconsistent with the commission's decision relating to its calculation of the market price of electricity approved in Docket Number 22344, *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rates Pursuant to PURA §39.201 and Public Utility Commission Substantive Rule §25.344*. NewEnergy, CPA, and TNMP stated that such fees are not necessary in the slice of system approach adopted by the rule. EGSI agreed and noted that in its case, it did not expect the dispatch of entitlements to affect the dispatch of its units. PG&E agreed and suggested that because the proposed heat rates were at the high end of the reasonable range for such products, fuel service costs are subsumed within the heat rate and capacity payment, and that inclusion of such fees within the heat rates will simplify the auctions. Cities and TNMP agreed in reply comments with PG&E that these costs are best accounted for in the heat rates. Reliant disagreed in reply comments stating that it neglected the fact that only a portion of start up costs are assigned to the entitlements to reflect the entitlement only being a portion of the unit.

TXU argued for the use of company specific fees and start-up costs and suggested language to incorporate this change. TXU stated that start-up fees and fuel service charges represent real costs to PGCs and will be incurred in the provision of the entitlements. AEP agreed in reply comments. CPA, in reply comments, suggested that each utility be required to file cost information for fuel service costs and start-up fees prior to the first auction.

EGSI, AEP, and EPE also suggested the use of different hubs for natural gas prices. TXU suggested changes to the rule in reply comments that would incorporate this concern.

The commission agrees with the parties that suggest that start-up fees and fuel service costs are appropriately subsumed within the heat rates, and doing so will simplify the auctions. Appropriate changes to the rule have been made in subsection (e)(1)(A) through (D). However, the commission does recognize that these costs may be real costs incurred in the provision of entitlements. To the extent these costs are no longer recovered

through separate charges, the commission believes it is appropriate for utilities to include these costs in the establishment of their opening bid prices in order to ensure their recovery. This clarification has been made to subsection (f)(7).

Question Number 4: Are the credit requirements detailed in subsection (e)(5)(D) consistent with typical credit requirements in wholesale markets and with other credit requirements previously adopted by either the commission or ERCOT?

NewEnergy stated that credit requirements are generally two months of maximum charges, and to the extent the entitlements require higher deposits than other products, market participants may seek other alternatives in the market or incorporate those added costs into their bids, resulting in a distorted market price. EGSI supported the adoption of standard credit requirements. PG&E and Reliant supported the proposed credit standards, but PG&E noted that such terms are usually reciprocal, as reciprocity will provide confidence in a seller's ability to perform and provide a level playing field. TXU replied that PG&E's proposal ignores the fact that affiliated PGCs are required to auction entitlements under Senate Bill 7 and cannot choose not to do so.

TNMP suggested that the requirements be relaxed to only include continuing payments. AEP suggested changes to make the requirement consistent with those recommended by AEP to other commissions. TXU agreed with AEP and further suggested changes to make clear the payment obligations of the entitlement holder and that financial instruments be in a form and from an issuer reasonably acceptable to the seller, as such language is common in wholesale market transactions. TXU also recommended removal of subsection (e)(5)(D)(i)(V), a loan issued by an affiliate, as an option, as this option does not give any security to the affiliated PGC unless the proceeds of the load are deposited with the affiliated PGC or an escrow agent.

The commission finds that the credit standards included in the rule are consistent with those previously adopted by the commission, but agrees with TXU that, for purposes of this rule, the option of a loan issued by an affiliate does not provide sufficient security to the affiliated PGC unless deposited with the PGC or an escrow agent. The commission therefore deletes the subclause, but notes that the requirements of subsection (e)(5)(D)(i)(II) could be met through the depositing of a loan from an affiliate. The commission declines to require reciprocity in the credit standards at this point in time.

Question Number 5: Given that the entitlement products are system capacity, should there be more flexibility in scheduling the baseload, gas intermediate, and gas cyclic products?

Several parties submitted extensive comments on the use of the products in ancillary services market in response to this question. Those comments are discussed in further detail after the discussion of Question Number 10.

NewEnergy supported the system capacity approach because such an approach can provide significant flexibility. Cities argued for the removal of scheduling restrictions as such restrictions would make the products inferior to capacity retained by the utilities because such capacity is not subject to similar restrictions. Specifically, Cities argued for day-ahead notice for baseload and intermediate capacity and one-hour notice for peaking capacity, with multiple daily start-ups. PG&E and CPA stated that the scheduling provisions should be representative of system capacity and consistent with ERCOT protocols, and while the start-up times appeared reasonable, the ramp-up limitations and minimum take provisions are inconsistent with that premise and are unnecessary. CPA also stated that entitlements should be able to be used for the full range of capacity, energy, and ancillary service needs in the market and recommended intra- day energy deployment flexibility to allow entitlement holders to use Responsibility Transfer Mechanisms in the ERCOT protocols to designate entitlements for purposes of providing ancillary services resources. TNMP suggested more flexibility, but limited to the normal use of the relevant type of units in order to make the products more usable in ancillary services markets. TNMP proposed a methodology that assigns the slice of system a corresponding slice of ancillary services capability. Reliant responded that this ignores the characteristics of the underlying generation assets.

EGSI and TXU supported the scheduling parameters. Reliant proposed reducing the minimum take for the gas-intermediate product from 50% to 30% in order to make the product more flexible. TXU agreed that such a reduction was appropriate in reply comments. OPC replied that this moved in the right direction, but still was not flexible enough. In reply comments, Reliant further proposed additional flexibility in the baseload and gas intermediate products to improve flexibility, specifically, allowing between 80% to 100% take from the baseload product, and allowing starts and stops of the gas intermediate products.

The commission agrees that the products should be as flexible as possible while still recognizing the nature of the underlying generation assets. As such the commission adopts Reliant's proposed changes for the baseload product and makes corresponding changes to subsection (e)(5)(C)(i). The commission also adopts Reliant's proposed reduction in the minimum take requirement for the gas-intermediate product in subsections (e)(1)(B) and (e)(5)(C)(ii).

Question Number 6: Will the bid procedures, evaluation methodology, and determination and application of the market clearing price provide an appropriate valuation for the products? What procedures best balance the commission's goals of determining an appropriate market price, providing market liquidity, and facilitating price discovery and transparency?

OPC and Consumers stated that the use of a lowest winning bid as a market clearing price will result in the products being undervalued, and gives market participants an incentive to game the auction in an attempt to set the lowest possible market clearing price. OPC also suggested that the true-up provisions of PURA may also create an incentive for the sellers of the capacity to collude with buyers in an attempt to lower the prices received in the auctions. OPC and TXU suggested that multiple round bidding might be more appropriate. NewEnergy stated that the products will require refinement in the secondary market before they can be used and that will likely lead to depressed values in the auctions.

AEP and TXU supported a "pay what you bid" methodology to be applied to winning bids, as it will more closely track a bilateral market, will provide the marketplace with a range of prices instead of one, and will result in higher revenues. Cities supported the AEP proposal in reply comments, noting that it will likely increase revenues and recognizes the difference in value that individual bidders may place on a particular entitlement. Cities also suggested simultaneous bidding by capacity type, with sequential bidding across types. EPME also supported a single round, simultaneous auction as an equitable procedure that best protected the market from manipulation. PG&E responded that a

"pay as you bid" approach leads bidders to bid low prices out of concern for over-paying for products, but noted a multiple round open bid process would minimize this. AEP noted that multiple round auctions are more costly to run, and provide more opportunities for disputes and disagreements.

Reliant, PG&E, and TNMP supported the existing bid methodology.

TXU provided discussion on a variety of auction options, including multiple round auctions and sequential auctions and recommended allowing entitlement sellers to have flexibility with how they design their auction procedures and allow the sellers to make changes to their bid procedures. These options were discussed further at the October 20, 2000 Public Hearing. TXU also suggested that the setting of an appropriate reservation price would aid in the provision of information to the market as to the proper value of an entitlement. OPC, TNMP, and CPA replied that a multiple round auction could be preferable to the procedure in the proposed rule, with OPC recommending inclusion of an activity rule requiring winning bidders to have bid in each round, a starting price at an appropriate reserve price, and recommended the establishment of bid increments after review of the auction characteristics. OPC re-iterated that each winner should pay the amount they bid. Reliant stated that if a multiple round auction is used, data from each round should be available only in aggregate for all bidders, and that the rounds should take place very quickly, which could only be done through an Internet bidding process. Reliant also suggested use of descending bid prices and noted that multiple round auctions increase the risk of collusion and noted that use of a "bid what you pay" structure may make the ECOM true-up difficult.

The commission agrees with the parties that recommended a multiple round auction and finds that the use of a multiple round bidding process will best value the capacity auction products. Specifically, the commission agrees with the parties that stated the multiple round auction approach discussed at the October 20, 2000 Public Hearing will provide better price discovery and transparency. Subsection (f)(6) has been revised to incorporate this bidding structure. Bidders in each round will be required to submit a quantity demanded for a particular entitlement at the price posted for the round. The commission agrees with OPC that the opening price in the first round should be tied to the opening (or reserve) price established by the affiliated PGC in accordance with the rule. The commission also agrees with OPC that an appropriate methodology needs to be developed to determine bid increments. As such, the notice for each pending auction will include the formula to be used to adjust the posted price between rounds. The development of a proper formula shall be discussed by the implementation group. In the absence of the development of a uniform methodology, each affiliated PGC shall provide its method in its notice. The commission agrees with Reliant that all winning bidders should pay the market-clearing price, which shall be the price in the next to last round. Winning bidders will therefore pay this price for the quantities they demanded in the last round plus a pro-rata share of any differential between the quantity available at auction and the quantity demanded in the last round, consistent with the discussion at the Public Hearing. The commission also agrees with Reliant that a multiple round auction may present gaming opportunities not present in other auction types. As such, bidders will not be permitted to bid greater quantities at higher prices, consistent with the presentation at the Public Hearing. The commission also agrees with Reliant that in order for the bidding to proceed in a timely fashion, an internet-based auction should be used. Such a requirement has been added in subsection (f)(6)(C).

Question Number 7: Is the true-up methodology in subsection (h) an appropriate methodology to incorporate the capacity auction revenues into the stranded cost true-up required by PURA §39.262? Is there an adjustment needed to those revenues in order to reflect products that are more firm than the overall system?

OPC argued that the determination of the true-up procedure should be done in the contested proceeding to occur in 2004, and not in the formula suggested by the rule and suggested that a utility with no CTC could get a windfall through the procedure. OPC also suggested that the heat rates may lead to inappropriate valuations of the products and suggested certain revisions that the commission should have made in its determination of the gas prices used in the ECOM model, which would have resulted in even lower estimates of ECOM in the current unbundled cost of service (UCOS) proceedings. OPC demanded that the true-up procedure be deleted from the rule, as it will lead to an overrecovery of stranded costs. ARM agreed in reply comments and recommended that the commission initiate a comprehensive rulemaking to address PURA §39.262.

TXU responded that inclusion of language in this rule will reduce uncertainty about the true-up in 2004.

EGSI stated that the auctions should not produce products that are firmer than overall system. Cities argued that revenues from both demand and energy should be accounted for in the auction proceeds, including fuel service cost adders. Reliant argued that start-up fees should not be included in the revenues used in the true-up and on reply comments, argued that a fuel reconciliation was inappropriate and unnecessary.

Cities proposed that the reconciliation should include a month-by-month reconciliation of energy charge revenues and actual fuel costs incurred, and should be done separately for baseload and gas-fired capacity. Cities also stated that the rule should provide incentive for utilities to sell their assets in the manner that derives the most value for the assets, and that utilities should not be allowed to devalue their assets in an attempt to manipulate the final true-up calculation. PG&E agreed that to the extent start-up fees or other fees are permitted, they should be standardized and included in the true-up calculation.

TXU recommended that the fixed cost contribution from the ECOM model be divided by 12 in order to yield a monthly value for the true-up calculation. TXU also stated that it is inappropriate to reconcile non-market based gas costs as part of the true-up process as it is inconsistent with the Legislature's directive that fuel costs be finally reconciled as of December 31, 2001. TXU also suggested that it would be appropriate to revise the capacity auction revenues downward in order to reflect the increased firmness of the products over system firmness.

PG&E and CPA initially stated that the true-up methodology is reasonable and should reflect all receipts from the auctions. PG&E and CPA further stated that as firm products are readily available from independent power producers and are consistent with the products found in the marketplace, no adjustment was needed to reflect a greater degree of firmness than system firmness. However, on reply comments, PG&E and CPA recommended that the process be deferred to the broader true-up project as PG&E expressed concern that the process does not adequately reconcile all receipts from the capacity auctions.

SPS stated that the true-up should not apply to those utilities that are not seeking recovery of stranded costs and suggested that the rule as drafted requires such utilities to return the gains from the sales of generation assets to ratepayers, in direct contravention of the intent of the legislature. AEP agreed that the true-up should not apply to utilities with no stranded costs. In reply comments, Oxy and TIEC disagreed, stating that the SPS divestiture was not required as part of Senate Bill 7, but was a condition of the settlement approving the merger of its parent company, and that gains from the sales of those assets should be addressed in accordance with traditional regulatory principles, not the stranded cost provision of Senate Bill 7. Oxy did note that the true-up procedures in subsection (h) of the rule is the stranded cost true-up under PURA, which SPS will not be subject to if it does not have stranded costs. Oxy also noted potential problems for other utilities with positive ECOM if SPS's language is adopted. Oxy, TIEC, and OPC both stated that this issue should not be resolved in this rulemaking.

The commission agrees that the establishment of the true-up procedures may be premature at this time. The commission notes that there is disagreement with how this portion of the 2004 true-up should occur and believes that further exploration of this issue is warranted. The commission further notes that parties have not had the opportunity to comment on how the final products adopted by the commission should be incorporated into the true-up process. As such, the existing true-up language has been replaced with the language directly out of PURA describing the general process to be followed at the time of the true-up. Language has been included, however, noting that the true-up does not apply to utilities that did not request stranded cost recovery. The commission will consider the appropriate further detail of this process in a separate rulemaking, after parties have had an opportunity to consider the final capacity auction products and how they are appropriately accounted for in the stranded cost true-up to occur in 2004.

The commission agrees with Oxy, TIEC and OPC that the issue of what should be done with the gains from sales of SPS's plants is not an issue germane to this rulemaking. The commission finds that its order in Docket Number 21990, *Application of Southwestern Public Service Company Regarding Proposed Merger between New Century Energies, Inc. and Northern States Power Company*, appropriately addresses the reasons for and the nature of the divestiture of SPS's generation plants. The commission agrees that SPS, as a utility without stranded costs, is not subject to the portions of the 2004 true-up proceeding relating to stranded cost true-up, either prospectively for post 2004, or historically for the 2002-2004 period, for which capacity auction revenues will be used. Issues relating to what should be done with any gains from the sale of SPS's generation plants are properly considered in another proceeding, not in this rulemaking.

Question Number 8: The definition of "affiliated power generation company" in PURA §31.002(2) refers to a power generation company that is the successor in interest of an electric utility. If an electric utility places its generation in a non-affiliated company, is that company a "successor in interest" and therefore considered an "affiliated power generation company" for the purposes of remaining subject to the capacity auction requirement? Similarly, if generation assets are sold to a third party, does that third party become a "successor in interest" and therefore an "affiliated power generation company" and also become subject to the capacity auctions for those assets?

OPC suggested that companies are generally considered affiliates if one company owns over 5.0% of another company due to the common ownership. OPC suggested that as long as a PGC has any relationship that may lead it to favor an incumbent REP over other REPs, the PGC should be required to continue to auction entitlements, in order to insure that unaffiliated REPs have the ability to procure capacity. EGSI and SPS stated that a non-affiliated company or third party should not be considered a successor in interest or subject to the capacity auction requirements.

Reliant in reply comments stated that only if all of the assets were sold together or placed in a separate entity would the successor be considered an affiliated power generation company.

CPA, PG&E, TXU, and Oxy suggested that whether or not a subsequent owner is a "successor in interest" is a question of fact that may depend on the particulars of a transaction. PG&E did suggest that a successor in interest for the purposes of the capacity auction would be an entity that owns or controls a significant portion of the utility's generation assets, but again, that would involve a factual determination. AEP agreed that some purchasers should clearly not be considered successors in interest. Oxy also noted that the commission may, in SPS's transition to competition proceeding, require purchasers of SPS's capacity to participate in the auctions in order to aid in the development of a liquid market in SPS's power region.

The commission agrees with the parties that suggested that this issue is best resolved on a case by case basis. The definition of affiliated power generation company in this rule has not been changed.

Question Number 9: Should the gas price paid by the holder of an entitlement when that entitlement is struck be a known, fixed price at the time the entitlement is up for bid? Will having a known price make the products more usable and desirable to retail electric providers?

NewEnergy stated that a complete known price is crucial for REPs to use these products to serve retail load, and that the costs of the risk management tools that REPs will need to procure in the marketplace may inhibit REPs from participating in the auctions. NewEnergy proposed alternate products in the form of a baseload product, an on-peak product and an off-peak product, each of which would be a must-take product for varying durations and times, and a call option product, which would be a right but not an obligation to purchase up to the size of the entitlement each hour. Bids for each of the products would be a dollar per megawatt hour (MWh) bid, with a minimum take also bid for the call option product. TNMP agreed that price certainty was a desirable goal but noted it will be difficult to evaluate the proper price for such contracts. Austin Energy stated that the fuel price must be known at the time of the auction and not be subject to future changes.

EGSI, CPA, PG&E, AEP, TXU, Reliant and Cities generally stated that requiring a known gas price at the time of auction would effectively require the affiliated PGC to enter into hedging transactions for the purpose of offering a fixed price in the auctions. AEP further noted that the entitlements may be more valuable to entities who believe that they can hedge gas prices in a way superior to that of the selling PGC and stated that the commission should defer the existing futures market for the provision of gas hedging products. TXU also suggested that such a requirement would go beyond the scope of PURA and would effectively create an electricity option product.

The commission recognizes that hedging products exist in the market place today and agrees that market participants may better perform this function than the affiliated PGCs. The commission believes that although the products proposed by NewEnergy have the advantage of being simple, they are basically energy products, and have few attributes of capacity. The greater flexibility allowed by the capacity products outlined in the rule better facilitate the competitive market; the products desired by NewEnergy will likely be provided in the market, in part from the entitlement products mandated by the rule. No change to the rule is required.

Question Number 10: Should the commission retain an independent third party to conduct the auctions?

EGSI, TXU and AEP recommended that each affiliated PGC conduct its own auctions as the commission retains oversight of the auctions, and there is little incentive for the PGC to engage in discriminatory conduct. AEP further suggested that use of a third party may increase costs. CPA stated that it believes the rule has adequate procedures in place to ensure non- discrimination.

PG&E and TNMP recommended that the commission retain a third party administrator, as such an entity could provide a single point of contact for capacity auction information, trading, and purchasing and would eliminate any concern about utilities gaining sensitive market information. Reliant disagreed and stated that such a requirement would only add costs. PG&E stated that if the commission allows utilities to conduct their own auctions, it should also preclude the utilities from using or disclosing any competitively sensitive information obtained from the bids prior to the disclosure of the bids to all auction participants.

The commission finds that retention of a third-party administrator by the commission is not necessary at this time as the prohibition on affiliates participating in the auctions minimize the potential for discriminatory behavior. The commission does agree with PG&E that the affiliated PGC should be precluded for using or disclosing any competitively sensitive information obtained from the bidding process prior to the disclosure of the bids to all auction participants. Additionally, the commission believes that there may be added benefits to the market if all affiliated PGCs jointly auction their entitlements such that the auctions are held in a common place or on a common web-site/screen. The commission encourages the parties in the implementation group to determine if it is feasible or desirable for the affiliated PGCs to jointly retain an auction administrator as well as resolve issues relating to the payment for this service. The commission notes that it has also added language in subsection (f)(2)(A) noting that affiliated PGCs, or groups of affiliated PGCs, may retain third party administrators to conduct the auctions.

Ancillary services provision from the capacity auction products

In addition to comments on these questions, several parties provided extensive comments on how the products should be revised to allow them to be used in ancillary services markets.

TNMP generally expressed a concern about the robustness of the ancillary services market and suggested that this rulemaking could be used to correct the potential market problem of the allowance of 100% self-provision on ancillary services. TNMP stated that limitations on dispatch effectively eliminated the potential for these products to be used in the ancillary service markets and suggested that the products would need call option capability and other specifics required by ERCOT for use as certain ancillary services. TNMP suggested that payments for other ancillary services could be shared on a load ratio basis with entitlement holders. TXU disagreed with this proposal, noting that a holder who had scheduled 100% of the entitlement would also receive payment for the ancillary services. TNMP also stated that if the rule could not be developed to achieve equivalent freedom of dispatch for entitlement holders as the generation owner, it would support a move to unit-specific auctions. TNMP supported the comments of CPA (discussed above) with respect to the use of the Responsibility Transfer Mechanism.

TXU suggested that the proposed products were primarily energy products that allow scheduling on a day-ahead basis and that the heat rates in the rule are not appropriate if the products are to be used for ancillary services. TXU also suggested language limiting the ancillary services to regulation up, regulation down, responsive reserve, and non-spinning reserve and noted that the rule should address the responsibility of the entitlement holder for settlement charges. TXU disagreed that the auction products should be modified to allow ancillary services capabilities and instead proposed a separate ancillary service product that would have scheduling and dispatch capabilities consistent with its intended use. TNMP argued that such a product would limit the dispatch of remaining entitlements. TXU stated that if the entitlements were to be used to provide ancillary services, it is important for the rule to address the responsibility for ERCOT settlement charges associated with the deployment of ancillary services scheduled from the entitlement.

AEP stated that it supported the further incorporation of ancillary services into the auction products and stated that entitlement holders should be allowed to schedule, on a day-ahead basis, up to a proportionate share of the ancillary services capabilities of the underlying units, but would require the use of company-specific heat-rates. AEP and EGSI also noted that provision of ancillary services for non-ERCOT utilities may be governed by the Federal Energy Regulatory Commission (FERC) transmission tariffs and urged the commission to allow flexibility.

Reliant proposed in reply comments to change the heat rate points to heat rate curves, in order for the products to be used in ancillary service markets. CPA generally supported those comments. PG&E generally supported the concept, but noted that several details needed to be discussed to make the proposal workable. PG&E also recommended that the commission retain the right to re-evaluate the heat rates in the future should it be necessary to do so.

In general, the commission believes that the market is best served by ensuring that the capacity auction products can be used for as many ancillary services as possible. However, it appears that this may require substantial changes to the rule on which not all parties have had the opportunity to comment, especially the heat-rate curve proposal set forth by Reliant. These changes could cause the products to lose the standardization and tradability that has been a major goal of this rule. Additionally, the ERCOT protocols are not at this time finalized, so attempts to incorporate those protocols into this rule may be premature. As such, the commission declines to modify the rule at this time but believes it is appropriate to establish an implementation task force to examine what further provisions may be needed to ensure that these products can be adequately used in ancillary services markets. Therefore, the commission has added language in subsection (e)(1)(E) of the rule providing that ancillary services may be provided from entitlements in accordance with procedures adopted by the commission, which

will be developed in the implementation group. The implementation group should also address the ERCOT settlement issues raised by TXU. In general, the commission believes it is appropriate for this group to first examine the use of the gas-cyclic and gas-peaking products for ancillary services, as these products currently have the most scheduling flexibility, and only examine the use of the baseload and gas-intermediate products if it appears that it is critical to the market that these products also be used for ancillary services needs. In response to TNMP's concerns, and in order to ensure that these products can be adequately used for ancillary services needs or bid into the ancillary services markets, the commission has removed some of the scheduling requirements in subsection (e)(1)(C), (e)(5)(C)(iii), and (e)(5)(C)(iv) and noted that these products may be scheduled in accordance with scheduling procedures to be developed by the commission. In response to PG&E's comment about the commission retaining the right to modify the heat rates in the future, the commission notes that subsection (j) allows the commission to modify the products by order. To the extent the heat rates need to be modified, the commission believes this subsection provides that latitude.

Comments on specific sections of the rule:

§25.381(c) Definitions

AEP stated that the clear intent of the statute is to have affiliate PGCs auction entitlements to the utility's rate base generation fleet, and that as written, the rule could be interpreted to include utility-owned capacity that is not included in rate base, or capacity owned by unregulated subsidiaries. PG&E disagreed that capacity needed to be included in rate base to be included in the auction requirement and responded that AEP's proposed revision would also exclude capacity additions.

The commission finds that the plain reading of the statute suggests that any capacity currently owned and operated by the integrated utility is subject to the capacity auctions obligation, whether or not that capacity is included in rate base. Capacity currently owned and operated by unregulated affiliates of the utility is not subject to the auction requirements. This is consistent with the definition of affiliated power generation company in this section, which refers to the entity unbundled from the *electric utility*. No change to the definition has been made.

Reliant proposed modifying the definition of congestion zone to reference the ERCOT protocols.

The commission declines to make Reliant's change, as not all utilities subject to this rule are in ERCOT. However, the commission does broaden the definition to clarify that a congestion zone includes any area identified as a zone subject to transmission constraints.

§25.381(d)

TXU recommended that any divestiture count toward a utility's obligation for capacity auctions and suggested deletion of the requirement that such divestiture occur pursuant to a commission order. SPS stated that it did not disagree with TXU's revision, but reasserted that PURA does not require the sharing of the gains from sales of generation assets for utilities that have not sought stranded cost recovery. PG&E replied that the commission should reject TXU's recommendation.

The commission disagrees with TXU. The provision to allow certain utilities to meet their capacity auction requirements through divestiture is intended to keep faith with prior commission orders, decisions, and settlements in merger cases, and as such, is not arbitrary. The commission notes that other utilities that divest generation assets will have a lower amount of installed capacity to which the 15% requirement will be applied, and those utilities that divest to the point where they own less than 400 MW of capacity will be exempted by virtue of that limitation. No change to the rule has been made.

§25.381(e)(1)(B)

AEP recommended language clarifying that the minimum take for the gas-intermediate product applies in every hour.

The commission agrees with AEP's point but notes that this section already states that the minimum take is provided "seven days per week and 24 hours per day" and believes further clarification is not necessary.

§25.381 (e)(1)(F) Other Products

PG&E noted that an explicit good cause exception is not needed as commission substantive rule §25.3 already provides for the granting of exceptions to commission rules upon showing of good cause and that inclusion of an explicit exception in this rule may encourage utilities to seek their own products.

AEP noted that Southwest Electric Power Company (SWEPCO) and West Texas Utilities (WTU) may not have sufficient capacity to auction some of the products or terms required by the rule and supported the good cause exception. EGSI and AEP noted that non-ERCOT utilities may need to auction different products to recognize their unique circumstances.

The commission agrees with PG&E that §25.3 does provide a blanket good cause exception allowance and that the granting of such exceptions will defeat the purpose of the standardization of the products embodied in this rule. However, the commission believes that the inclusion of subsection (e)(1)(F) is valuable for informational purposes. The commission *does* recognize that utilities with relatively small amounts of generation subject to the auctions or FERC jurisdictional utilities may be unable to provide all of the products for all of the terms required by the rule. As such, the commission will entertain exceptions to the rule requirements for such utilities, but generally desires that these utilities auction the same products as outlined by the rule, if possible, but for one of the terms (*i.e.* monthly verses one- year terms). The commission recognizes that FERC jurisdictional utilities may have unique circumstances that may justify exceptions to the rule.

§25.381(e)(2)

TXU suggested that the term "settlement interval" be replaced with "scheduling period".

The commission adopts TXU's change.

§25.381(e)(3)

TXU requested that the commission consider the manner in which the affiliated PGC expects to use its generation units in determining the appropriate assignment of units to the products if a party objects to the utility's assignment.

The commission incorporates TXU's language.

§25.381(e)(4)

AEP expressed concern over the intent of the language indicating a requirement for the affiliated PGC to identify the point of the PGC's system from which the entitlement is dispatchable and recommended deletion of this provision

The commission declines to make AEP's change as this requirement may be needed in order to determine the cost responsibility for congestion costs. However, the commission does clarify that this requirement is to identify where on the transmission system the energy from the entitlements is delivered to the buyer.

TXU requested an amendment allowing an affiliated PGC to refuse to dispatch an entitlement if directed to do so by the ERCOT independent organization.

The commission agrees with TXU that if a PGC receives instructions from ERCOT to curtail generation due to a system emergency that such an order would override the dispatch of entitlements. TXU's recommended change has been made, but clarified to limit the dispatch only in the circumstance of a system emergency.

§25.381(f)(1)(A)

AEP noted that the determination of the 40% test is more complicated than suggested by the single sentence included in the rule and recommended the inclusion of a cross-reference to the price to beat rule and suggested additional language to make this section consistent with the determination that certain utilities may meet their capacity auction obligations through divestiture.

The commission agrees with AEP that language on the computation of the 40% threshold is properly detailed in the price to beat rule. The commission adds language to this section clarifying that the determination will be made pursuant to the commission's price to beat rule.

§25.381(f)(2)(A)

TXU recommended language to clarify that affiliated PGCs may outsource the auction administration functions.

The commission believes that allowing affiliated PGCs to conduct their auctions gives them full latitude in deciding whether or not to outsource such administration to a third-party. This section has been modified to reflect that concept. In general, the commission would strongly support multiple affiliated PGCs pooling their entitlements under a common auction and Internet site.

§25.381(f)(2)(B)

PG&E requested that the commission require that utilities disclose system outage information for the previous five years in the auction notice to assist bidders in evaluating the potential risks of outages. PG&E also noted that it is not necessary for the utility to determine which units will meet the product entitlements.

The commission notes that such information is not needed under the adoption of TXU's proposed firmness solution. Therefore, no change has been made to this section. However, the commission has required notice of historical planned outage rates in the initial filing to be made by the affiliated PGC under subsection (e)(3).

§25.381(f)(3)(A) and (B)

TXU suggested that too many entitlements will be auctioned too far ahead of the time they will be deployed and stated that liquidity would be better served by auctioning more entitlements closer to the months in which they will be used. Specifically TXU requested that 20% of entitlements be auctioned as two year strips, 20% as one year strips, 30% as discrete months (12 months in advance) and 30% as discrete months sold on a tri-annual basis.

The commission generally agrees that having 80% of available entitlement auctioned by October 2001 may be excessive. As such, the commission reduces the amount of two-year strips to 20% and increases the amount of discrete months sold on a tri-annual basis to 30%. Corresponding changes have been made to subsection (f)(3)(A) and (B).

§25.381(f)(3)(A)(i)

Reliant suggested that the initial auction should offer 30% of the entitlements as two one- year strips as opposed to a two year strip in order for the products to be appropriately incorporated into the true-up.

The commission agrees with Reliant and has made the suggested change, but notes that the two strips are to be auctioned jointly.

§25.381(f)(4)

AEP and EGSI noted that the "rounding up" provision should be revised as it will lead to an affiliated PGC auctioning more than the 15% required by statute which may be an unreasonable taking by the commission. AEP suggested language allowing the affiliated PGC to determine how to auction any remainder. TXU also recommended that the commission give latitude to the affiliated PGC in determining how to auction a remainder so that the affiliated PGC could assign the remainder to the product with the highest market value.

The commission notes that it will be extremely unlikely that utilities will be able to meet the exact 15% requirement in 25 MW blocks of capacity. Rounding down would clearly allow utilities to auction less than 15% of their capacity, which would be in clear violation of PURA. Allowing utilities discretion as to how they auction any remainder of less than 25 MW will result in limited products of a size different than the majority of entitlements. As the statute requires auction of *at least* 15% of a utility's capacity under commission rules, the commission finds that the requirement to auction slightly more than 15% conforms to the statute. The commission also notes that the affiliated PGC will receive compensation at a market price for all capacity sold at auction, including this slight increment over the 15%. The commission does agree that instead of automatically assigning the remainder to the next highest heat-rate product, a remainder should be assigned to the product valued highest by the market. As such, the existing language will be retained for purposes of the initial auction. Language has been added directing the affiliated PGC to assign the remainder to the product with the highest market value in the immediately preceding auction.

§25.381(f)(7)

TXU and AEP recommended that the opening bid price be based on the expected cost of providing the entitlements to the affiliated PGC. Cities agreed that a reservation price should be added to avoid the possibility of the price clearing at zero and suggested a methodology to develop reserve prices.

The commission is generally concerned that setting too high a reserve price will result in capacity going unsold, which would be contrary to PURA. PURA also specifically forbids the inclusion of any return on equity, which suggests that it was intended that a utility recover its variable costs of operation. The commission clarifies this section to allow the opening bid to include all variable costs of operation not recovered through the capacity bids or energy prices. As long as the opening bid is met, the affiliated PGC will recover no less than its variable costs of operation. The commission has also added clarifying language to note that an affiliated PGC is not obligated to accept bids for products below the opening bid price, but the PGC will be required to propose

additional auctions of the other products in order to comply with the 15% requirement. In order to be consistent with the auction procedures, the commission has also replaced the term "reserve bid price" with "opening bid price".

§25.381(f)(8)

TXU suggested additional language to make the payment requirements stricter on buyers of entitlements.

The commission declines to adopt TXU's proposed changes. As discussed earlier, the credit standards are consistent with those approved by the commission in other proceedings.

§25.381(g)

AEP recommended deletion of the language that requires secondary buyers of entitlements to meet the same credit requirements as in the rule and noted that in energy markets today, buyers can resell products to other entities, but do not escape the responsibility of paying the initial seller. PG&E responded that such a requirement would place substantial credit requirements on the initial purchaser and may discourage participation in the initial auctions.

The commission agrees with PG&E, but notes as stated in the rule, that if a holder of an entitlement sells it to a party that does not meet the credit standards in the rule, that the initial holder of the entitlement would retain payment obligations to the seller. The commission believes that this arrangement will enhance the tradability of the entitlements.

§25.381(h)(1)

PG&E requested that the language regarding the gross-up of the capacity auction proceeds be clarified and suggested language to clarify that the proceeds from each product be summed before subtracting the amount from the gross-up from the fixed cost contribution from the ECOM model.

The commission has addressed this issue in its response to the comments on Question Number 7.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically pursuant to PURA §39.153, which requires that the commission establish rules that define the scope of the capacity entitlements to be auctioned, and the procedures for the auctions.

Cross Reference to Statutes: PURA §§14.002, 31.002, 39.153, 39.201, and 39.262.

§25.381. Capacity Auctions.

(a) Applicability. This section applies to all affiliated power generation companies (PGCs) as defined in this section in Texas. This section does not apply to electric utilities subject to Public Utility Regulatory Act (PURA) §39.102(c) until the end of the utility's rate freeze.

(b) Purpose. The purpose of this section is to promote competitiveness in the wholesale market through increased availability of generation and increased liquidity by requiring electric utilities and their affiliated PGCs to sell at auction entitlements to at least 15% of the affiliated PGC's Texas jurisdictional installed generation capacity, describing the form of products required to be auctioned, prescribing the auction process, and prescribing a true- up procedure, in accordance with PURA §39.262(d)(2).

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

(1) Affiliated power generation company (PGC) - For purposes of this section, an "affiliated PGC" refers to any affiliated power generation company that is unbundled from the electric utility in accordance with PURA §39.051. Until January 1, 2002, the term also includes an electric utility as defined in §25.5 of this title (relating to Definitions) that owns or operates for compensation in this state equipment or facilities to generate more than 400 megawatts (MW) of electricity in this state until the electric utility has unbundled, but does not include river authorities.

(2) Auction conclusion date - The date on which the bids are due to be received and the winning bids in an auction are announced.

(3) Business day - Any day on which the affiliated PGC's corporate offices are open for business and that is not a banking holiday

(4) Close of business - 5:00 p.m., central standard or daylight savings time.

(5) Congestion zone - An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.

(6) Daily gas price - The index posting for the date of flow in the Financial Times Energy publication "Gas Daily" under the heading "Daily Price Survey" for East- Houston-Katy, Houston Ship Channel.

(7) Day-ahead - The day preceding the operating day.

(8) Installed generation capacity - All potentially marketable electric generation capacity owned by an affiliated power generation company, including the capacity of:

(A) generating facilities that are connected with a transmission or distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(9) Power generation company (PGC) - As defined in §25.5 of this title.

(10) Starts - Direction by the owner of an entitlement to dispatch a previously idle entitlement.

(11) Texas jurisdictional installed generation capacity - The amount of an affiliated PGC's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(d) General requirements. Subject to the qualifications for auction entitlements and the auction process described in subsections (e) and (f) of this section, each affiliated PGC subject to this section shall sell at auction capacity entitlements equal to at least 15% of the affiliated PGC's Texas jurisdictional installed generation capacity.

Divestiture of a portion of an affiliated PGC's Texas jurisdictional installed generation capacity will be counted toward satisfaction of the affiliated PGC's capacity auction requirement if and only if the divestiture is made pursuant to a commission order in a business combination proceeding pursuant to PURA §14.101, and after the transfer of the assets and operations to a third party.

(e) Product types and characteristics.

(1) Available entitlements and amounts. The following four products shall be auctioned as capacity entitlements under subsection (d) of this section. Each affiliated PGC shall auction an amount of each product in proportion to the amount of Texas jurisdictional installed generating capacity on the affiliated PGC's system that are the respective type of generating units. An affiliated PGC that owns generation in multiple congestion zones shall auction entitlements for delivery in each congestion zone. The amount of each product auctioned in each zone shall be in proportion to the amount of the respective type of generating units located in that zone, but the total shall not be less than 15% of the affiliated PGC's Texas jurisdictional installed generation capacity. The available entitlements for the months of March, April, May, October, and November of each year may be reduced in proportion to the average annual planned outage rate for the group of generating units associated with each type of entitlement. Entitlements shall be for system capacity.

(A) Baseload.

(i) Description. For each baseload capacity entitlement, the scheduled power shall be provided to the purchaser during the month of the entitlement seven days per week and 24 hours per day, in accordance with the scheduling requirements and limitations provided in paragraph (5)(C)(i) of this subsection.

(ii) Block size. Each baseload capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel cost owed to the affiliated PGC by the entitlement purchaser for the dispatched baseload power will be the average cost of coal, lignite, and nuclear fuel (in dollars per MWh) based on the company's final excess cost over market (ECOM) model as determined in the proceeding pursuant to PURA §39.201 as projected for the relevant time period. Electric utilities without an ECOM determination in their proceeding conducted pursuant to PURA §39.201 shall propose, for commission review, an average cost of fuel in a similar manner.

(iv) Starts per month. The purchaser of a baseload capacity entitlement must take power from the entitlement seven days per week and 24 hours per day and is therefore not permitted to direct the affiliated PGC to make any starts per month of baseload capacity entitlements.

(B) Gas - intermediate.

(i) Description. For each gas-intermediate capacity entitlement, 30% of the entitlement shall be provided to the purchaser during the month of the entitlement seven days per week and 24 hours per day with the remainder of the block scheduled as day-ahead shaped power, or hour ahead for ancillary services, in accordance with the scheduling requirements and limitations provided in paragraph (5)(C)(ii) of this subsection.

(ii) Block size. Each gas-intermediate capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel cost owed to the affiliated PGC by the capacity purchaser for the gas-intermediate capacity dispatched will be 9,900 British thermal units per kilowatt-hour (BTU/kWh) heat rate times the minimum kilowatt-hours (kWh) that must be taken for gas-intermediate capacity as required in paragraph (5)(C)(ii) of this subsection times the first-of-the-month index posted in the publication "Inside FERC" for the Houston Ship Channel for the month of the entitlement. For power dispatched above the minimum kWh required, the additional fuel price owed to the affiliated PGC will be 9,900 BTU/kWh times the kWh of gas- intermediate power dispatched pursuant to the entitlement above the minimum requirement times the daily gas price.

(iv) Starts per month. The purchaser of gas-intermediate capacity must take a minimum of 30% of the power from the entitlement and is therefore not permitted to direct the affiliated PGC to make any starts per month of gas-intermediate capacity entitlements.

(C) Gas - cyclic.

(i) Description. The gas-cyclic entitlement shall be flexible day-ahead shaped power and ancillary services.

(ii) Block size. Each gas-cyclic capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel price owed to the affiliated PGC by the capacity purchaser for gas-cyclic capacity dispatched will be 12,100 BTU/kWh times the kWh of the gas-cyclic power dispatched under the entitlement times the daily gas price.

(iv) Starts per month and associated costs. The purchaser of gas-cyclic capacity shall be entitled to direct the selling affiliated PGC to make up to the amount of starts per month of each entitlement of gas-cyclic capacity allowed by the scheduling procedures adopted by the commission.

(D) Gas - peaking.

(i) Description. The gas-peaking entitlement shall be intra-day power and ancillary services.

(ii) Block size. Each gas-peaking capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel price owed to the affiliated PGC by the purchaser for gas-peaking capacity dispatched will be 14,100 BTU/kWh times the kWh of the gas-peaking power dispatched under the entitlement times the daily gas price.

(iv) Starts per month and associated costs. The purchaser of gas-peaking capacity shall be entitled to direct the selling affiliated PGC to make unlimited starts per month of each entitlement of gas- peaking capacity.

(E) Ancillary services. The owner of a capacity entitlement may use it to meet ancillary services needs, if the needs may be met in a manner that is consistent with procedures developed by the commission. The amount of ancillary services available will be in proportion to the ancillary services capabilities of the units that are used to define the capacity offered in the different entitlement products.

(F) Other products. Upon showing of good cause by the affiliated PGC and approval by the commission, an affiliated PGC may propose to auction entitlements different from those described in this subsection, including unit specific capacity.

(2) Forced outages. If all units providing capacity to an entitlement product experience a forced outage or an emergency condition prevents or restricts the ability of an affiliated PGC to dispatch a particular entitlement product, the entitlements of that product may be reduced in proportion to the percentage reduction to the grouping of units assigned to that entitlement; provided that such reductions in availability of any single entitlement do not exceed 2.0% of the total monthly

energy available from the entitlement. Notification of any such reductions will take place prior to the next scheduling period.

(3) Generation units offered. Within 60 days after the effective date of this section, the affiliated PGC shall file with the commission its proposed assignment of each of the affiliated PGC's power generation units to one of the four available product entitlements identified in paragraph (1) of this subsection, and the resulting amount of each type of entitlement to be auctioned. As part of this filing, the affiliated PGC shall provide planned outage histories for the years 1998, 1999, and 2000 for each generating unit to be used to calculate the average annual planned outage rate for each group of generating units. Interested parties shall have 30 days in which to provide comments on the utility's proposed assignments. If no comments are received, the utility's assignment shall be deemed appropriate. If any party objects to the utility's proposed assignments, the commission shall determine the appropriate assignment considering the manner in which the affiliated PGC expects to use such generation units.

(4) Obligations of affiliated PGC. The affiliated PGC shall dispatch entitlements only as directed by the holder of the entitlement in accordance with paragraph (5)(C) of this subsection. The affiliated PGC may not refuse to dispatch the entitlement and may not curtail the dispatch of an entitlement unless expressly authorized by this section or directed to do so by the independent organization in order to alleviate a system emergency. The affiliated PGC shall specify in its notice provided pursuant to subsection (f)(2)(A) of this section the point on the transmission system where energy from each entitlement is delivered to the buyer.

(5) Purchaser's rights and duties.

(A) No possessory interest. The entitlements sold at auction shall include no possessory interest in the unit or units from which the power is produced.

(B) No possessory obligations. The entitlements sold at auction shall include no obligation of a possessory owner of an interest in the unit or units from which the power is produced.

(C) Scheduling. The purchaser shall have the right to designate the dispatch of the entitlement, subject to paragraph (2) of this subsection. In addition, the following scheduling limitations apply based upon the type of capacity entitlement being scheduled.

(i) Baseload. Baseload capacity entitlements must be scheduled at a minimum of 80% of the block size. A baseload entitlement purchaser may vary the amount of energy scheduled between 80% and 100% of the block size on a day-ahead basis. Such schedule changes must be in hourly increments of no more than +/- 10% of the block size per hour. Baseload capacity entitlements can be scheduled only on a day-ahead basis. Nothing in this paragraph affects the right or obligation of the owner of a baseload entitlement to schedule the delivery of power from the entitlement through the independent organization.

(ii) Gas - intermediate. Gas-intermediate entitlements can be scheduled on a day-ahead basis. Gas-intermediate ancillary services can be scheduled on a day-ahead or hour-ahead basis. An entitlement must be scheduled at a minimum of 30% of the block size, with a maximum allowable hourly swing of +/- 25% of the block size. Other than for ancillary services, there shall be no hour-ahead scheduling for intermediate capacity entitlements.

(iii) Gas - cyclic. Gas-cyclic entitlements shall be scheduled consistent with the scheduling procedures developed by the commission.

(iv) Gas - peaking. Gas-peaking entitlements shall be scheduled consistent with the scheduling procedures developed by the commission.

(D) Credit requirements.

(i) Standards. Entities submitting bids must satisfy one of the following credit standards:

(I) The entity holds an investment grade credit rating (BBB- or Baa3 from Standard and Poor's or Moody's respectively or an equivalent);

(II) The entity provides an escrowed deposit equal to the bid amount plus the amount that would be paid to exercise the entitlement for the shorter of the duration of the entitlement or three months at the minimum required dispatch;

(III) The entity provides a letter of credit or surety bond equal to the bid amount plus the amount that would be paid to exercise the entitlement for the shorter of the duration of the entitlement or a rolling three-month period at the minimum dispatch required, irrevocable for the duration of the entitlement;

(IV) The entity provides a guaranty from another entity with an investment grade credit rating; or

(V) The entity makes other suitable arrangements with the affiliated PGC, provided that the affiliated PGC makes such arrangements available on a non-discriminatory basis.

(ii) All cash and other instruments used as credit security shall be unencumbered by pledges for collateral.

(iii) In the event the holder of the entitlement initially relied on its investment grade credit rating but subsequently loses it during the entitlement period, the holder of the entitlement must provide alternative financial evidence within ten days.

(iv) The holder of the entitlement must notify the affiliated PGC of any material changes that impact the financial requirement contained in the credit standards.

(v) In the event the holder of the entitlement fails to meet or continue to meet its security requirement, the entitlement shall revert to the affiliated PGC and shall be auctioned in the next auction for which notice can be provided of the sale of the entitlement pursuant to subsection (f)(2)(A) of this section.

(f) Auction process.

(1) Timing issues.

(A) Frequency of auctions.

(i) Initial auction. The initial capacity auction shall be concluded on or before September 1, 2001.

(ii) Subsequent auctions. Capacity auctions subsequent to the initial auction shall be concluded on March 15, 2002, July 15, 2002, September 1, 2002, and November 15, 2002. Auctions conducted in the years following 2002 will be concluded in the same months and day of the month, as the auctions conducted in 2002 (or in the event that date falls on a weekend or banking holiday, on the first business day before the weekend or banking holiday).

(iii) Termination of the capacity auction process. The obligation of an affiliated PGC to auction entitlements shall continue until the earlier of 60 months after the date customer choice is introduced or the date the commission determines that 40% or more of the electric power consumed by residential and small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is

provided by nonaffiliated retail electric providers. The determination of the 40% threshold shall be as prescribed by the commission's rule relating to the price to beat.

(B) Auction conclusion.

(i) Receipt of bids. In order for an affiliated PGC that is auctioning capacity to consider a bid, the bid must be received by that affiliated PGC by close of the round for which the bid is to be submitted.

(ii) Concluding each individual auction. The affiliated PGC shall provide notice of the winning bid(s) to auction participants and the commission by the close of business on the auction conclusion date.

(iii) Confidentiality and posting of bids. The affiliated PGC shall only provide the quantities requested by bidders during the auction. The affiliated PGC shall designate non-marketing personnel to evaluate the bids and persons reviewing the bids shall not disclose the bids to any person(s) engaged in marketing activities for the affiliated PGC or use any competitively sensitive information received in the bidding process. Upon announcement of the winning bids, the affiliated PGC shall provide the commission and all auction participants with all of the bids, but shall not divulge the identity of any particular bidders. Upon specific request by the commission, and under standard protective order procedures, the utility shall provide the identity of the bidders to the commission.

(2) Auction administration.

(A) Each auction shall be administered by the affiliated PGC selling the entitlement. An affiliated PGC or group of affiliated PGCs may retain the services of a qualified third-party to perform the auction administration functions.

(B) Notice of capacity available for auction.

(i) Method of notice. At least 60 days before each auction conclusion date, each affiliated PGC offering capacity entitlements at auction shall file with the commission notice of the pending auction. The commission shall provide on its Internet site a continually updated list of pending auctions for each affiliated PGC subject to this section.

(ii) Contents of notice. Such notice shall include the auction conclusion date, the date and time by which bids must be received for the first round, and the types, quantity (number of blocks), congestion zone, and term of each entitlement available in that auction. The notice shall also include the formula that will be used to adjust the price of entitlements between rounds of the auction. The affiliated PGC shall also specify which power generation units will be used to meet the entitlement for each type of entitlement to be auctioned. If baseload entitlements are being auctioned, the utility shall also specify the fuel cost described in subsection (e)(1)(A)(iii) of this section at the time of the auction. If gas intermediate, gas cyclic, or gas peaking entitlements are being auctioned, the utility shall specify the fuel service cost.

(3) Term of auctioned capacity.

(A) Initial auction. For the initial auction on September 1, 2001, each entitlement will be one month in duration, with:

(i) Approximately 20% of the entitlements auctioned as two one-year strips with the strips auctioned jointly (the 12 months of 2002 and 2003),

(ii) Approximately 30% of the entitlements as one-year strips (the 12 months of 2002), and

(iii) Approximately 20% of the entitlements as discrete months for each of the 12 months of 2002 (January through December of 2002)

(iv) Approximately 30% of the entitlements as discrete months for the first four months of 2002 (January through April of 2002).

(v) Reductions in the amounts of entitlements available during the months of March, April, May, October, and November of each calendar year shall be accounted for in the entitlements offered as discrete months.

(B) Subsequent auctions.

(i) The auction on March 15 of a year will auction approximately 30% of the entitlements as the discrete months of May through August of that year.

(ii) The auction on July 15 of a year will auction approximately 30% of the entitlements as the discrete months of September through December of that year.

(iii) The auction on September 1 of a year will auction:

(I) Approximately 30% of the entitlements as the one-year strips for the next year, and

(II) Approximately 20% of the entitlements as discrete months for each of the 12 calendar months of the next year.

(iv) The auction on November 15 of a year will auction approximately 30% of the entitlements as the discrete months of January through April of the next year.

(v) Reductions in the amounts of entitlements available during the months of March, April, May, October, and November of each calendar year shall be accounted for in the entitlements offered as discrete months.

(vi) In June of 2003, an evaluation will be made by the commission as to the need for another set of two-year strips (the 24 months of 2004 through 2005). If such term is deemed to be necessary, the next set of two-year strips will be auctioned on September 1 of 2003. If such term is not deemed to be necessary, then subsequent auctions will auction 50% of entitlements over one-year strips and 50% of the entitlements as discrete months.

(C) Modification of term. If the auction is for a one-year or two-year strip term and the affiliated retail electric provider (REP) expects to reach the 40% load loss threshold in paragraph (1)(A)(iii) of this subsection, the affiliated PGC may request a shorter term strip by providing evidence of the loss of customer load. Similarly, prior to an auction for the next four available months, an affiliated PGC may request to not auction months in which it projects reaching the 40% threshold. Such filings shall be made 90 days before the auction conclusion date. An affiliated PGC that will satisfy its auction requirements through divestiture, as described in subsection (d) of this section may petition the commission to set an appropriate term for entitlements. The affiliated PGC may not adjust the amount or length of an entitlement to be auctioned except as authorized by the commission.

(4) Quantity to be auctioned.

(A) Block size and number of blocks. The block size of the auctioned capacity entitlement is 25 MW. The affiliated PGC shall divide the amount determined for each product described in subsection (e)(1) of this section by 25 to determine the number of blocks of each type to be auctioned.

(B) Divisibility. For purposes of the initial auction, if the amount to be auctioned for an affiliated PGC for a particular product is not evenly divisible by 25, the remainder shall be added to the next highest heat-rate product available (in the order of baseload, gas-intermediate, gas cyclic, and gas peaking). The remainder for the highest heat-rate product available shall then be rounded up to 25. For subsequent auctions, a remainder shall be added to the product most highly valued in the immediately preceding auction and shall increase by one the number of entitlements of that product.

(C) Total amount. The sum of the blocks of capacity auctioned shall total no less than 15% of the affiliated PGC's Texas jurisdictional installed generation capacity.

(5) Bidders. For each auction, potential bidders must prequalify by demonstrating compliance with the credit requirements in subsection (e)(5)(D)(i) of this section in advance of submission of a bid.

(6) Bidding procedures. For purposes of this section, the term "set of entitlements" shall refer to the pairing of a particular product with a term. For example, a quantity of baseload products sold as a one-year strip for 2002 would be a set of baseload-annual 2002 entitlements, while a quantity of baseload products sold as the discrete month of July 2002 in a quantity of ten would be a set of baseload- July 2002 entitlements.

(A) Method of auction. Each auction shall be a simultaneous, multiple round, open bid auction. Rounds shall be held open for a reasonable amount of time to allow bidders to submit bids while still allowing efficient conclusion of the auction.

(i) First round. For the first round of the auction, the affiliated PGC will post the opening bid price determined in accordance with paragraph (7) of this subsection for each of set of entitlements available for purchase at the auction. Each bidder will specify the number it wishes to purchase of each set of entitlements at the opening bid price(s). If the total demand for a set of entitlements is less than the available quantity of the set of entitlements, the price for each of the entitlements in the set will be the opening bid price and each bidder in the round will receive all of the entitlements in the set they demanded. Any remaining entitlements of the set will be held for future auction as noticed by the affiliated PGC in accordance with its notice given pursuant to paragraph (7) of this subsection.

(ii) Subsequent rounds. If the total demand for a set of entitlements is more than the available quantity, the affiliated PGC will adjust the price upward. Bidders shall then submit bids for the quantities they wish to purchase of each set of entitlements at the new price(s). Subsequent rounds shall continue until demand is less than or equal to supply for each set of entitlements. The auction then closes and the market clearing price for each set of entitlements is set at the last price for which demand exceeded supply. Bidders shall then be awarded the entitlements they demanded in the final round, plus a pro-rata share of any entitlements they demanded in the next to last round.

(B) Activity rules.

(i) A bidder must bid in the first round for a particular entitlement to participate in subsequent rounds.

(ii) A bidder may not bid a greater quantity than it bid in a previous round for a particular entitlement.

(C) Mechanism for auction. Each affiliated PGC shall conduct the auction over the internet on a secure web page(s) and shall assign a password and bidder's number to each entity that has satisfied the credit requirements in this section.

(7) Establishment of opening bid price. Within 60 days of the effective date of this section, the affiliated PGC may file with the commission a methodology for determining an opening bid price for each type of entitlement, if needed, based on the utility's expected variable cost of operation, but excluding any return on equity. The opening price may not include any cost included in the fuel price to be paid by entitlement winners, nor any cost being recovered by its affiliated transmission and distribution utility through non-bypassable delivery charges, but may recover variable costs not included in the fuel prices, such as fuel service costs and start-up fees. Parties shall have 30 days after filing to challenge the methodology. In the notice provided pursuant to paragraph (2)(B)(i) of this subsection, the affiliated PGC may make available an opening bid price calculated pursuant to the commission-approved methodology for each type of entitlement to be offered for sale at auction. The affiliated PGC shall not be obligated to accept any bid for a product less than the opening bid price, but shall notify the commission that the opening bid price was not met. The affiliated PGC shall, in its notice, propose an auction of additional entitlements of the products for which the minimum bid was met in order to comply with the 15% requirement.

(8) Results of the auction. The results of the auction shall be simultaneously announced to all bidders by posting on the affiliated PGC's auction web site with posting of the market clearing price for each set of entitlements.

(g) Resale of entitlement. The winners of an entitlement may resell the entitlement (or portions thereof) to any eligible purchaser except the affiliated REP of the affiliated PGC that originally auctioned the entitlement. The third party must meet the same credit requirements that had been required of the initial bid winner. Alternatively, a winner may assign the entitlement to a third party that does not meet the associated credit requirements provided that the original winner retains all payment and other related obligations. Owners of entitlements may direct the dispatch of those entitlements to any lawful purchaser of electricity, including the affiliated REP.

(h) True-up process.

(1) For each month beginning on February 1, 2002 to the month following the date a final order is issued in the PURA §39.262 proceeding, the affiliated PGC shall reconcile, and either credit or bill to the transmission and distribution utility, any difference between the price of power obtained through the capacity auctions under this section and the power cost projections that were employed for the same time period in the Excess Cost over Market (ECOM) model to estimate stranded costs for the affiliated PGC in the PURA §39.201 proceeding.

(2) An affiliated PGC that does not have stranded costs described by PURA §39.254 is not required to comply with paragraph (1) of this subsection.

(i) True-up process for electric utilities with divestiture. If an affiliated PGC meets its capacity auction requirements through a divestiture as allowed by subsection (d) of this section, the proceeds of the divestiture shall be used for purposes of the true-up calculation.

(j) Modification of auction procedures or products. Upon a finding by the commission that the auction procedures or products require modification to better value the products or to better suit the needs of the competitive market, the commission may, by order, modify the procedures or products detailed in this rule.

(k) Contract terms. Parties shall utilize a standard agreement adopted by the commission in detailing the terms, conditions, and obligations of the selling and buying parties.

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 December 15, 2000.

TRD-200008721
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 4, 2001
Proposal publication date: September 15, 2000
For further information, please call: (512) 936-7308

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PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 105. ADVERTISING

16 TAC §§105.2, 105.3, 105.7, 105.9, 105.13, 105.19, 105.20, 105.24, 105.26, 105.31

The Motor Vehicle Board of the Texas Department of Transportation adopts amendments to §§105.2-105.3, 105.7, 105.9, 105.13, 105.19-105.20, 105.24, 105.26, and 105.31 of Chapter 105, Advertising Rules, as published in the August 4, 2000 issue of the *Texas Register* (25 TexReg 7293). Section 105.24 is adopted with changes. The sections set guidelines for truthful and accurate practices in the advertisement of motor vehicles. Sections 105.2-105.3, 105.7, 105.9, 105.13, 105.19-105.20, 105.26, and 105.31 are adopted without changes and will not be republished.

The proposals concerning amendments to Sections 105.10, 105.21 and 105.28 are withdrawn. Proposed amendments to these sections will be republished for comment in the near future. The proposal concerning new §105.18, Licensee Identification, requiring licensees to include license numbers in advertising, is withdrawn and will not be republished.

General changes to rule language.

The Motor Vehicle Commission was renamed the Motor Vehicle Board in 1992. The amendments change all references from "Commission" to "Board" in §§105.3, 105.19 and 105.31. Other proposals correct grammar and simplify language so it is more easily understood.

Other changes specific to each section.

Changes to §105.2 state that any false, misleading or deceptive advertising may be found a violation of the Texas Motor Vehicle Commission Code, regardless of whether the misleading or deceptive advertising is specifically enumerated in Chapter 105. The amendment to §105.3 eliminates redundant concepts already contained in §105.2.

Amendments to §105.7 prohibit advertising greater allowances for trade-ins or better deals because of large sales volumes unless the dealer can show such is the case. Changes to §105.9 more clearly describe the types of taxes and fees that may be excluded from the advertised price of a vehicle.

The purpose of §105.13 is to clarify the Board's policy that dealers are prohibited from advertising a guaranteed allowance for a trade-in. Changes to §105.13 clarify the intent of the section by exchanging the word "used" (in advertising) for the word "featured" (in advertising).

Section 105.20, Manufacturer and Distributor Rebates, is rewritten for clarity without changing the substance of the rule. Manufacturers and distributors must still disclose any dealer contributions to rebates, or interest or finance charge reductions.

Changes to §105.24 include rewriting for clarity and adding more examples of acceptable advertising concerning dealer discounts, savings claims and rebates. The Board agreed that advertisements should show the difference between the dealer's sale price and a converter's total suggested list or retail price, in addition to the previous language requiring these differences be shown between a dealer's sale price and a manufacturer's or distributor's price. The section was amended to require comparisons with a converter's total suggested list or retail price.

The changes to §105.26(a) clarify the payment information that must be included when advertising a vehicle available for lease.

The amendments to Chapter 105 will result in stronger protection of the public and dealers from those dealers who engage in false, deceptive or misleading practices, as well as better understanding by licensees required to comply with the rules. The amendments describe how an entity may advertise without violating the provisions of the Texas Motor Vehicle Commission Code (Article 4413(36), §3.05(b), Vernon's Texas Civil Statutes) that require truthful and accurate advertising for the benefit of the citizens of this state.

Comments concerning §105.24 favored including converter prices when comparing a dealer's sales price with a manufacturer's or distributor's suggested list or retail price. It was clarified that converters will have to provide suggested list or retail price information to dealers, just as manufacturers and distributors do. No comments were received regarding any of the other adopted amendments. Comments were received from the Texas Automobile Dealer's Association.

The amendments are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt and amend rules as necessary and convenient to effectuate the provisions of this act.

Texas Motor Vehicle Commission Code Section 3.05(b) is affected by the amendments.

§105.24. Savings Claims; Discounts.

(a) A savings claim or discount offer is prohibited except to advertise a new motor vehicle, and the advertisement must show the difference between the dealer's sale price and the manufacturer's, distributor's or converter's total suggested list or retail price.

(1) If a savings claim or discount offer includes only a dealer discount, the advertisement shall disclose that the discount is from the MSRP. The following is an acceptable format for advertising a dealer discount: "$2,000 discount off MSRP".

(2) A savings claim or discount offer that includes a manufacturer's customer rebate must disclose the amount of the rebate as well as the amount of the dealer's discount. The following is an acceptable format for advertising a savings claim with a rebate and a dealer discount: "$2,000 savings off MSRP ($1,500 dealer discount and $500 rebate.)".

(3) If a savings claim discloses a manufacturer's option package discount, then that discount must be disclosed prior to the

discount off MSRP. The savings claim shall be advertised as a total savings. The following is an acceptable format for advertising a total savings claim: "Total Savings $3,000 ($1,000 option package discount, $1,500 dealer discount off MSRP, and $500 rebate)".

(b) The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

(c) If an option that is added by a dealer is not a factory-available option, a savings claim may not be advertised on that vehicle. If a dealer has added an option obtained from the manufacturer or distributor of the motor vehicle and disclosed the option and its factory suggested retail price on a dealership addendum, the dealer may advertise a savings claim on that vehicle as long as the option is listed, and the difference is shown between the dealer's sale price and the factory suggested retail price of the vehicle including the factory available option.

(d) Statements such as "up to," "as much as," "from," shall not be used in connection with savings or discount claims.

(e) No person may advertise a savings claim or discount offer on used motor vehicles.

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 December 18, 2000.

TRD-200008744
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: January 7, 2001
Proposal publication date: August 4, 2000
For further information, please call: (512) 416-4899

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CHAPTER 111. GENERAL DISTINGUISHING NUMBERS

16 TAC §111.8

The Texas Motor Vehicle Board adopts amendments to §111.8 of Chapter 111, General Distinguishing Numbers, as published in the September 1, 2000 issue of the *Texas Register* (25 TexReg 8569). The appendices of §111.8 are amended to clarify instructions about printing requirements for printers of temporary tags. The amendments are adopted without changes and will not be republished.

The amendments add advisory language to Appendices A-2 and D-2 that makes it clear to printers of license tags that they must enter into a licensing agreement with the Texas Department of Transportation (TxDOT) to print temporary tags for dealers and converters. This language is already on the instructions for buyer's tags and these amendments make the instructions uniform for all tags authorized by this subsection. In addition, language notifying printers of the requirement for using copyrighted TxDOT logos is added to Appendices A-2, B-2, B-4, C-2, and D-2. The effect of the rule will be a clearer understanding of the requirements for a printer wishing to print temporary tags.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to amend rules as necessary and convenient to effectuate the provisions of this act.

Texas Motor Vehicle Commission Code Section 4.01 and Transportation Code Sections 503.062, 503.0625, 503.063, and 503.067 - 503.069 are affected by the amendments.

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 December 18, 2000.

TRD-200008745
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: January 7, 2001
Proposal publication date: September 1, 2000
For further information, please call: (512) 416-4899

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PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER C. SIMULCAST WAGERING
DIVISION 2. SIMULCASTING AT HORSE RACETRACKS

16 TAC §321.234

The Texas Racing Commission adopts an amendment to §321.234 without changes to the proposed text as published in the November 3, 2000 issue of the *Texas Register* (25 TexReg 10866) and the amendment will not be republished. The amendment deletes the requirement that a pari-mutuel horse track set aside and pay to the breed registries 10% of the gross amount the track receives from exporting its simulcast races to out-of-state locations.

The amendment was presented to the Commission as a petition for rulemaking by representatives of Lone Star Park at Grand Prairie, Retama Park, and Sam Houston Race Park. Based on the petitioners' oral testimony before the Commission, the racetracks seek to have any future payments set by a negotiated agreement between the breed registries and the racetracks. Therefore, subsections (c) and (d) would no longer be necessary. The amendment would also capitalize the word "commission" to conform to rule style.

Oral comment was received at the December 12 Commission meeting. Representatives for the Class 1 racetracks expressed their support for the amendment. Lone Star Park at Grand Prairie indicated the rule without amendment would be invalid as it may exceed the Commission's statutory authority. A representative of the Texas Thoroughbred Association expressed support for

amendment. He expressed TTA's satisfaction with the distribution as provided in their agreement with the associations. A representative of the Texas Quarter Horse Association opposed this amendment. TQHA asserted these funds were previously promised to the breed registries but had not yet been paid.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06 which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; and §11.011, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering.

The proposed amendment implements Texas Civil Statutes, Article 179e.

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 December 13, 2000.

TRD-200008666
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: January 2, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.5

The Texas State Board of Medical Examiners adopts new §161.5, regarding general provisions, without changes to the proposed text as published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11229).

The proposed new section will clarify that the board is in compliance with Americans With Disabilities Act requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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 December 18, 2000.

TRD-200008738
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: January 7, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 305-7016

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CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.1

The Texas State Board of Medical Examiners adopts an amendment to §173.1, regarding physician profiles, without changes to the proposed text as published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11231).

The proposed amendment will allow the release of certain information on the physician profile to be optional.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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 December 18, 2000.

TRD-200008739
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: January 7, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 305-7016

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CHAPTER 199. PUBLIC INFORMATION

22 TAC §§199.1 - 199.4

The Texas State Board of Medical Examiners adopts amendments to §§199.1-199.4, regarding public information, without changes to the proposed text as published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11232).

The proposed amendments will correct the name of the Public Information Committee to the Public Information/Profile Committee and make other miscellaneous administrative corrections.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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 December 18, 2000.

TRD-200008740
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: January 7, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 305-7016

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PART 20. TEXAS COMMISSION ON PRIVATE SECURITY

CHAPTER 430. COMMISSIONED OFFICERS/PERSONAL PROTECTION OFFICERS

22 TAC §430.50

The Texas Commission on Private Security adopts an amendment to §430.50 concerning Commissioned Security Officers and Personal Protection Officers without changes to the proposed text as published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11233).

The Texas Commission on Private Security and Commission members reviewed suggestions and recommendations from individuals and various trade associations to clarify the requirements for security guard uniforms.

The adoption of the amendment will serve to clarify the requirements for commissioned security guard uniforms and add non-commissioned security guard uniform requirements.

No comments were received regarding this section.

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

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

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 December 14, 2000.

TRD-200008687
Dr. Jerry L. McGlasson
Director
Texas Commission on Private Security
Effective date: January 3, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 463-5545

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CHAPTER 435. REGISTRANTS

22 TAC §435.1

The Texas Commission on Private Security adopts an amendment to §435.1 concerning Registrants with deletions of a portion of the text as published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11234).

The Texas Commission on Private Security and Commission members reviewed suggestions and recommendations from individuals and various trade associations to clarify the employment requirements for a registrant of a licensed company.

The adoption of the amendment will serve to clarify the employment requirements for a registrant of a licensed company.

No comments were received regarding this section.

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

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

§435.1. Employment Requirements.

(a) A registrant or commissioned security officer of a licensed company must meet the specifications defined by the Internal Revenue Service as an "employee."

(b) A licensee shall not make application for any person knowing that the conditions of that person's employment do not conform to Subsection (a) of this Section.

(c) In the public interest and to ensure the good conduct of applicants for a registration or a security officer commission, they shall meet the requirements of Section 14 of the Act.

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

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

TRD-200008685
Dr. Jerry L. McGlasson
Director
Texas Commission on Private Security
Effective date: January 3, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 463-5545

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CHAPTER 440. CONTINUING EDUCATION

22 TAC §440.1

The Texas Commission on Private Security adopts an amendment to §440.1 concerning Continuing Education with a change in one word to the proposed text as published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11234).

The Texas Commission on Private Security and Commission members reviewed suggestions and recommendations from individuals and various trade associations to clarify the continuing education requirements for registrants.

The adoption of the amendment will serve to clarify continuing education requirements for registrants and include continuing education requirements for additional registrants.

Comments were reviewed from an individual suggesting possible additions to the amendment to include continuing education requirements for instructors. The agency staff and Commission members will review the suggestions for possible future action.

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

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

§440.1. Continuing Education Courses.

(a) A license may not be renewed until the required minimum hours of Commission-approved continuing education credits have been obtained in accordance with the Act and Commission Rules. Proof of the required continuing education must be maintained by the employer and contained in the personnel file of the registrant's employing company.

(1) all registrants not specifically addressed in this section shall complete a total of eight hours of continuing education, seven hours of which must be in subject matter that relates to the type of registration held, and one hour of which must cover ethics.

(2) private investigators and managers of Class A and Class C licenses shall complete a total of 12 hours of continuing education, 11 hours of which must be in subject matter that relates to the type of registration held, and one hour of which must cover ethics.

(3) alarm system monitors shall complete four hours of continuing education in subject matter that relates to the duties and responsibilities of an alarm system monitor. Alarm system installers, alarm system salespersons and managers of alarm system companies shall complete eight hours of continuing education that relates to their duties.

(4) commissioned security officers and personal protection officers shall complete six hours of continuing education. Continuing education for commissioned security officers and personal protection officers must be taught by schools and instructors approved by the Commission to instruct commissioned security officers as defined in § 20 of the Act. Commissioned security officers shall submit a firearms proficiency certificate along with their renewal application.

(5) non-participating owners, partners, shareholders, non-commissioned security officers and administrative support personnel are specifically exempted from the continuing education requirements.

(6) all registrants shall indicate they have completed the required minimum hours of Commission-approved continuing education credits on their application for renewal. Renewal application shall also include name of school, school number, seminar number, seminar date and credits earned.

(7) continuing education schools shall report attendees of continuing education classes to the Commission within 30 days of class completion. This report shall include the school number, instructor number, date and location of school in addition to the following information for each participant: name, SSN and continuing education credit earned.

(b) Continuing education instructors shall provide a certificate of completion to each person successfully completing the continuing education course within seven days after the date of course completion.

(1) The continuing education certificate of completion shall contain:

(A) the name and social security number of the person attending the course;

(B) the title and topic of the course;

(C) the number of hours of instruction provided;

(D) the signature of the instructor; or

(E) any information deemed necessary by the Director.

(2) The manager of a commissioned security officer training school conducting a continuing education course for commissioned security officers shall provide a certificate of completion to each person successfully completing the course within seven days after the date the course was completed.

(3) The certificate of completion for commissioned security officers shall contain:

(A) the name and social security number of the person attending the course;

(B) the title and topic of the course;

(C) the number of hours of instruction provided;

(D) the signature of the instructor and school Director; and

(E) any information deemed necessary by the Director.

(c) To receive Commission approval, a continuing education course shall contain instruction relating to one or more of the following:

(1) Investigative procedures and practices;

(2) Business practices;

(3) Legal aspects of private investigation or private security;

(4) Ethical aspects of private investigation or private security;

(5) Handgun proficiency as defined under Section 20 of the Act; and/or

(6) Any other course of instruction approved by the Director.

(d) To receive Commission approval, a continuing education course shall contain at least one clock hour of instruction.

(e) The Director shall approve courses for continuing education that are determined to meet the qualifications of these rules and the Act. Such courses may be provided for and taught by any organization or person that, in the Director's discretion, has the education, knowledge and experience to provide such information. A person wishing to conduct a continuing education course must provide the Director a description of the contents of the curriculum and the qualifications of any instructor. The Director shall inform the person wishing to conduct the course of the approval or disapproval within 10 working days of receiving the request. The Director may delegate this responsibility to other employees of the Commission.

This agency hereby certifies that the 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 December 14, 2000.

TRD-200008684
Dr. Jerry L. McGlasson
Director
Texas Commission on Private Security
Effective date: January 3, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 463-5545

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CHAPTER 446. SCHOOLS/INSTRUCTORS/TRAINING

22 TAC §§446.8, 446.15 - 446.17

The Texas Commission on Private Security adopts an amendment to §446.8 and §§446.15-446.17 concerning Schools/Instructors/Training without changes to the proposed text as published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11235).

The Texas Commission on Private Security and Commission members reviewed suggestions and recommendations from individuals and various trade associations to clarify the training requirements for commissioned security officers.

The adoption of the amendment will serve to clarify firearm training requirements for commissioned security officers.

No comments were received regarding this section.

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

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

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 December 14, 2000.

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Dr. Jerry L. McGlasson
Director
Texas Commission on Private Security
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For further information, please call: (512) 463-5545

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 29. PURCHASED HEALTH SERVICES

SUBCHAPTER D. MEDICAID HOME HEALTH SERVICES

25 TAC §29.307

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits adoption of the repeal of §29.307, concerning reimbursement methodology for home health services. The repeal is adopted without changes to the proposed text as published in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8132).

The rule is being repealed because it is unnecessary. The Texas Government Code §531.021, as amended in 1997, 75th Legislature, gave the Health and Human Services Commission responsibility to establish rules and standards regarding the setting of Medicaid rates, fees and charges. The Health and Human Services Commission currently maintains rules to govern Medicaid home health services, making this repeal necessary.

No comments were received on the proposal during the comment period.

The repeal of this rule is in accordance with the Human Resources Code, §32.021 and the Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program. Rules are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized by Acts of the 72nd Legislature, First Called Session, Chapter 15, §1.07, (1991).

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 December 15, 2000.

TRD-200008726
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: January 4, 2001
Proposal publication date: August 25, 2000
For further information, please call: (512) 458-7236

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SUBCHAPTER L. GENERAL ADMINISTRATION

25 TAC §29.1118

On behalf of the State Medicaid Director, the Texas Department of Health (department) adopts an amendment to §29.1118, concerning provider re-enrollment in the Medicaid Program, without changes to the proposed text as published in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8133), and therefore the section will not be republished.

The 76th Legislative Session, 1999, passed House Bills 2641 and 2896, which grants an extension to the original Senate Bill

30 law date of September 1, 1999 to September 1, 2000, due to implementation of an electronic method of re-enrolling. House Bill 2896 allows for a further extension to ensure a significant number of providers re-enroll in the Texas Medicaid Program. In accordance with this section of House Bill 2896, the Texas Department of Health is extending the deadline to December 31, 2000.

The department received no public comments during the comment period regarding adoption of the proposed amendment.

The amendment is adopted under the Human Resources Code, §32.021 and the Texas Government Code, §531.021, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program. Rules are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized by Acts of the 72nd Legislature, First Called Session, Chapter 15, §1.07, (1991).

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 December 18, 2000.

TRD-200008742
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: January 7, 2001
Proposal publication date: August 25, 2000
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER I. VARIABLE LIFE INSURANCE

28 TAC §3.803

The Commissioner of Insurance adopts amendments to §3.803 concerning variable life insurance. Amended §3.803 is adopted without changes to the proposal as published in the November 3, 2000 issue of the *Texas Register* (25 TexReg 10871), and will not be republished.

Amended §3.803 is necessary to eliminate the requirement that insurers file with the commissioner, prior to any distribution, all variable life insurance sales, advertising and descriptive material. It will also eliminate the requirement that insurers file with the commissioner any revised versions of such sales, advertising and descriptive material already filed with the commissioner. Such requirements are no longer necessary for the effective and efficient administration and regulation of variable life insurance. Amended §3.803 is necessary to streamline the requirements of insurers authorized to issue variable life insurance, and facilitate the issuance and distribution of variable life insurance sales, advertising and descriptive material by eliminating the prior filing requirement, while keeping in place all other regulatory requirements and consumer protections.

Comment: A commenter expressed support for the amended section.

Agency Response: The department appreciates the commenter's support.

For: State Farm Insurance Company.

The amendment is adopted under the Insurance Code Articles 3.75 and 21.21 and §36.001. Article 3.75, §8 provides that the commissioner may establish such rules or limitations which are fair and reasonable as may be appropriate for the augmentation and implementation of this article, including disclosure requirements. Article 21.21, §13 authorizes the commissioner to promulgate and enforce reasonable rules as necessary to accomplish the regulation of trade practices in the business of insurance. Section 36.001 authorizes the commissioner of insurance to adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.

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

Filed with the Office of the Secretary of State on December 15, 2000.

TRD-200008720
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 4, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 463-6327

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CHAPTER 19. AGENTS' LICENSING

SUBCHAPTER R. UTILIZATION REVIEW AGENTS

28 TAC §§19.1703, 19.1708, 19.1715

The Commissioner of Insurance adopts amendments to §§19.1703, 19.1708, and 19.1715 concerning requirements for prospective, concurrent, and retrospective reviews of mental health treatment provided under a health insurance policy or health benefit plan. The amendments are adopted with changes to the proposed text of all three sections as published in the September 29, 2000 issue of the *Texas Register* (25 TexReg 9861).

These amendments are necessary to implement Senate Bill 569 (Acts 1999, 76th Leg., ch. 579, p. 3119, eff. Sept. 1, 1999), which amended Insurance Code Article 21.58A, §4, regarding observation of mental health therapy and review of a mental health therapist's notes, and to address numerous inquiries to the department requesting clarification of the permissible scope

and contents of medical record summaries and of the term "mental health therapist" which is used in Senate Bill 569 and current §19.1708(f). The amendments are also necessary to extend to patients whose mental health treatments are reviewed retrospectively the same confidentiality protections afforded to patients whose treatments are prospectively or concurrently reviewed.

In response to comments, changes have been made to the proposed sections as published. The changes are: (i) The term "medical record summary" defined in §19.1703(19) has been changed to "mental health medical record summary," and the definition has been changed to clarify that the term means a summary of process or progress notes that are relevant to understanding the patient's need for treatment of a mental or emotional condition or disorder. These changes are made for consistency with Senate Bill 569 and to clarify that the rules carry out the intent of Senate Bill 569 with regard to mental health records. As a result of this change in terminology from "medical record summary" to "mental health medical record summary," the term "medical record summary" in §19.1708(f)(1) and §19.1715(c)(1) is also changed to "mental health medical record summary." (ii) The definition of "retrospective review" in §19.1703(30) is changed to clarify that retrospective review does not include a post-service review of a service upon which prospective or concurrent review had already been performed.

The amendments to §19.1703 define the terms "mental health medical record summary," "mental health therapist," "mental or emotional condition or disorder" and "retrospective review." The amendments to §19.1708 provide that the prohibition against requiring, as a condition of treatment, approval or for any other reason, a mental health therapist's process or progress notes extends to an oral, electronic, facsimile, or written submission of such notes. The amendments also provide that the utilization review agent is not precluded from requiring the submission of a patient's mental health medical record summary or medical records and/or process or progress notes that relate to treatment of non-mental or non-emotional conditions or disorders. The amendments to §19.1715 extend the confidentiality protections provided in §19.1708(f) and Senate Bill 569 to patients whose mental health treatment under a health insurance policy or a health benefit plan are reviewed retrospectively.

For: Office of Public Insurance Counsel and Harris Methodist.

For with changes: Texas Hospital Association, Pacificare, and a member company of the Texas Association of Insurance Officials.

Against: None.

General

Comment: Two commenters expressed support for the proposal as published.

Response: The department appreciates the commenters' support.

Comment: One commenter stated that §19.1702(c)(3)(B) appears to extend the utilization review rules to Medicaid managed care, and requested clarification on the applicability of these rules to HMOs that perform review under their contracts with the Medicaid program.

Response: The rules apply to HMOs that perform review under their contracts with the Medicaid program. The Insurance Code Article 21.58A §14(g) provides that an HMO that contracts with the Health and Human Services Commission or an agency operating part of the state Medicaid managed care program to provide health care services to recipients of medical assistance under Chapter 32 of the Human Resources Code, is subject to Article 21.58A. When an HMO performs utilization review, it must, as a condition of licensure comply with Article 21.58A, (except §3 and §10) and rules promulgated by the Commissioner for appropriate verification and enforcement of compliance. Section 19.1702(c)(3)(B) clarifies that reviews performed for the Texas Medicaid Program by HMOs that contract with the Health and Human Services Commission or an agency operating part of the state Medicaid managed care program to provide health care services to recipients of medical assistance under any program of the Texas Department of Mental Health and Mental Retardation shall comply with rules related to HMOs performing utilization review.

§19.1703(19) Definition of "Medical record summary"

Comment: One commenter recommended that §19.1703(19)(B)(ii) be changed to read "current or proposed treatment intervention" to clarify that treatment intervention includes care that is being provided at the time the request for information is made by the payor or agent as well as proposed treatments.

Response: The department recognizes the commenter's concerns but believes that the requested change is redundant and therefore unnecessary. The treatment plan includes treatment intervention, which by its very nature encompasses current and proposed treatment, and a discharge plan, which addresses post-discharge treatment.

Comment: One commenter recommended that §19.1703(19)(B)(iii) be changed to read "general characterization of patient behaviors or thought processes that affect the level of care needs, including danger to self or others, or psychosis". The commenter stated that the change is necessary to clarify the characterization of a patient's mental condition.

Response: The department does not believe that the requested change is necessary. The term "diagnosis" in §19.1703(19)(B)(i) and the phrase "general characterization of patient behaviors or thought processes that affect level of care needs" in §19.1703(19)(B)(iii) are broad enough to include psychosis and danger to self and others. Additionally, the department is concerned that by including the specific conditions proposed by the commenter the rule may be read to limit what is included in the treatment plan.

Comment: One commenter recommended that §19.1703(19)(B) be changed to add a clause (v) to provide that the treatment plan include "patient goals and criteria to be met prior to termination of the discharge plan." This change is recommended to assist the utilization review agent to better assess the progress of the patient and to evaluate or determine if changes to the treatment plan are necessary or appropriate.

Response: The department disagrees. The rules define "treatment plan" on the basis of what is currently included in such a plan. To include the requested elements as part of the treatment plan would impose requirements on mental health therapists that are not in accordance with the ordinary course of business or professional practice. Therefore, the imposition of these additional requirements could be considered a substantive change in the proposed rule which would require republication.

Comment: One commenter stated concern that proposed §19.1715 may apply to retrospective reviews of medical necessity under a health insurance policy or plan regardless of whether a utilization review agent is involved. Requiring providers to provide a summary rather than actual medical records is likely to encourage or enable exaggeration or fraud in instances where there is information in the actual records that the provider knows would be likely to cause the insurer to not cover the claim. The commenter recommended that the "medical record summary" as defined in §19.1703(19) require, at an absolute minimum, patient history information, including the onset and duration of the condition or disorder, the symptoms manifested, a description of any prior episodes of the condition or disorder, and a description of any prior treatment for the same or any other mental or emotional conditions or disorders. This would better assure that the information is complete and accurate.

Response: The department disagrees with the requested change but agrees that a change is needed to address the commenter's concerns. For consistency with Senate Bill 569 the definition of "medical record summary" in §19.1703(19) has been changed to a summary of process or progress notes that are relevant to understanding the patient's need for treatment of a mental or emotional condition or disorder. It is the department's position that the rule does not preclude the utilization review agent or health carrier from obtaining the patient history information specified by the commenter. In addition, to clarify that the rules reflect the intent of Senate Bill 569 with regard to mental health records, the term "medical record summary" in §19.1703(19), §19.1708(f)(1), and §19.1715(c)(1) has been changed to "mental health medical record summary."

§19.1703(30) Definition of "Retrospective review"

Comment: One commenter stated that any review of the medical necessity or appropriateness of treatment should be subject to the utilization review rules and the limitations on the disclosure of mental health information required by Senate Bill 569, regardless of when performed or whether prospective or concurrent review has been previously conducted. Under the proposed definition of retrospective review, the prohibition on disclosure of mental health information required by §19.1715(c) would not be applicable to review done subsequent to prospective or concurrent review. To afford the same confidentiality protections to mental health information regardless of the timing of the review, the commenter recommended that §19.1703(30) be changed to "a system in which review of the medical necessity and appropriateness of health care services provided to an enrollee is performed subsequent to the completion of such health care services. Retrospective review includes reviews that are conducted subsequent to prospective or concurrent reviews for medical necessity and appropriateness."

Response: The department agrees that clarification is necessary and has revised §19.1703(30) to clarify that retrospective review does not include a post-service review of a service upon which prospective or concurrent review had already been performed. By excluding such reviews from the definition of retrospective review, the department is not excluding any category of review from the utilization review rules. Instead, the department is clarifying that such reviews are considered to be prospective or concurrent as a continuation of the previous review for the same services. The limitations on disclosure of mental health information required by Senate Bill 569 apply to all utilization reviews, whether they be prospective, concurrent, or retrospective.

The amendments are adopted under the Insurance Code Article 21.58A and §36.001. Article 21.58A, §4(o) prohibits a utilization review agent from requiring, as a condition of treatment, approval or for any other reason, the observation of a psychotherapy session or the submission or review of a mental health therapist's process or progress notes but allows the agent to require submission of a patient's mental health medical record summary. Article 21.58A, §11 regulates retrospective review of the medical necessity and appropriateness of health care service made under a health insurance policy or a health benefit plan. Article 21.58A, §13 authorizes the Commissioner to adopt rules to implement the provisions of the article. Section 36.001 provides that the Commissioner of Insurance may adopt rules for the conduct and execution of the duties and functions of the department only as authorized by statute.

§19.1703. Definitions.

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

(1) Act--Insurance Code, Article 21.58A, entitled "Health Care Utilization Review Agents."

(2) Administrative Procedure Act--Government Code, Chapter 2001.

(3) Administrator--A person holding a certificate of authority under the Insurance Code, Article 21.07-6.

(4) Adverse determination--A determination by a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary or not appropriate.

(5) Appeal process--The formal process by which a utilization review agent offers a mechanism to address adverse determinations.

(6) Certificate--A certificate of registration granted by the commissioner to a utilization review agent.

(7) Commissioner--The commissioner of insurance.

(8) Complaint--An oral or written expression of dissatisfaction with a utilization review agent concerning the utilization review agent's process. A complaint is not a misunderstanding or misinformation that is resolved promptly by supplying the appropriate information or clearing up the misunderstanding to the satisfaction of the enrollee.

(9) Department--Texas Department of Insurance.

(10) Dental plan--An insurance policy or health benefit plan, including a policy written by a company subject to the Insurance Code, Chapter 20, that provides coverage for expenses for dental services.

(11) Dentist--A licensed doctor of dentistry, holding either a D.D.S. or a D.M.D. degree.

(12) Emergency care--Health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

(13) Enrollee--A person covered by a health insurance policy or health benefit plan. This term includes a person who is covered as an eligible dependent of another person.

(14) Health benefit plan--A plan of benefits that defines the coverage provisions for health care for enrollees offered or provided by any organization, public or private, other than health insurance.

(15) Health care provider--Any person, corporation, facility, or institution licensed by a state to provide or otherwise lawfully providing health care services that is eligible for independent reimbursement for those services.

(16) Health insurance policy--An insurance policy, including a policy written by a company subject to the Insurance Code, Chapter 20, that provides coverage for medical or surgical expenses incurred as a result of accident or sickness.

(17) Inquiry--A request for information or assistance from a utilization review agent.

(18) Life-threatening--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(19) Mental health medical record summary--A summary of process or progress notes relevant to understanding the patient's need for treatment of a mental or emotional condition or disorder such as:

(A) identifying information; and

(B) a treatment plan that includes:

(i) diagnosis;

(ii) treatment intervention;

(iii) general characterization of patient behaviors or thought processes that affect level of care needs; and

(iv) discharge plan.

(20) Mental health therapist--Any of the following persons who, in the ordinary course of business or professional practice, diagnose, evaluate, or treat any mental or emotional condition or disorder:

(A) a person licensed by the Texas State Board of Medical Examiners to practice medicine in this state;

(B) a person licensed as a psychologist by the Texas State Board of Examiners of Psychologists;

(C) a person licensed as a psychological associate by the Texas State Board of Examiners of Psychologists;

(D) a person licensed as a specialist in school psychology by the Texas State Board of Examiners of Psychologists;

(E) a person licensed as a marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists;

(F) a person licensed as a professional counselor by the Texas State Board of Examiners of Professional Counselors;

(G) a person licensed as a chemical dependency counselor by the Texas Commission on Alcohol and Drug Abuse;

(H) a person licensed as an advanced clinical practitioner by the Texas State Board of Social Worker Examiners;

(I) a person licensed as a master social worker by the Texas State Board of Social Worker Examiners;

(J) a person licensed as a social worker by the Texas State Board of Social Worker Examiners;

(K) a person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners;

(L) a person licensed as a registered professional nurse by the Texas Board of Nurse Examiners;

(M) a person licensed as a vocational nurse by the Texas Board of Vocational Nurse Examiners;

(N) any other person who is licensed or certified by a state licensing board in the State of Texas to diagnose, evaluate, or treat any mental or emotional condition or disorder.

(21) Mental or emotional condition or disorder--A mental or emotional illness as detailed in the most current revision of the Diagnostic and Statistical Manual of Mental Disorders.

(22) Nurse--A registered professional nurse, a licensed vocational nurse, or a licensed practical nurse.

(23) Open records law--Government Code, Chapter 552.

(24) Patient--An enrollee or an eligible dependent of the enrollee under a health benefit plan or health insurance plan.

(25) Payor--An insurer writing health insurance policies; any preferred provider organization, health maintenance organization, self-insurance plan; or any other person or entity which provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits to persons treated by a health care provider in this state pursuant to any policy, plan or contract.

(26) Person--An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

(27) Physician--A licensed doctor of medicine or a doctor of osteopathy.

(28) Practicing healthcare provider--A health care provider who is engaged in diagnosing, treating, and/or offering to treat any mental or physical disease or disorder or any physical deformity or injury or performing such actions with respect to individual patients.

(29) Provider of record--The physician or other health care provider that has primary responsibility for the care, treatment, and services rendered to the enrollee or the physician or health care provider that is requesting or proposing to provide the care, treatment and services to the enrollee and includes any health care facility when treatment is rendered on an inpatient or outpatient basis.

(30) Retrospective review--A system in which review of the medical necessity and appropriateness of health care services provided to an enrollee is performed for the first time subsequent to the completion of such health care services. Retrospective review does not include subsequent review of services for which prospective or concurrent reviews for medical necessity and appropriateness were previously conducted.

(31) Screening criteria--The written policies, decision rules, medical protocols, or guides used by the utilization review agent as part of the utilization review process (e.g., appropriateness evaluation protocol (AEP) and intensity of service, severity of illness, discharge, and appropriateness screens (ISD-A)).

(32) Utilization review--A system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within the state. Utilization review shall not include elective requests for clarification of coverage.

(33) Utilization review agent--An entity that conducts utilization review, for an employer with employees in this state who are covered under a health benefit plan or health insurance policy, a payor, or an administrator.

(34) Utilization review plan--The screening criteria and utilization review procedures of a utilization review agent.

(35) Working day--A weekday, excluding New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

§19.1708. Utilization Review Agent Contact with and Receipt of Information from Health Care Providers.

(a) A health care provider may designate one or more individuals as the initial contact or contacts for utilization review agents seeking routine information or data. In no event shall the designation of such an individual or individuals preclude a utilization review agent or medical advisor from contacting a health care provider or others in his or her employ where a review might otherwise be unreasonably delayed or where the designated individual is unable to provide the necessary information or data requested by the utilization review agent.

(b) Unless precluded or modified by contract, a utilization review agent shall reimburse health care providers for the reasonable costs for providing medical information in writing, including copying and transmitting any requested patient records or other documents. A health care provider's charge for providing medical information to a utilization review agent shall not exceed the cost of copying set by rules of the Texas Workers Compensation Commission for records and may not include any costs that are otherwise recouped as a part of the charge for health care.

(c) When conducting routine utilization review, the utilization review agent shall collect only the information necessary to certify the admission, procedure, or treatment and length of stay. This information may include identifying information about the patient and enrollee, the benefit plan, the treating health care provider, and facilities rendering care. It may also include clinical information regarding the diagnoses of the patient and the medical history of the patient relevant to the diagnoses; the patient's prognosis; and the treatment plan prescribed by the treating health care provider along with the provider's justification for the treatment plan. Second opinion information may also be required when applicable, sufficient to support benefit plan requirements. These items shall only be requested when relevant to the utilization review in question and be requested as appropriate from the beneficiary, plan sponsor, health care provider, or health care facility. The required information should be obtained from the appropriate source since no one source will have all of this information.

(1) Utilization review agents shall not routinely require hospitals and physicians to supply numerically codified diagnoses or procedures to be considered for certification. Utilization review agents may ask for such coding, since if it is known, its inclusion in the data collected increases the effectiveness of the communication.

(2) Utilization review agents shall not routinely request copies of medical records on all patients reviewed. During prospective and concurrent review, copies of medical records should only be required when a difficulty develops in certifying the medical necessity or appropriateness of the admission or extension of stay. In those cases, only the necessary or pertinent sections of the record should be required.

(d) Information in addition to that described in this section may be requested by the utilization review agent or voluntarily submitted by the health care provider, when there is significant lack of agreement between the utilization review agent and health care provider regarding the appropriateness of certification during the review or appeal process. "Significant lack of agreement" means that the utilization review agent:

(1) has tentatively determined, through its professional staff, that a service cannot be certified;

(2) has referred the case to a physician for review; and

(3) has talked to or attempted to talk to the health care provider for further information.

(e) The utilization review agent should share all clinical and demographic information on individual patients among its various divisions (e.g., certification, discharge planning, case management) to avoid duplicate requests for information from enrollees or providers.

(f) Notwithstanding any other provision of this chapter, a utilization review agent may not require as a condition of treatment approval, or for any other reason, the observation of a psychotherapy session or the submission or review of a mental health therapist's process or progress notes that relate to the mental health therapist's treatment of a patient's mental or emotional condition or disorder. This prohibition extends to requiring an oral, electronic, facsimile, or written submission or rendition of a mental health therapist's process or progress notes. This does not preclude the utilization review agent from:

(1) requiring submission of a patient's mental health medical record summary or

(2) requiring submission of medical records and/or process or progress notes that relate to treatment of conditions or disorders other than a mental or emotional condition or disorder.

§19.1715. Retrospective Review of Medical Necessity.

(a) When a retrospective review of the medical necessity and appropriateness of health care service is made under a health insurance policy or plan:

(1) such retrospective review shall be based on written screening criteria established and periodically updated with appropriate involvement from physicians, including practicing physicians, and other health care providers; and

(2) the payor's system for such retrospective review of medical necessity and appropriateness shall be under the direction of a physician.

(b) When an adverse determination is made under a health insurance policy or plan based on a retrospective review of the medical necessity and appropriateness of the allocation of health care resources and services, the payor shall afford the health care providers the opportunity to appeal the determination in the same manner afforded the enrollee, with the enrollee's consent to act on his or her behalf, but in no event shall health care providers be precluded from appeal if the enrollee is not reasonably available or competent to consent. Such appeal shall not be construed to imply or confer on such health care providers any contract rights with respect to the enrollee's health insurance policy or plan that the health care provider does not otherwise have.

(c) When a retrospective review of the medical necessity and appropriateness of health care service is made under a health insurance policy or health benefit plan, the submission or review of a mental health therapist's process or progress notes that relate to the mental

health therapist's treatment of a patient's mental or emotional condition or disorder may not be required. This prohibition extends to requiring an oral, electronic, facsimile, or written submission or rendition of a mental health therapist's process or progress notes. This does not preclude:

(1) requiring submission of a patient's mental health medical record summary or

(2) requiring submission of medical records and/or process or progress notes that relate to treatment of conditions or disorders other than a mental or emotional condition or disorder.

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 December 18, 2000.

TRD-200008743
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 7, 2001
Proposal publication date: September 29, 2000
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER N. LIFE INSURANCE ILLUSTRATIONS

28 TAC §21.2209

The Commissioner of Insurance adopts amendments to §21.2209 concerning delivery of illustrations and records retention on life insurance illustrations. The section is adopted without changes to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5796) and will not be republished.

The amendments are necessary to add a new paragraph (5) to the section to include language that permits the showing of a diligent effort to obtain a signed copy of the numeric summary page.

Subchapter N, Life Insurance Illustrations, was based upon and incorporated nearly all of the Life Insurance Illustrations Model Regulation adopted by the National Association of Insurance Commissioners on December 6, 1995. The amendment, like the NAIC model, provides that if the illustration is sent by mail, an insurance producer, or other authorized representative, or the insurer itself, shall make a diligent effort to obtain a signed copy of the numeric summary page. The diligent effort requirement shall be deemed satisfied if a self-addressed prepaid envelope is provided with the illustration mailing. The amendment requires the insurer to retain a copy of the signed numeric summary obtained from the insured. In addition, the amendment made clarification and grammatical changes.

Section 21.2209(a)(3): One commenter requested changes to the language in subsection (a)(3) concerning the procedures to be followed if an illustration is not used in the sale of life insurance policy. The commenter noted that some life insurance policies will be sold without the use of an illustration if, pursuant to §21.2205(a), the policy is identified as a policy that will not be illustrated, and in that case, the provisions in §21.2209(a)(3) should not apply.

Agency Response: The department agrees that §21.2209(a)(3) will not apply to a life insurance policy form identified as a form that will not be illustrated pursuant to §21.2205(a). The department does not believe that additional changes are necessary.

Section 21.2209(a)(5): A commenter stated that allowing insurers to send proof of illustrations by mail rather than delivery in person could lead to confusion of consumers due to the lack of available advice from a producer or other insurance representative. The commenter also suggested that the rule should not require a signature from the consumer as some consumers may not be aware of what is being signed and may mistake the duplicate copy of the numeric summary page to be signed as some type of legal waiver. The commenter also objected to allowing the insurer to show a diligent effort to secure a signed copy of the numeric page by including a self-addressed postage prepaid envelope and instructions for return in order to meet the requirements of §21.2209.

Agency Response: The department notes that the subchapter regulating life insurance illustrations imposes certain standards for life insurance illustrations. These standards include general rules, formats, and prohibitions for life insurance illustrations. The standards are designed in such a way as to eliminate confusion among consumers. Allowing delivery of a life insurance illustration by mail does not make the life insurance illustration more or less understandable. The requirement that an insurer make a diligent effort to obtain a signed copy of the numeric summary page increases the likelihood that a consumer will have the opportunity to read the life insurance illustration and consider the information presented therein.

For, with changes: Sneed, Vine & Perry. Against: Office of Public Insurance Counsel.

The amendments are adopted under the Insurance Code Article 21.21 and §36.001. Article 21.21, §13 authorizes the commissioner to promulgate reasonable rules as necessary to accomplish the purposes of Article 21.21 in the regulation of trade practices in the business of insurance by defining, or providing for the determination of all practices of this state which constitute unfair methods of competition or unfair or deceptive acts or practices. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance.

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

Filed with the Office of the Secretary of State on December 11, 2000.

TRD-200008645
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: December 31, 2000
Proposal publication date: June 16, 2000
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

SUBCHAPTER B. PROVISIONS PERTAINING TO USE OF CAPITALIZATION GRANT FUNDS

DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.212

The Texas Water Development Board (the board) adopts amendments to 31 TAC §375.212, concerning the Clean Water State Revolving Fund without changes to the proposed text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10879) and will not be republished. The amendments are adopted to correct punctuation and add a new paragraph to §375.212 to update the rules.

Section 375.212 is amended to add new paragraph (29), adding Davis-Bacon Act requirements to a list of federal requirements applicable to all projects receiving assistance from the Clean Water State Revolving Fund which are constructed in whole or in part with funds directly made available by capitalization grants. The U.S. Environmental Protection Agency has proposed that a condition be added to all capitalization grant agreements entered into between E.P.A. and the states under Title VI of the Clean Water Act on or after January 1, 2001, requiring the states to ensure that the requirements of Section 513 of the Clean Water Act, which relates to Davis-Bacon Act requirements, will be applied to publicly owned treatment works receiving Clean Water State Revolving Fund assistance under those agreements. The applicable Davis-Bacon Act provisions relate to payment of prevailing wage rates. Pursuant to a proposed settlement agreement between the E.P.A. and the Building and Construction Trades Department, AFL/CIO, such requirements will also be applied to all capitalization grant agreements entered into between E.P.A. and the states under Title VI of the Clean Water Act on or after January 1, 2001. The amendment will bring Board rules into compliance with this proposed E.P.A. requirement. Amendments are also adopted to correct punctuation in paragraphs §375.212(25) through §375.212(28).

There were no comments received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

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

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

TRD-200008676

Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: January 3, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 463-7981

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 347. TITLE IV-E FEDERAL FOSTER CARE PROGRAM

37 TAC §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21

The Texas Juvenile Probation Commission adopts amendments to Chapter 347 §347.1, §347.3, §347.5, §347.7, §347.9, §347.11, §347.13, §347.15, §347.17, §347.19, and §347.21 concerning standards relating to Title IV-E. The following rules shall be adopted with changes to the proposed text as published in the August 25, 2000 issue of the *Texas Register* (25 TexReg 8354) and will be republished.

TJPC adopts these rules in an effort to come in to compliance with Adoption and Safe Families Act, Public Law 105-89, as enacted in January 2000.

The following public comments were received:

Public comment: Public comment was received by Bexar County Juvenile Probation which suggested using acronym of Temporary Assistance to Needy Families brings standard into compliance with correct terminology.

Agency response: The AFDC program has been renamed as Temporary Assistance to Needy Families (TANF). However, Title IV-E eligibility continues to be based on AFDC criteria as it was in effect on July 16, 1996. This information will be added to the definition of Aid to Families with Dependent Children to clarify the distinction.

Public comment: Public comment was received by Bexar County Juvenile Probation. Eligibility of a child for IV-E financial support should not be based on whether the facility is primarily for "the detention of children who are determined to be delinquent," but on the eligibility of the child. There are many children in the juvenile justice system whose circumstances and needs are indistinguishable from many children under the State's managing conservatorship.

Agency response: The Texas Juvenile Probation Commission agrees that there are many children in the juvenile justice system whose circumstances and needs are indistinguishable from many children under the State's managing conservatorship. However, this definition is consistent with federal law as stated at 42 USC 672(c) and CFR 1355.20(a). No change.

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

§347.1. Introduction.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) is the state agency in Texas that administers Title IV-E of the Social Security Act (42 United States Code §§670 et seq.). The federal government reimburses TDPRS for part of the foster care costs of eligible children served by TDPRS. This law was enacted to establish a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, to improve the programs for child welfare, social services, and aid to families with dependent children, and for other purposes. In addition, to be eligible for this program, TDPRS must manage the cases of eligible children in compliance with standards set in the Social Security Act, 42 USC §622. These requirements ensure careful management of a child's case. They require a case plan and a case review system designed to return children to their families or some other permanent plan at the earliest possible date. They require a system to track the location of children in placement, even when they run away. It also includes protection of families' and children's rights.

(b) The Texas Juvenile Probation Commission (TJPC) has contracted with TDPRS to make these federal funds available to reimburse part of the foster care costs of eligible children in the juvenile justice system. TJPC is willing to contract with any juvenile board which meets the federal requirements for Title IV-E and the Social Security Act, 42 USC §622. A juvenile board that wants to contract with TJPC to access these funds must perform in the ways described in the following rules, and in certain rules of the TDPRS referred to in these rules.

§347.3. Definitions.

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

(1) Administrative review--A review open to the participation of the caregiver and parents of the child. The purposes of the review are to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the extent of progress on issues that led to the child's removal from the home, and to project a likely date for permanency.

(2) Aid to families with dependent children (AFDC)--A financial assistance program available to low-income families who meet categorical requirements described in 40 TAC Part 1, Chapter 3. The ADFC program has been renamed Temporary Assistance for Needy Families (TANF). However, Title IV-E eligibility continues to be based on AFDC criteria in effect on July 16, 1996.

(3) Billing level of care--Rate of payment based on the level of services a facility is licensed or approved to provide.

(4) Caregiver or substitute care facility--Any IV-E approved facility or foster family.

(5) Date of actual placement--The date the child enters an eligible foster care setting.

(6) Disposition order--A court order that results in the child's placement in substitute care.

(7) TJPC eligibility specialist--A person employed and trained by TDPRS to make IV-E eligibility determinations.

(8) Initial order of removal--The first order that removes the child from the home and which culminates in the child's placement in substitute care without the child having returned to the home.

(9) Juvenile board--An administrative body established by state statute that is responsible for the provision of juvenile probation services within a defined jurisdiction.

(10) Juvenile court--A court designated by the juvenile board under the Texas Family Code, §51.04, or other state law, which hears cases involving delinquent conduct or conduct indicating a need for supervision.

(11) Level of care--A numerical rating based on an assessment of the services a child will need while in substitute care.

(12) Permanency hearing--A judicial hearing required by 42 USC §675. The hearing must be held no later than 12 months after the child's date of actual placement in a Title IV-E approved facility, and every 12 months thereafter throughout the child's stay in substitute care.

(13) Permanency plan--A description of the planned living arrangement for the child following a stay in substitute care. It may include, but is not limited to:

(A) return to parent;

(B) placement with a relative(s);

(C) emancipation/independent living;

(D) long-term institutional care; or

(E) adoption.

(14) Reasonable efforts--Judicial findings regarding efforts made to prevent or eliminate the need to remove the child from the home, and if the child must be removed, judicial findings regarding efforts made to finalize the permanency plan.

(15) Specified relative-A relative within the degree of relationship specified under AFDC rules with whom the child lived within six months prior to removal from the home.

(16) Substitute care-the placement of a child in a foster home, residential treatment center, or other child care institution.

(17) Texas Department of Protective and Regulatory Services (TDPRS)-the state agency responsible for the administration of the Title IV-E program in Texas.

(18) Title IV-E (IV-E)--A federal foster care program established under 42 USC §§670 et seq. which, among other things, assists states with the cost of care for children who qualify for financial assistance through the Aid to Families with Dependent Children Program, and who meet the eligibility requirements described in 42 USC §672(a).

(19) Title IV-E approved facility--Facilities licensed and/or approved by the Texas Department of Protective and Regulatory Services (TDPRS) for Title IV-E participation.

§347.5. Specific Language Required in Court Orders.

(a) The initial order of removal shall be issued no later than six months after the last day on which a child lived with a specified relative and shall include one of the following findings:

(1) "The court finds that it is in the best interest of the child for the child to be placed outside of (his or her) home"; or

(2) "The court finds that continuation in the home is contrary to the child's welfare";

(b) The initial order of removal or any subsequent orders shall include the following additional findings:

(1) "The court finds that reasonable efforts have been made to prevent or eliminate the need for the child to be removed from (his or her) home, and to make it possible for the child to return to (his or her) home". The safety of the child is of paramount concern when determining the level of reasonable efforts that are necessary. This finding

must be entered within 60 days of the child's removal from the home; and

(2) "It is ordered that the (name of county in which the court's jurisdiction arises) juvenile probation department be responsible for the child's care and placement"; and

(3) "The court finds that the child has been removed from (his or her) home and the court approves the removal."

(c) A child is not IV-E eligible until the findings described in subsection (a) and (b) of this section have been made and all other IV-E eligibility requirements are met.

(d) Findings regarding reasonable efforts and best interest of the child must be based on documentation of the child's specific circumstances and so stated in the court order.

§347.7. Screening and Certification of IV-E Juveniles.

(a) The juvenile board shall ensure that the juvenile probation department develops and implements a procedure to screen all children placed outside the home by the juvenile court for the following IV-E eligibility criteria:

(1) whether court orders used to remove the child from the home contain language required by §347.5; and

(2) whether the child would have been eligible for AFDC at the time of removal from a specified relative; and

(3) whether the child has been placed in a IV-E eligible setting as described in §347.9.

(b) If a child meets the requirements in subsection (a) of this section the juvenile probation department shall complete and submit to TJPC within 30 working days of the child's date of actual placement a foster care assistance application with all required attachments.

(c) TJPC shall forward the application to the Eligibility Specialist who shall determine the child's IV-E eligibility and notify TJPC in writing of the child's IV-E eligibility status. TJPC shall notify the juvenile probation department of the determination

(d) A juvenile probation department has the right to appeal any eligibility determination. The department shall submit the appeal to TJPC in writing. TJPC shall forward the appeal to TDPRS for a ruling and report the results of the ruling to the department.

§347.9. Placement in IV-E Approved Facilities.

(a) Facilities shall be licensed or approved by TDPRS to be eligible for Title IV-E participation.

(b) Facilities eligible for IV-E participation include:

(1) private residential facilities which are licensed or certified as:

(A) an emergency shelter;

(B) a foster family home;

(C) a foster group home;

(D) a therapeutic foster family home;

(E) a therapeutic foster group home;

(F) a residential treatment center;

(G) a maternity home;

(H) a halfway house;

(I) a child placing agency;

(J) a therapeutic camp; or

(K) a basic child care facility as these facilities are defined in 40 TAC Chapter 720.

(2) public residential child care institutions which:

(A) meet the definition of one of the facilities in paragraph (1) of this subsection;

(B) are licensed or certified for no more than 25 children; and

(C) are not operated primarily for the detention of children determined to be delinquent.

(c) Facilities not licensed by TDPRS shall comply with minimum licensing standards equivalent to those described in 40 TAC §720.

(d) A juvenile board may assist a facility who meets the requirements of subsection (b)(1) or (b)(2) of this section in obtaining approval from TDPRS for IV-E participation by ensuring that the following information is provided to TJPC:

(1) the type of license or certification held by the facility;

(2) the agency that issued the certification or license;

(3) whether the facility is a private residential facility or a public residential child care institution as those terms are defined in subsection (b)(1)(2) of this section;

(4) a description of the facility;

(5) a description of the services provided by the facility and corresponding per diem rates; and

(6) a copy of the written agreement between the facility and the juvenile probation department, if one exists.

(e) For programs operated by a juvenile board and administered by a juvenile probation department, the juvenile board shall verify that upon approval for participation in the Title IV-E program, the department shall:

(1) complete cost reports as required by TDPRS and obtain approval of the report by an independent auditor;

(2) implement procedures to ensure compliance with TDPRS or equivalent licensing standards; and

(3) allow TJPC or its designee to conduct quality assurance monitoring to measure compliance with levels of service provision as determined by TDPRS standards.

(f) For private facilities that are approved for participation in the Title IV-E program but that are not under contract with TDPRS, the juvenile board shall ensure that the provider:

(1) completes a cost report as required by TDPRS and obtains approval of the report by an independent auditor;

(2) implements procedures to ensure compliance with TDPRS or equivalent minimum licensing standards; and

(3) contracts with an independent party to measure compliance with levels of service provision in accordance with TDPRS standards.

§347.11. Eligibility Recertification.

(a) The juvenile board shall ensure that the juvenile probation department administers a process to recertify a child's IV-E eligibility status six months from the child's date of actual placement and every six months thereafter.

(b) The juvenile board shall ensure that the juvenile probation department:

(1) develops and implements procedures to track each child's IV-E eligibility status and recertification date; and

(2) submits to TJPC the foster care assistance review information every six months or when changes affecting eligibility occur.

(c) TJPC shall forward the foster care assistance review information to the Eligibility Specialist who shall make a redetermination of the child's IV-E eligibility and notify TJPC in writing of the child's eligibility status. TJPC shall notify the department of the determination.

(d) A department has the right to appeal any eligibility determination as described in section 347.7(d).

§347.13. Family Reunification.

(a) The Child/Family Case Plan includes family reunification services. The juvenile board shall ensure that the juvenile probation department:

(1) assesses the home situation and offers services to the family to help them safely resume supervision, care, and control of the child;

(2) plans for permanent placement for a child, if a child cannot safely return home; and

(3) documents in the child's case record a chronology of all contacts and services offered to the family, child, and caregiver.

(b) The juvenile board shall ensure that the juvenile probation department maintains contact with the child, the child's family, and the caregiver monthly, or more frequently as required by the child/family case plan.

§347.15. Case Plan and Review System.

(a) The juvenile board shall ensure that the juvenile probation department develops a case plan that meets the requirements of 42 USC §675 for each IV-E eligible child within 30 working days of the child's date of actual placement. The case plan shall outline actions designed to facilitate the safe return of the child to his or her own home or other permanent placement and assure that the child receives safe and proper care while in substitute care.

(b) The status of each IV-E eligible child shall be reviewed periodically but no less frequently than once every six months from the date of actual placement. The purpose of the review is to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the extent of progress on issues that led to the child's removal from the home, and to project a likely date for permanency. The review may be a judicial review or an administrative review, and shall be open to the participation of the parent and the caregiver. If the review is an administrative review, it shall be conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of or the delivery of services to either the child or the parents who are the subject of the review. Others with a legitimate interest in the child's welfare who may participate in the review include the juvenile probation officer, the probation officer's supervisor, the child's counselor, the child's attorney, guardian ad litem, and a representative from the child's school.

(c) A permanency hearing open to the participation of the parent and the caregiver shall be held for each child no later than 12 months after the child's actual date of placement and every 12 months thereafter. The juvenile board shall ensure that the juvenile probation department provides sufficient information for the court to review the child's status as described in subsection (b) of this section and to determine whether:

(1) the permanency plan for the child is appropriate;

(2) reasonable efforts to finalize the permanency plan have been made;

(3) for a child 16 or older, services are needed to assist the child in the transition to independent living;

(4) for a child placed outside the state, whether the placement continues to be in the best interests of the child; and

(5) procedural safeguards have been applied regarding parental rights to notification regarding removal of the child from the home, any change in the child's placement, and any determination affecting parental visitation privileges.

(d) In accordance with 42 USC 675(5)(E) the juvenile probation department shall notify the appropriate local entity responsible for filing a petition to terminate parental rights for any child who has been in substitute care under the responsibility of the juvenile court for 15 of the most recent 22 months unless:

(1) the child is being cared for by a relative; or

(2) the child's case plan includes documentation of the compelling reason that such a petition would not be in the best interests of the child; or

(3) the family has not been provided services described in the case plan as being necessary for the safe return of the child to the child's home.

§347.17. Information System.

(a) The juvenile board shall ensure that the juvenile probation department establishes and maintains a system to track at least the following for children in substitute care:

(1) current level of care;

(2) name, date of birth, ethnicity, and sex;

(3) present location;

(4) permanency plan; and

(5) who is responsible for the child's care and placement.

(b) The juvenile board shall ensure that the juvenile probation department notifies TJPC within 5 days of any changes in the child's location or any other change that would affect the child's eligibility

§347.19. Foster Care Assistance Payments.

(a) A juvenile board shall ensure that the juvenile probation department submits to TJPC:

(1) a request for reimbursement of substitute care costs by the tenth of the month following the month in which the services were provided.

(2) a request for reimbursement of IV-E related administrative expenses within 30 working days of the close of each TJPC fiscal quarter; and

(3) a request for correction of a prior month's reimbursement as soon as any discrepancy or need for adjustment is discovered.

(b) TJPC shall review all reimbursement requests for accuracy and forward the requests to TDPRS for payment. All payments are contingent on the availability of federal funds and shall be forwarded to juvenile probation departments upon receipt from TDPRS.

§347.21. Program Monitoring.

(a) The juvenile board shall allow staff from TJPC to review IV-E case management systems and case records, fiscal operations, and Title IV-E approved residential programs operated by the juvenile

board for compliance with TJPC, TDPRS, and related federal standards. These reviews shall be conducted on a regular basis as determined by TJPC.

(b) TJPC shall notify the juvenile board in writing of the monitoring results.

(c) The juvenile board shall ensure that the juvenile probation department responds to written notice of noncompliance with a written corrective action plan that includes a projected date of compliance within 30 working days of receipt of the notice.

(d) If a juvenile probation department fails to respond to the written notice of noncompliance, or continues to be out of compliance with one or more of these rules, then TJPC may pursue further action, which may include one or more of the following:

(1) arranging a meeting with the juvenile probation department to discuss:

(A) problems with noncompliance and reasons for noncompliance;

(B) identification of needed resources to assist with correcting problem areas; and

(C) strategies to correct problem areas;

(2) requiring a written corrective action plan and expected date of compliance to be submitted to TJPC within 30 working days of conference date;

(3) suspending federal funds to the juvenile probation department temporarily until compliance with federal standards is accomplished;

(4) requiring the juvenile probation department to reimburse funds to TJPC; and

(5) terminating the IV-E contract between TJPC and the juvenile board.

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 December 18, 2000.

TRD-200008772
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: January 7, 2001
Proposal publication date: August 25, 2000
For further information, please call: (512) 424-6710

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABABILITIES

40 TAC §§189.2, 189.5-189.12

Adoption Preamble

Introduction. The Texas Council on Purchasing from People with Disabilities (TCPPD or the council) adopts amendments and new rules to Title 40, T.A.C, Chapter 189 concerning the Purchase of Products and Services from People with Disabilities as published. Amendments to §§189.8, 189.9, 189.10 and 189.11 are adopted without changes to the proposed text; amendments to §§189.2, 189.5 and 189.7 are adopted with changes to the proposed text; and new §189.6 and 189.12 are adopted with changes to the proposed text that was published in the October 13, 2000 issue of the *Texas Register* (25 TexReg.10317).

Reasoned Justification.

As required by the Government Code, §2001.033(1), the council's reasoned justification is set out in the preamble. The reasoned justification is contained throughout the preamble, including the reasons why the amendments and new rules are necessary and the benefits that will be provided; a summary of the factual basis of the rules as adopted; names of those who commented and whether the entities were for or against adoption of portions of the amended and new rules; a summary of comments received and the reasons why the agency agreed or disagreed with some of the comments, submissions, and proposals.

In formulating these new and amended rules, the council carefully and fully analyzed all of the statutory and policy mandates and objectives and all the facts and evidence available and submitted, as well as all comments received. The council utilized all of this information, along with its expertise and experience, to formulate these new and amended rules which balance the statutory mandates to provide meaningful employment to persons with disabilities with the statutory mandate to offer for sale products and services from the state use program to state agencies and political subdivisions at a fair market price and according to applicable specifications. Full and objective analysis and consideration was given to all comments received.

Changes in the proposed rules were made in response to the public comments received and considered by the council. These changes also include revisions for consistency, sequential order to accommodate deletions or additional paragraphs, clarification, or to correct typographical or grammatical errors. Legal counsel has advised the council that the changes affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the proposed rules. Accordingly, republication of the adopted sections as proposed amendments is not required.

A complete description of the changes in the proposed text made in response to public comment is found in the summaries of comments and responses which follow.

How the Rules Will Function.

The adopted amendments and new rules establish the following benefits for the state use program: clarification of understanding of the state use program, clarification of purposes of the TCPPD meetings; definition of criteria for recognition and approval of entities eligible for participation in the state use program to ensure the statutory purpose of the program is fulfilled; explanation of

TCPPD's role in overseeing the state use program, clarification of duties and contract provisions of a central nonprofit agency and fulfillment of reporting requirements; clarification of product specifications and exceptions; development of criteria for determining fair market prices of products and services from persons with disabilities; explanation of the consequences for noncompliance with the statute and rules, provision of better notice to the entities affected; correct citation of the law; and further development of standards for the central nonprofit agency to assure the council fulfills its duty to objectively oversee management of the program.

The changes made in response to the proposed rules as a result of the comments and summarized as follows: 1) Section 189.2(9) was amended to include applicable provisions of the enabling statute, §§ 122.014 and 122.016, Human Resources Code for clarity and conformity with the rules in response to the comments. 2) Section 189.5(g) was added to provide a notice provision in the rules to delineate the council's process for resolving protests and complaints in response to comments. 3) Section 189.6(c) was amended to replace "personnel" with "human resource functions" for clarity. 4) Section 189.6(d) was amended by deleting the reference to "support services" for clarity. Other clarification language was added as shown in the response to the comments. 5) Section 189.6(e) was deleted as well as a parallel portion of §189.6(j), which was relocated at subsection (h). In response to comments, the council deleted the requirement that CRPs use a competitive process to obtain raw materials because the council agrees that there is no such requirement in Chapter 122, Human Resources Code. 6) Section 189.6(f) was relocated to subsection (e) and the language was amended in the response to the comments, to include benefits in the calculation of the thirty-five percent (35%) minimum of the contract price for services approved for the state use program. 7) Section 189.6(g) was relocated to subsection (f) to accommodate changes to the proposed rules. 8) Section 189.6(i) was relocated to subsection (g) and amended to appropriately include political subdivisions in the rule as required by Chapter 122, Human Resources Code. 9) Section 189.6(h) in the proposed rules was deleted because it was duplicative of subsection (n) which was relocated at subsection (m). 10) A portion of §189.6(j) was relocated to subsection (i) and amended to appropriately include political subdivisions in the rule as required by Chapter 122, Human Resources Code. 11) A portion of §189.6(j) was relocated to subsection (h) and the language was amended to provide clarity as stated in the response to the comments. 12) Section 189.6(k) was relocated at subsection (j) to accommodate sequential changes to the proposed rules. 13) Section 189.6(m) was relocated at subsection (l) to accommodate sequential changes to the proposed rules. 14) Section 189.7(g) reflects an amendment in the language that the CNA's records be submitted to the council rather than to another CNA in the event of a transition to assure the appropriate application of the Public Information Act in response to the comments. 15) Section 189.7(l)(2) is amended, in response to the comments, to reflect council's understanding that the state use program is not intended to encompass the CNA's activity in the private sector. 16) Section 189.7(l)(8)(A) was amended, in response to the comments, to reflect the council's acknowledgment that a thirty (30) day payment period may adversely affect some CRPs. 17) Section 189.9(a) deleted the reference to §2155.441, Government Code, because it is a preference and not an exemption to competitive bidding. 18) Section 189.12(b)(2) was amended to provide clarity of goals regarding resolution of customer complaints. 19) Section 189.12(b)(8) was amended, in response to comments, to more clearly define the council's expectations of the CNA in regard to the CRP's purchasing records to facilitate the annual report. 20) Section 189.12(b)(9) was amended, in response to comments, to reflect council's understanding that the state use program is not intended to encompass the CNA's activity in the private sector. 21) Section 189.12(b)(10) was amended to clarify that the rule refers to conflicts between the CRP and the CNA and the portion of the rule that referred to five complaints per year was deleted because it was redundant. 22) Section 189.12(b)(11) was deleted because the language was redundant. 23) Sections 189.12(b)(12), (13), (14), (15), and (16) were relocated at subsections (11), (12), (13), (14), and (15) respectively to accommodate sequential changes in the proposed rules.

Summary of Comments and Reasons Why Council Agrees or Disagrees with Comments.

Fourteen entities submitted comments on the proposed new and amended rules as published in the October 13, 2000 issue of the *Texas Register* (25 TexReg. 10317) from Andrews Diversified Industries; Burke Center; Coalition of Texans with Disabilities; Concho Resource Center; Gray & Becker, P.C. on behalf of TIBH Industries, Inc.; Marian Moss Enterprises Inc.; On Our Own Services, Inc.; Small Business United of Texas; St. Vincent De Paul Rehabilitation Services of Texas, Inc., d/b/a Peak Performers; Texas Association of Business & Chambers of Commerce; Texas Association of Goodwills; National Federation of Independent Business - Texas; West Texas Lighthouse for the Blind; and Vinson & Elkins L.L.P. on behalf of Pitney Bowes, Inc.

Comments expressing general support for the amended and new rules were received from Burke Center; Coalition of Texans with Disabilities; National Federation of Independent Business - Texas; Small Business United of Texas; Texas Association of Business & Chambers of Commerce; and Vinson & Elkins L.L.P. on behalf of Pitney Bowes, Inc.

Comments expressing opposition to portions of the proposed amended and new rules and/or suggesting revisions to portions of the amended and new rules were received from Andrews Diversified Industries; Concho Resource Center; Gray & Becker on behalf of TIBH Industries, Inc.; On Our Own Services, Inc.; Marian Moss Enterprises Inc.; Texas Association of Goodwills; St. Vincent De Paul Rehabilitation Services of Texas, Inc., d/b/a Peak Performers; and West Texas Lighthouse for the Blind.

Comments to the proposed rules are summarized below with reasons why the council agrees or disagrees with the comments. An asterisk (*) before each comment indicates the comment was submitted by a singular entity.

Comment: Proposed Rule Preamble - *The fiscal impact on CRPs related to the reporting requirements cannot be determined at this time. This entity suggested that all parties be allowed to determine the fiscal impact, report to the council, and after approval from the council, pass the cost on to the customer.

*The cost of implementing the rules and recordkeeping requirements will knock the CRPs out of every negotiation with every agency on a contract. There is no room in pricing for additional record-keeping costs.

*There is no doubt that rules generate more compliance requirements for the CNA, CRPs, vendors, and related parties and the language "some new reporting and recordkeeping requirements" does not accurately reflect the real situation. There is a concern

that cost of operations will increase due to the proposed rules which will further erode the competitiveness of the CRPs.

*The determination of no fiscal implications for the proposed rules is incorrect because there is potential for a tremendous increase in the number of man- hours that will be required by CRPs and the CNA to implement the rules. CNA time spent on identifying new work situations will be reassigned to paperwork and bureaucracy.

Response: The council disagrees with comments. The fiscal impact language in the proposed preamble indicates no fiscal impact to state and local governments. Most of the specified information is already provided to the CNA. The council believes that any additional expense imposed on CRPs or the CNA as a result of complying with the proposed rules will be outweighed by the anticipated public benefits of enhanced fiscally responsible oversight and fulfillment of the state use program's purpose of assisting persons with disabilities to achieve independence through productive employment in accordance with §122.001, Human Resources Code. This information will enable the council to ascertain whether criteria for participation in the state use program are met pursuant to its responsibilities under §122.003(j), Human Resources Code.

Comment: §189.2(5) and §189.6(b) - *One entity expressed concern that a definition which requires a CRP to exist for the primary purpose of employing persons with disabilities to produce products or services will eliminate some legitimate CRPs from participating in the state use program. For example, those CRPs whose primary purpose is to rehabilitate persons with disabilities, but only employ a few persons with disabilities to produce products, will be adversely affected.

*The language, "primary purpose of employing persons with disabilities" should not be required since some entities provide an array of services to the disabled including sheltered employment, but do not have the employment of persons with disabilities as a primary purpose.

*The language should not freeze out legitimate CRPs that may be quasi-governmental, exist under a "group exemption letter" from the IRS which grants a tax exception to a central authority which is effective for its local affiliates, or CRPs that have language in articles or bylaws that do not state the primary purpose of employing persons with disabilities.

*Two comments were received indicating that the federal tax identification requirement in the definition does not apply to governmental entities.

*All private CRPs must be incorporated and the governmental entities should be related to the state mental health and mental retardation system.

*The language "private nonprofit unincorporated entity which has its own nonprofit status and federal tax identification number" should be deleted because it is a legal conundrum that runs contrary to the Texas Nonprofit Corporations Act and the IRS Code of 1986, as amended. The word "status" suggests independent authority outside the council which is empowered to grant such status. There are only two authorities governing qualifying nonprofit entities: the Secretary of State and the IRS. The "primary purpose" language is excessively restrictive and exclusive of many other purposes.

*Language that requires a CRP to have as its primary purpose, the employment of people with disabilities, would eliminate all MHMR centers in the state.

Response: The council disagrees with the comments. The proposed definition of a CRP complies with §122.002(3), Human Resources Code, which requires that a government or nonprofit private program employ persons who produce products or perform services for compensation in order to be classified as a CRP. Administration of this program requires the council to establish criteria for CRPs consistent with the definition in the proposed rules to adequately determine eligible and non-eligible participants in the state use program and comply with §122.002(3) and §122.003(j), Human Resources Code.

Also, proposed rules §189.6(l)(1) and (2), now relocated at §189.6(k)(1) and (2), allow the council the discretion to recognize CRPs that maintain accreditation by a nationally accepted vocational rehabilitation accrediting organization and approve CRPs services that have been approved for purchase by a state habilitation or rehabilitation agency. These categories of CRPs are in addition to those that meet definitional criteria.

In response to the last comment as listed above, it is noted that a purchasing preference is allowed in the state procurement competitive bid process for products from a workshop, organization or corporation whose primary purpose is training and employing persons having mental retardation or physical disability as provided by §2155.441, Government Code.

The language of the proposed rule only requires a private nonprofit incorporated or private nonprofit unincorporated entity to obtain a federal tax identification number. A private nonprofit unincorporated entity may obtain a federal tax identification number and may apply for tax exemption under IRS Ruling 67-390, 1967-2 Cumulative Bulletin 179 and 501(c)(3) of the Internal Revenue Code.

Comment: §189.2(9) - *Three comments stated that the proposed rule is in conflict with state use program statutes and §2155.138 and §2155.069, Government Code do not apply to the enabling statutes under the Human Resources Code.

*The definition is vague, could lead to abuse and appears to be contrary to §122.016, Human Resources Code.

*Purchasing authority for the state use program should come only from the enabling statute in §122.016. Multiple applicable codes create confusion and could result in loss of sales to CRPs.

*An exception situation should flow first from §122.016 of the Human Resources Code, which should be listed with §§2155.138 and 2155.441 and 2155.069 of the Government Code.

*The state use program is an exception to the General Services Commission code.

Response: The council disagrees. Section 2155.138(a)(3), Government Code provides an exemption from competitive bidding for goods or services approved by the council only if they meet the enumerated requirements including state specifications for quantity, quality, delivery, and life cycle costs. Sections 122.014 and 122.016, Human Resources Code provide that products must be manufactured according to specifications developed by the commission unless the product, as manufactured according to GSC specifications, does not meet the reasonable requirements of a state agency or political subdivision; or the requisitions made cannot be reasonably complied with through the provision that products or services be produced by persons with disabilities. All state laws must be construed according to the Code Construction Act, §311.026, Government Code which supports the interpretation of apparently conflicting laws so that effect is given to both when possible. Therefore,

council must consider application of both statutes when making determinations and decisions to disapprove a product for the state use program or to apply the exceptions.

However, proposed rule §189.2(9) will be amended to reference the applicable provisions of the enabling statute of Human Resources Code, §122.014 and §122.016 in order to provide clarity and conformity in the rules. The provision will read as follows: "Exception--Any product or service approved for the state use program purchased from a vendor other than a CRP because the state use product or service does not meet the applicable requirements as to quantity, quality, delivery, life cycle costs, price, testing and inspection requirements pursuant to §§2155.138, 2155.069, Texas Government Code or as described in §122.014 and §122.016, Human Resources Code."

Comment: §189.6(b) - *Two comments as expressed in §189.2(5) state a governmental CRP would not be required to have a federal tax identification number.

*Not all CRP's will be able to exist with this definition.

Response: The council agrees with the comments but has determined that no amendment to the proposed rule is required. Governmental entities are not required to have a federal tax identification number. The language of the proposed rule only requires the private nonprofit incorporated and private nonprofit unincorporated entities to obtain federal tax identification numbers.

The council has the rulemaking authority granted in §122.013 and §122.002(3), Human Resources Code to establish criteria for CRPs to operate and fulfill the purposes of the state use program by providing meaningful employment to persons with disabilities as stated in §122.001, Human Resources Code. Therefore, strict guidelines complying with the enabling statutes are considered necessary to ensure only those entities envisioned by the legislature are allowed to participate in the state use program.

Comment: §189.6(c) - *"Personnel" should be replaced with "human resource functions".

Response: The council agrees with the comment and for clarification has changed the language as follows: "A CRP must maintain payroll, human resource functions, accounting and documentation of disability for people employed to produce goods or services under the state use program."

Comment: §189.6(d) - *Maintenance of billing and payment records should not be limited solely to subcontracts of the CRP. Also, the meaning of support services is unclear.

Response: The council disagrees with the first part of the comment. Such language is provided to assist the council in ensuring operations and control of the CRP is retained by the CRP's board of directors and not some other entity. The proposed rules do not limit maintenance of billing and payment records to subcontracts since §189.7(i)(1) requires such records be maintained by the CRPs by implication. However, the council agrees that the language of support services may be unclear. Therefore, the language is amended to read: " A CRP must maintain contracts and billing and payment records if it contracts with outside entities for services of any kind."

Comment: §189.6(e), now deleted - *Two comments state a CRP should not be required to purchase their raw materials though the competitive process or provide documentation for failure to do so. Deletion was recommended because the federal program does not impose this requirement on CRPs.

*This information is already reported to the council in a cost analysis. Further, the request is unreasonable since the product has already been considered to be at fair market price.

*There is a concern about having a state mandate on how CRP's will purchase.

*Chapter 122, Human Resources Code does not require CRPs to use the competitive process to obtain raw materials. Compliance would result in increased costs to the CRPs.

*Competitive process is optional to the CRP. If the CRP chooses to select a vendor that prices them out of a contract, then the council simply does not have to award the state use contract to that CRP.

Response: The council agrees that Chapter 122, Human Resources Code does not require the CRPs to use a competitive process to obtain raw materials and will delete this language in this subsection and also the parallel provision in proposed rule §189.6(j), now relocated at §189.6(h).

Comment: §189.6(f), now relocated at (e) - *The entity disputes mandatory language that a CRP must comply with the percentages. The discretion of council to accept a lower percentage is limited to the direct labor requirement.

*There was another comment that the language in subsections (f), (g), and (h) indicates micro management of CRP's ability to operate a contract. The stringent parameters will inhibit growth and development of the program in today's market and such a system will limit integrated and business oriented opportunities for Texans with disabilities. Overabundance of regulatory efforts may enforce rules, but won't enhance growth and improvement.

*Another comment to subsection (f)(1) was to replace mandatory language to discretionary language "should" and add the words "including benefits" to the end of the sentence. Also this entity suggested that subsections (f)(2) and (3) replace "must" with "should" to allow council flexibility to approve lower percentages.

*Subsections (f)(3) and (g)(1) contain duplicative language.

*Subsection (f)(3) should have language that allows council to approve a higher administrative fee when it is satisfied that this percentage is not feasible for a particular service.

*The percentages should be guidelines only. Due to the nature of the field, CRPs are called upon to be creative in their search for work for people with disabilities. The mandatory percentages are too confining to achieve employment of persons with disabilities in every situation.

*There was a suggestion to add to subsections (f)(4) and (g)(3) a mandate that a CRPs attend an annual training.

*It was noted that the language in subsection (f)(1) does not include benefits. This entity requested that the requirement on supply cost in subsection (f)(2) be changed to a goal, in an effort to prevent destruction of the program.

Response:The council disagrees with the comments that disfavor mandatory percentages because the proposed rule allows the council flexibility to grant exceptions as required by the particular circumstances of a situation, service or program. At the same time, the rule maintains the integrity and accountability of the state use program by requiring that all participants meet and

follow the statutory purpose of providing employment opportunities for persons with disabilities.

The council disagrees with requiring the CRPs to attend the annual training because such a mandatory provision would prevent CRPs from using their judgment to attend such a meeting. In addition, it is a function of the CNA to monitor whether the CRPs are complying with program guidelines pursuant to §122.019(b)(6), Human Resources Code. Those CRPs that are in compliance would not necessarily need to attend annual training sessions. It is noted that the CNA is required to provide annual training sessions as stated in proposed rule §189.12(b)(3) and (4).

The council agrees to amend the language to include "benefits" in proposed rule §189.6(f)(1), now relocated at §189.6(e)(1), as follows: "A minimum of thirty-five percent (35%) of the contract price of the service must be paid to persons with disabilities who perform the service in the form of wages and benefits."

Comment: §189.6(g), now relocated at (f) - *Mandatory language should be replaced with discretionary language.

Response:The council disagrees because there is sufficient flexibility in the language of this rule to allow the council to accept a lower percentage when it is satisfied that the percentage is not feasible for a particular product while at the same time ensuring integrity, accountability, and fulfillment of the state use program's purpose. Mandatory language is necessary to ensure the state use program's success in providing meaningful employment for persons with disabilities.

Comment: §189.6(h), now deleted, and (n), now relocated at (m) -

*These provisions are flawed as there is no authority to suspend, disqualify or revoke approval of a CRP. Also "shall" should be replaced with "may" in each of these rules. Both subsections are too punitive. There is no notice requirement and no due process provisions for CRPs to refute allegations or remedy deficiencies before disqualification.

*There was a suggestion to change the language to "may result in suspension" in order to allow for extenuating circumstances.

*Another comment recommended mandatory language be replaced with discretionary language and any act of suspension or disqualification should have an element of due process for the CRP.

Response: The council disagrees with the comments that claim there is no authority for the council to suspend, disqualify, or revoke a CRP's participation in the state use program. Section 122.002(3), Human Resources Code provides broad authority to set criteria for CRPs to participate in the program and the council has been given broad rulemaking authority in §122.013, Human Resources Code to implement, extend, administer or improve the state use program.

The council agrees that subsections (h) and (n) appear duplicative and confusing; therefore, subsection (h) will be deleted and subsection (n) will be relocated to subsection (m) and be amended to read: "Violation of any of the criteria given in this chapter may result in suspension of approval or in disapproval of a CRP's eligibility to participate in this program, and/or may result in suspension or disqualification of any product or service."

The council agrees that a procedure to appeal or dispute actions taken by the CNA or the council to suspend, revoke, or disapprove a CRP or a product or service from participating in the state use program should be included. Therefore, the following language will be added as subsection (g) of §189.5 of the proposed rules: "189.5(g) Protests/Dispute Resolution/Hearing

(1) Any CRP which is aggrieved in connection with the disapproval or suspension of its ability or its product or service to participate in the state use program may formally protest to the presiding officer of the council. Such protests must be in writing and received by the presiding officer within ten (10) working days after such aggrieved person or entity knows, or should have known, of the occurrence of the protested action. The written protest must be presented to the presiding officer not later than thirty (30) days prior to the regularly scheduled council meeting. Formal protests must conform to the requirements of this subsection and subsection (2) of this section, and shall be resolved in accordance with the procedure set forth in subsections (3) and (4) of this section.

(2) A formal protest must be sworn and contain:

(A) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(B) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (A) of this subsection;

(C) a precise statement of the relevant facts;

(D) an identification of the issue or issues to be resolved;

(E) argument and authorities in support of the protest; and

(F) a statement that copies of the protest have been mailed or delivered to the using agency and/or the CNA, as appropriate.

(3) A quorum of the full council shall have the authority to settle and resolve the dispute concerning the disapproval or suspension of a CRP or its product and/or service to participate in the state use program.

(4) The council will deliberate and decide whether the disputed action is to be reversed, modified or affirmed during the regularly scheduled meeting following receipt of the formal written protest. The council's determination will be final."

Comment: §189.6(j) - *Include discretionary language in this provision.

Response: The council agrees with the comment to proposed rule §189.6(e) that protested the requirement for CRPs to purchase raw materials through a competitive process. Therefore, such language is deleted from the provision. In addition, the rule will be amended and relevant provisions will be relocated to provide clarity. Proposed §189.6(f), (g) and (k), now relocated at §189.6(e), §189.6(f) and §189.6(j), respectively, combined with §189.2(9) and (10) and §189.6(d) enhance the council's ability to make determinations of fair market value to maximize purchases of products approved for the state use program, pursuant to §122.015, Human Resources Code.

Proposed rule §189.6(j), now relocated at subsection (h), is amended for clarification to read as follows: "Any necessary subcontracted services shall be performed to the maximum extent possible by other community rehabilitation programs and in a manner that maximizes the employment of persons with disabilities."

Comment: §189.6(k), now relocated at (j) - *Change "organization" to "CRP" and add language that requires a non-profit CRP

to maintain complete managerial control of their agencies and finances, but allows a CRP to be a subsidiary of a for-profit parent corporation as long certain criteria are achieved.

*The requirements exclude MHMRs and enclaves whose primary purpose may not be employment, but a whole array of services. The limitation grossly discriminates against certain classes of people which directly violates the Constitution of the United States.

*The language should allow for entrepreneurial models of employment for persons with disabilities that operate within guidelines of the IRS for non-profit agencies. Persons with disabilities are being employed by companies whose primary purpose is not the employment of persons with disabilities. The language needs to allow for special circumstances.

Response: The council disagrees with the comments and suggestions. The council has determined that this rule complies with the overall purpose of the state use program in support of employment for persons with disabilities as stated in §122.001, Human Resources Code and its duty to establish criteria for recognition and approval of CRPs pursuant to §§ 122.002(3) and 122.003(j), Human Resources Code. The council is authorized under §122.013, Human Resources Code to make rules to implement, extend, administer or improve the state use program. The council has also determined that this criterion will ensure that the program continues to primarily benefit persons with disabilities and prevent abuse of the program by private companies seeking to avoid the state's competitive bidding requirements.

The term "organization" is used to encompass those entities that qualify under the definition of a CRP and under the response to comments on proposed rules §189.2(5) and §189.6(b).

Comment: §189.6(m), now relocated at (l) - *There was a question presented on how the review will be administered and who will bear the burden of the expense.

*This provision grossly discriminates against certain classes of people which directly violates the Constitution of the United States.

Response: The council disagrees with the comments and intends that any review as referenced in this subsection will be conducted by the council, the CNA under proposed rule §189.7, or another state agency, as directed by the council. The council does not intend that any CRP subject to review bear any expense incurred in conducting the review, except those CRP expenses necessary to cooperate with and facilitate the review. These expenses are expected to be minimal. Any costs will be paid as provided in §122.019(f), Human Resources Code.

No discrimination is involved in this process. The council only seeks to maintain the integrity and credibility of the state use program and this rule aids in ensuring that its purpose is fulfilled according to §122.001, Human Resources Code and that only eligible participants remain in the state use program.

Comment: §189.7(c) - *An entity recommended that the management fee remain a flat rate for all CRPs in an effort to ensure a subsidy and the same level of service for smaller CRPs and contracts. A system without a flat fee may result in loss of smaller contracts due to higher commission rates or inability of the CNA to justify the cost of servicing the contract.

*There was a query as to whether the council is the only entity that can determine a fair and varying management fee of the CNA, and whether the council has discretion to approve a varying management fee.

*Change the "sole discretion" language to "in compliance with applicable laws". The varying management fees will seriously damage the program because the small contracts and CRPs will not be protected and will not reflect the varying work levels related to thousands of contracts each year. A flat fee will subsidize the small contracts. No other existing program uses a varying management fee.

*The language permitting council to negotiate varying management fees with a CNA is contradictory to §122.019(e) of the Human Resources Code because there is only authority to approve one fee and at a maximum rate.

*A varying management fee would prove to be difficult to manage and would not be objective. The customers of the CRP are more than willing to pay a certain percentage to have their contract included in the state use program.

Response: The council disagrees that a varying management fee would be difficult to manage or that it would damage the state use program. Council believes a varying management fee may not be necessary but the proposed rule affords the council the flexibility to set a varying fee in specific and appropriate situations. The council has determined that §122.019(e), Human Resources Code does not limit the number of management fees it may set. A varying management fee may be necessary for the council to fulfill its duties to ensure continued success of the state use program by facilitating employment opportunities to persons with disabilities.

Comment: §189.7(e) -*An entity requested deletion of the proposed language because it exceeds the scope of authority in §122.019(d). The council should be allowed to designate a CNA for a five-year period with rolling two-year renewal periods after reviews. The legislative history does not contemplate or permit "competitive bidding". "Sole discretion" language should be eliminated. The five year period is also consistent with a mediation agreement from the council.

*The proposed rule is an attempt to re-write the statute at §122.019(c) and (d) and (1) and (2) is without statutory authority.

Response: The council disagrees. The Council has determined that it does not have authority under §122.019(d), Human Resources Code to award a CNA a contract that exceeds two years. The rule provides the council with timelines and guidelines to ensure a successful relationship with a central nonprofit agency and ongoing administration of the state use program.

It is the position of the council that any mediation agreement entered into pursuant to prior litigation, subsequently nonsuited by a plaintiff party, is no longer binding and that any provisions that purported to exceed council's statutory authority as to the duration of a CNA contract were void.

Section 2156.007 Contract Award, Government Code provides for competitive bidding for goods and services and applies to state agencies that purchase goods or services. The council is a state agency within the meaning of §101.001, Civil Practice and Remedies Code and must follow all relevant provisions of state law. Section 122.019(d), Human Resources Code provides an additional method of contracting with a CNA. This construction is supported by the Code Construction Act, Chapter 311, Government Code.

Comment: §189.7(f) - *Statutory authority to require competitive bidding was challenged and failed in the past; so why it is being pursued now?

*Legislative history does not contemplate or permit competitive bidding, nor does it allow the council to enter into an emergency contract.

*The provisions in subsections (1), (2), and (3) are without statutory authority. No authority exists for evaluating the CNA against anything other than the contractual specifications. There is no authority to terminate the contract with the CNA nor to access CNA financial records and job descriptions. It was recommended that entire §189.7(e), §189.7(f)(3) and (4) and §189.7(g) be stricken and to amend §189.7(f) to read "the council may use competitive bidding...when a contract with a CNA is terminated because...followed by subsections (1) and (2) only."

Response: The council disagrees. Section 2156.007 Contract Award, Government Code provides for competitive bidding for goods and services and applies to state agencies that purchase goods or services. The Council is a state agency within the meaning of §101.001, Civil Practice and Remedies Code and must follow all relevant provisions of state law. Section 122.019(d), Human Resources Code provides an additional option for contracting with a CNA and authority to review operations of the CNA. The council also has implied authority to take appropriate actions in accord with the findings of its review of the CNA. This construction is supported by the Code Construction Act, Chapter 311, Government Code and case law.

The council has the authority under §122.013, Human Resources Code to make rules to extend, administer or improve the state use program. This rule will improve the council's ability to obtain services that provide the best value for state agencies and political subdivisions and ensure that the program continues to primarily benefit persons with disabilities.

Comment: §189.7(g) -*The rules improperly require a turnover of additional CNA documents at a future time to a successor CNA without providing for any compensation or expense reimbursement. This would be an illegal taking of private property without compensation.

Response: The council disagrees with the comment. The council is given broad power in §122.013, Human Resources Code to administer the state use program. Inspection of the records under appropriate circumstances is essential to the council's success in meeting its duties and responsibilities under the statute. The council considers such records crucial to prevent disruption in the continuance of the program. Furthermore, proposed rule §186.12(b)(16) provides the CNA with safeguards for any information the CNA asserts is privileged. Although the council is of the opinion that the Public Information Act would apply without the explicit provisions of this rule, the application of this act has been explicitly stated to provide assurance to any prospective CNAs that their right to assert a privilege against disclosure of information is preserved.

The council disagrees that the records named under §122.009, Human Resources Code are private property because this law provides that these records are public.

The council agrees to change the language in the proposed rule to reflect that the records will be provided to council instead of a successor CNA and to clarify that this provision is only triggered in the event the CNA is terminated or ceases to exist as a CNA. The proposed rule was changed as follows: "In the event a new CNA succeeds to the contract for any reason provided in these rules, the prior CNA shall cooperate fully and assist the new CNA to take over CNA duties and responsibilities as soon as possible with minimal disruption to the operations of the program. Such cooperation and assistance will include turning over to the council the terminated CNA's records described in the Texas Human Resources Code §122.009(a), which includes but is not limited to a marketing plan, a listing of CRPs participating in the state use program, copies of all contracts with CRPs participating in the state use program, a listing of state agencies that purchase state use products and services, program funding requirements, and job descriptions for staffing a CNA to perform its duties under its contract with the council."

Comment: §189.7(i)(1) - *Delete the requirement to provide summary data from CRP annual business reports because some are too lengthy and some do not exist. The other required data provides sufficient information to gauge the performance of a CRP.

*Change the discretionary language of "may" to "will" in an effort to ensure effective marketing, education of the program, and on time payments to the CRPs.

*Why would annual business reports of the CRP be required? Accounting firms and Boards of non-profits will object adamantly to such a request.

*Detailed reporting requirements will increase the operating expenses and overhead of the CNA and CRPs. As to §189.7 in general, there is no recognition of a designation of a central nonprofit agency and there is a memorandum of agreement which outlines the duties of the CNA and council.

*A verification of participation should be included in the annual report and in subsection (2) add "requirement to report in-house career advancement, including managerial opportunities".

*Detailed reporting requirements will increase operating expenses and overhead of the CNA and the CRPs.

Response: The council disagrees with the comments. The information required in the proposed rule is necessary to protect the integrity of the program and assist council in carrying out its duties and responsibilities pursuant to the law. This information will provide documentation on a CRP's performance under the guidelines of the program and facilitate the preparation of the annual report required by §122.022, Human Resources Code. Most of this information is already collected by the CRPs to meet contractual obligations with the CNA. Participation is understood to be verified by the CNA. The council has no authority under current law to assume staffing management.

Comment: §189.7(j)(3)(D) and (4), (5), (6) - *The memorandum of understanding states an audited report prepared under generally accepted audit standards will be supplied by the CNA. A request for other expenditures and records still needs to be cooperatively agreed upon. As to subsection (j)(5), the proposed rule fails to acknowledge that §122.009, Human Resources Code sets forth the records that are subject to Chapter 552, Government Code.

*Another comment recommended deletion of (j)(3)(D) entirely because of costs involved in preparing an audited financial statement which will ultimately be passed to participating CRPs.

Response: The council disagrees. The information required in the proposed rule is necessary to protect the integrity of the program and assist council in carrying out its duties and responsibilities pursuant to the law. This information will provide documentation on the CNA's performance under the guidelines of the program and facilitate the review of the CNA required by §122.019(c), Human Resources Code. The council has been granted broad rulemaking authority under §122.013, Human Resources Code to implement and administer the program which implies authority to obtain data to objectively assess performance of the CNA. The CNA has already provided this information to the council and has not made an issue of costs incurred to gather this data.

The council notes that proposed rule §186.12(b)(16) provides the CNA with safeguards for any information the CNA asserts is privileged. Although the Council is of the opinion that the Public Information Act would apply without the explicit provisions of this rule, the application of this act has been explicitly stated to provide assurance to any prospective CNAs that their right to assert a privilege against disclosure of information to the public is preserved.

Comment: §189.7(k) - *Add "and career advancement programs including managerial opportunities" to this subsection.

*The CNA does not have authority to administer the CRP contracts. The CNA could assist and review general administration of contracts by the CRPs. CRPs need to remain independent of the CNA and the council but be accountable to the rules and regulations.

Response: The council disagrees with the comment. The council has contracted with the CNA to provide general administration of state contracts with CRPs pursuant to §122.019(b)(3), Human Resources Code. It is not a function of the CNA under provisions of the state use program to manage any other contracts of individual CRPs or specified internal operations. However, the council takes no position on other contracts or contractual provisions the CNA may have with individual CRPs. The requirements of this rule are critical to the success and operation of the state use program and provide insight to participants in the state use program on important functions of the CNA.

Comment: §189.7(l)(2) - *The proposed rule language indicates the CNA will become involved in private consumer products and services marketing and the language should be amended to reflect marketing only to state and political subdivisions.

Response: The council agrees with the comment and will amend the language as follows: " direct marketing of products and services to state agencies and political subdivisions".

Comment: §189.7(l)(8)(A) - *A payment system requiring payment to CRPs within thirty days of invoicing doubles the current payment time. This extension of payment time would increase costs of financing to CRPs and loss of jobs to persons with disabilities. The provision should be stricken entirely.

Response: The council agrees with the comment and will amend the language of this rule as follows: "establishing a payment system with a goal to pay CRPs within fourteen (14) to twenty-one (21) calendar days, but not later than thirty (30) calendar days of completion of work and proper invoicing."

Comment: § 189.7(n) - It is not possible for the CNA to have an authorized representative present at all council meetings who can bind the CNA because the Texas Nonprofit Corporation Act, Articles 1396-2.14 and 1396-1.02A(7) specifically vest control in the board of directors, which may delegate specific duties to its officers, agents and representatives. TIBH cannot lawfully abdicate its ultimate responsibility regarding liabilities and such a provision should not appear in an agency rule of the state.

Response: The council disagrees with the comment. The council understands the general principals in the Texas Nonprofit Corporation Act. However, the Act does not prevent the board of directors from authorizing a representative to attend quarterly council meetings and bind the corporation on applicable agenda items decisions. The quarterly meeting agenda is prepared and delivered to the central nonprofit agency in advance of the meeting which provides sufficient notice of solicited actions to the central nonprofit agency. Such a request is necessary to allow the council the ability to carry out the duties, responsibilities, and business of the state use program. The proposed rule requires a CNA representative, who has been properly appointed and acting under the management and control of the central nonprofit agency board of directors to be present and authorized to act on applicable agenda items at the council's quarterly meetings in accordance with and not contrary to article 1396-2.28 and Bar Comments, No. 7 and article 1396-2.14, Revised Civil Statues.

Comment: §189.8(c) - *A statement of who determines whether the reasonable requirements have been met should be provided.

*Section 122.016 of the Human Resources Code, which provides exceptions to determination of the price of a product takes precedence over §2155.138 and §2155.441, Government Code or other GSC statutes.

Response: The council disagrees with the comments. Section 122.007(d), Human Resources Code instructs the General Services Commission to make awards based on goods and services that meet formal state specifications developed by the General Services Commission. Therefore, the General Services Commission makes those determinations as well as processes the requisitions according to the General Services Commission's rules as provided by §122.007(e), Human Resources Code.

All state laws must be construed according to the Code Construction Act, Chapter 311, Government Code which supports the interpretation of apparently conflicting laws so that effect is given to both when possible. Section 2155.138, Government Code provides an exemption from competitive bidding for goods or services approved by the council only when, among other criteria, the product or service meets state specifications for quantity, quality, delivery, and life cycle costs. Sections 122.014 and 122.016, Human Resources Code do not provide any exceptions to the determination of the price of a product. Sections 122.014 and 122.016, Human Resources Code require products to be manufactured according to specifications developed by the commission unless the product, as manufactured according to commission specifications, does not meet the reasonable requirements of the state agency or political subdivision or the requisitions made cannot be reasonably complied with through provision of products or services produced by persons with disabilities. Therefore, council must consider that both statutes will apply when it makes determinations and decisions to disapprove a product for the state use program or to apply the exceptions.

Comment: §189.9(a) - *Who has authority to specify the time for products or services to be made available? If it is the using entity, then there is a possibility that the using entity would be given power to shut down the program.

*Section 2155.138 of the Government Code should not be given equal footing with Chapter 122 of the Human Resources Code

with regard to determining and fixing the fair market value or price of a product.

Response: The council disagrees. Although §122.008, Human Resources Code indicates that products that meet applicable specifications must be procured from a CRP at a price determined by council to be fair market price, § 2155.138(a)(4), Government Code provides an exemption from competitive bidding for goods or services approved by the council. This exemption only applies when the enumerated items are achieved including the criteria that a product or service cost no more than fair market price of similar items and other criteria are met. All state laws must be construed according to the Code Construction Act, Chapter 311, Government Code which supports the interpretation of apparently conflicting laws so that effect is given to both when possible.

The proposed rule requirements are necessary for council to adequately assess and achieve a fair market price for products and services produced by persons with disabilities because the council relies upon data provided by the CNA to determine fair market price. However, the price council approves may not always reflect a fair market price at the time a state agency must purchase a specific product or service.

As to the comment of who has the authority to specify the time for products or services to be made available, §122.007(d), Human Resources Code instructs the commission to make awards based on goods and services that meet formal state specifications developed by the General Services Commission. Therefore, the General Services Commission makes those determinations as well as processes the requisitions according to the General Services Commission's rules as provided by §122.007(e), Human Resources Code.

Section 2155.441, Government Code is being deleted from the existing rule because it only gives a preference for products of workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or a physical disability when state specifications regarding quantity, quality, delivery, life cycle costs and price are met. Section 2155.441 does not provide an exemption from competitive bidding but provides a purchasing preference to certain entities when bid specifications are met.

Comment: §189.10(b)(6) - *There were two comments that "unethical actions" is a vague term and the language should be deleted entirely.

Response: The council disagrees that the term is vague. This term "unethical" is defined in Black's Law Dictionary to mean activities or behavior that do not comply with professional or business standards. Any such activities or behaviors can be determined on a case by case basis by the council during its open meetings and any decisions taken by the Council may be disputed or appealed pursuant to proposed rule §189.5 as amended herein.

Comment: §189.10(c) - *There was a recommendation to strike the language entirely. The council should not be able to unilaterally terminate non-complying CRPs because it is beyond their statutory authority and council is not a party to the contracts. If council decides not to eliminate the language, the recommendation is to at least provide language on notice, procedures, remedies, and re-qualification procedures. This information should also be added to §189.6(h) and (n).

Response: The council disagrees. The council has implied authority to carry out and administer the duties and responsibilities described in Chapter 122, Human Resources Code which includes a variety of sanctions that may be imposed against CRPs that do not comply with the law or rules duly promulgated by the council. This rule will ensure the integrity and accountability of the program.

Council agrees that due process provisions should be included in the rules and has accordingly amended proposed rule §189.5 by adding subsection (g) as stated above.

Comment: §189.12(b) - *Quarterly regional training and information workshops will cost too much and state agencies would not attend without a mandatory rule.

*Reduce the requirement to no less than once per year.

*A comment to subsections (b)(3) and (4) is that the interpretation may result in unnecessary work and required meetings that will not be attended by the CRPs.

*How will micro management be accomplished without spending major dollars? The Texas Government Codes does not apply to this program. How long will reporting on a quarterly basis take and who will listen to the reports?

Response: The council agrees with some but not all of the above comments. The council disagrees that attendance at training workshops should be mandatory.

The council agrees that requiring the CRPs to attend the annual training would prevent CRPs from using their judgment to attend such a meeting. In addition, it is function of the CNA to monitor whether the CRPs are complying with program guidelines pursuant to its current Memorandum of Agreement with the council. Those CRPs that are in compliance with the criteria set by council and statute would not necessarily need to attend annual training sessions. There is no language in this rule that mandates attendance by CRPs or state agencies.

The CNA is required to provide training sessions by proposed rule §189.12(b)(3 and 4), §122.019(b)(6), Human Resources Code and Article III.A.5 and 7 of the current Memorandum of Agreement. Article III.A. 8.(2)(c) of the Memorandum of Agreement specifies that expenditures for these activities be reported in the proposed CNA annual budget which is submitted to the council for approval. The training workshops are intended to benefit CRPs. Quarterly regional training means that during each quarter the CNA must offer workshops to CRPs and state agencies located in one regional area. Training workshops for state agencies are intended to enhance sales volumes under the state use program. The General Services Commission has provided assistance to the CNA in promoting awareness of the state use program and may be contacted to assist with this effort.

The council disagrees that quarterly reporting of activities under proposed rule §189.12(b)(1) would be cost prohibitive. The CNA already provides the council with quarterly reports containing this data. This rule is well within the purpose and scope of the program and the council's rulemaking authority under §§122.001 and 122.013, Human Resources Code.

Comment: §189.12(b)(2) - *Strike the entire provision because of the enormous requirements of labor and costs involved in such reports. Allow the CNA to decide the most efficient and cost effective system to employ and how to report it.

Response: The council disagrees. The council has broad rulemaking authority under §122.013, Human Resources Code and power to assign other duties to the CNA pursuant to §122.019(b)(8), Human Resources Code which fulfill the purpose of the program and protect its integrity by enhancing accountability of the CNA to the program.

In order to provide a measure of the CNA's success in meeting this performance standard, the council amends this rule by adding the following language: "with a goal of incurring no more than five (5) complaints annually which have not been resolved to the customer's satisfaction".

Comment: §189.12(b)(5) - Strike the language "referring those that cannot be resolved to the council" because there is no statutory authority for council to mediate contracts between the CRP and CNA.

Response: The council disagrees because the council has the authority to carry out the details of the program, oversee performance of the CNA and protect the overall integrity of the program under its express and implied authority pursuant to §§122.003(j), 122.013, 122.019 and 122.020, Human Resources Code.

Comment: §189.12(b)(6) - *The proposed rule should be rewritten to conform with Article III(8)(C) of the Memorandum of Agreement between the CNA and council (effective September 1, 2000) to eliminate contradictions between the proposed rules and the Memorandum of Agreement.

Response: The council disagrees. The rule restates the requirements under Article III.A.8 of the Memorandum of Agreement.

Comment: §189.12(b)(8) - *The requirements are unclear. The CNA will not be able to provide reports detailing accounting services and invoice amounts for each CRP without incurring excessive costs.

Response: The council agrees the proposed rule is unclear and will amend the language as follows: "maintain a system in accordance with generally accepted accounting principles that will record information related to purchasing orders, invoices and payments to each CRP".

This information is currently provided in summary form in the prescribed annual report compiled by the CNA for the council, therefore the council disagrees that excessive costs would be incurred from providing data from which the summary is compiled. This data is necessary for council to objectively determine whether the CNA's performance is satisfactory in regard to Article III.A.2 of the current Memorandum of Agreement which assists the council in fulfilling its duty under §122.022, Human Resources Code.

Comment: §189.12(b)(9) - *Strike all language that references CNA involvement in private sector purchases because this would not be a part of CNA responsibilities.

Response: The council agrees that private sector purchases are not part of the CNA's responsibility under the purposes of the state use program. The language is amended as follows: "create a database of state agency and political subdivision purchasers to promote sales of state use program products and services".

Comment: §189.12(b)(10) -*"Conduct business ethically" is vague and ambiguous and an unrealistic goal statement.

Five complaints per year is an unrealistic expectation.

Response: The council disagrees because the phrase "conduct business ethically" is commonly understood to mean activities and behaviors that comply with professional and business standards.

Council agrees in regard to the quantitative measure of this performance standard and amends this provision as follows: "conduct business ethically and submit detailed quarterly reports to the council on any conflicts between the CRPs and the CNA".

Comment: §189.12(b)(11) - *Delete this provision because the CNA is not under the control of the council. The language "follow directives of the council" has the effect of an unauthorized taking of private enterprise. A goal of achieving 100% compliance is vague.

Response: The council disagrees with the substance of the comment because the council has broad power to discharge the responsibilities imposed on it by statute. However, the provision will be deleted because the language is repetitive and these requirements are found elsewhere in the rules.

Comment: §189.12(b)(12) - *Additional reporting will cost a great deal unless done on an expectation basis.

*Delete this provision entirely because the language in §122.019(c) limits council's authority to impose performance standards on the CNA through rulemaking. The statute has a clear and concise mandate to evaluate such performance against contract specifications. It is recommended the proposed rule language of performance standards be placed in the contract between the CNA and the council.

Response: The council disagrees because it is necessary for the CNA to assist council in carrying out its duties as assigned by the legislature and monitor the progress and integrity of the program.

While it is true that §122.019(c), Human Resources Code refers to contract specifications, it does not limit the council's ability to set performance standards to measure the CNA's compliance with contractual provisions. Section 122.019(a), Human Resources Code directs the council to contract for enumerated services and other duties designated by the council. Under the implied authority of this section and §122.013, Human Resources Code the council has determined that it is appropriate to specify performance standards for the CNA's services in its rules.

Comment: §189.12(b)(13) - *There is no realistic purpose to this law because the CNA responds to complaints in less than five (5) days.

Response: The council disagrees with the comment and believes the provision has been misunderstood by the entity. This rule relates to sales and is within the scope of the council's authority under §122.019(b)(8), Human Resources Code. The council needs this information to objectively determine whether the CNA is providing customer support services under §122.019(b)(4) and (5), Human Resources Code.

Comment: §189.12(b)(16) - *The proposed rule fails to acknowledge the relevance of §122.009(a) to document issues.

Response: The council disagrees. The council has determined it has the implied authority to obtain any records it needs to verify and/or support and/or provide details to any information provided to it by the CNA pursuant to §122.022 and §122.010, Human Resources Code, the current Memorandum of Agreement and its broad rulemaking powers. Documentation detailing the bases for assertions, conclusions or methodology of the CNA in

its reporting of data is necessary so the council can make objective determinations concerning the validity and accuracy of reports to fulfill the council's duties as required by §§122.003(j), 122.007 and 122.019(a) through (e), Human Resources Code.

Comment: §189.12(c) - *Delete entirely because there is no statutory authority to impose performance standards through rulemaking, instead there is a clear and concise mandate to evaluate such performance against contract specifications in §122.019(c), Human Resources Code.

Response: The council disagrees with the substance of this comment. The council has determined it has the implied authority from §122.013, Human Resources Code, to enact by rule the performance standards necessary to measure the CNA's compliance with the terms of the current Memorandum of Agreement and requirements enumerated in §122.019 and §122.022, Human Resources Code.

Statutory Authority. The new rules and amendments are adopted under Texas Human Resources Code, Title 8, Chapter 122, §122.013, which provides authorization for the council to adopt rules for the implementation, extension, administration, or improvement of the program pursuant to this chapter.

Rules To Be Adopted. The following rules will be adopted as provided below.

§189.2. Definitions.

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

(1) Appreciable contribution - the term used to refer to the substantial work effort contributed by persons with disabilities in the reforming of raw materials, assembly of components or packaging of bulk products in more saleable quantities, by which value is added into the final product offered for sale.

(2) Central nonprofit agency (CNA)--An agency designated as a central nonprofit agency under contract with the council pursuant to §122.019 of the Texas Human Resources Code.

(3) Chapter 122--Chapter 122 of the Texas Human Resources Code.

(4) Commission--The General Services Commission.

(5) Community rehabilitation program (CRP) --A government entity, private nonprofit unincorporated entity which has its own nonprofit status and federal tax identification number and has as its primary purpose the employment of persons with disabilities to produce products or perform services for compensation, or a private nonprofit incorporated entity with its own federal tax identification number, articles of incorporation and bylaws that establish its existence for the primary purpose of employing persons with disabilities to produce products or perform services for compensation.

(6) Council--The Texas Council on Purchasing from People with Disabilities.

(7) Direct labor--All work required for preparation, processing, and packaging of a product, or work directly relating to the performance of a service, except supervision, administration, inspection or shipping products.

(8) Disability--A mental or physical impairment, including blindness, that impedes a person who is seeking, entering, or maintaining gainful employment.

(9) Exception-- Any product or service approved for the state use program purchased from a vendor other than a CRP because the state use product or service does not meet the applicable requirements as to quantity, quality, delivery, life cycle costs, price, and testing and inspection requirements pursuant to, §§2155.138 and 2155.069, Government Code or as described in §§122.014 and 122.016, Human Resources Code.

(10) State use program--The statutorily authorized mandate requiring state agencies to purchase, on a non-competitive basis, the products made and services performed by persons with disabilities, which have been approved by the council pursuant to Human Resources Code, Chapter 122 and also meet the requirements of Texas Government Code, §§2155.138 and 2155.069. This program also makes approved products and services available to be purchased on a non-competitive basis by any political subdivision of the state.

(11) Value added --The labor of persons with disabilities applied to raw materials, components, goods purchased in bulk form resulting in a change in the composition or marketability of component materials, packaging operations, and/or the servicing tasks associated with a product.

§189.5. Open Meetings; Public Testimony and Access.

(a) A quorum of the full council or council subcommittee shall deliberate and make decisions in open meeting in accordance with Chapter 551 of the Texas Government Code and the open meeting shall be conducted pursuant to Robert's Rules of Order. The full council may meet in executive session for authorized purposes during a public meeting as allowed under Chapter 551 of the Texas Government Code.

(b) The public will be provided a reasonable opportunity to appear before the council or council subcommittee in an open meeting and present testimony pertinent to an agenda item duly posted for said open meeting or any issue under the jurisdiction of the council.

(c) The council shall comply with federal and state laws related to program and facility accessibility. Each CNA shall develop, for council's approval, a written plan that describes how a person who does not speak English can be provided reasonable access to the council's programs and services under its management.

(d) The council may deliberate and take action on public testimony regarding an agenda item at the meeting for which the agenda item was duly posted.

(e) If a member of the public inquires about a subject for which notice has not been given as required by Chapter 551 of the Texas Government Code, the notice provisions do not apply to:

(1) a statement of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(f) Any deliberation of or decision about a subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

(g) Protests/Dispute Resolution/Hearing

(1) Any CRP which is aggrieved in connection with the disapproval or suspension of its ability or its product or service to participate in the state use program may formally protest to the presiding officer of the council. Such protests must be in writing and received in by the presiding officer within 10 working days after such aggrieved person or entity knows, or should have known, of the occurrence of the action which is protested. The written protest must be presented to the presiding officer not later than thirty (30) days prior to the regularly scheduled council meeting. Formal protests must conform to the requirements of this subsection and subsection (2) of this section, and

shall be resolved in accordance with the procedure set forth in subsections (3) and (4) of this section.

(2) A formal protest must be sworn and contain:

(A) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(B) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (A) of this subsection;

(C) a precise statement of the relevant facts;

(D) an identification of the issue or issues to be resolved;

(E) arguement and authorities in support of the protest; and

(F) a statement that copies of the protest have been mailed or delivered to the using agency and/or the CNA.

(3) A quorum of the full council shall have the authority to settle and resolve the dispute concerning the disapproval or suspension of a CRP or its product and/or service to participate in the state use program.

(4) The council will deliberate and decide whether the disputed action is to be reversed, modified or affirmed during the regularly scheduled meeting following receipt of the formal written protest. The council's determination will be final.

§189.6. Criteria for Recognition and Approval of Community Rehabilitation Programs.

(a) Any CRP currently participating in the state use program on the date these rules are adopted will be allowed to continue so long as they comply with the criteria given in this chapter.

(b) A CRP must be a government entity, private nonprofit unincorporated entity which has its own nonprofit status and federal tax identification number and has as its primary purpose the employment of persons with disabilities to produce products or perform services for compensation, or a private nonprofit incorporated entity with its own federal tax identification number, articles of incorporation and bylaws that establish its existence for the primary purpose of employing persons with disabilities to produce products or perform services for compensation.

(c) A CRP must maintain payroll, human resource functions, accounting and documentation of disability for people employed to produce goods or services under the state use program.

(d) A CRP must maintain contracts and billing and payment records if it contracts with outside entities for services of any kind.

(e) A CRP desiring to provide services under the state use program must comply with the following requirements to obtain approval from the council:

(1) A minimum of thirty-five percent (35%) of the contract price of the service must be paid to persons with disabilities who perform the service in the form of wages and benefits.

(2) Supply costs for the service must not exceed twenty percent (20%) of the contract price of the service.

(3) Administrative costs allocated to the service must not exceed ten percent (10%) of the contract price for the service. At least seventy-five percent (75%) of the hours of direct labor necessary to perform a service must be done by persons with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular service.

(f) A CRP must comply with the following requirements to obtain approval from the council for state use products:

(1) At least seventy-five percent (75%) of the hours of direct labor necessary to reform raw materials, assemble components, manufacture, prepare, process and/or package a product must be done by persons with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular product.

(2) Appreciable contribution to the product by persons with disabilities must be determined on a product-by-product basis to be substantial based on acceptable documentation provided to the council upon application for a product to be approved for the state use program.

(g) The rules governing the approval of products to be offered by community rehabilitation programs apply to all items that a community rehabilitation program proposes to offer to state agencies or political subdivisions, regardless of the method of acquisition by the agency, whether by sale or lease. A community rehabilitation program must in fact own any product or products it leases. A proposal by a community rehabilitation program to rent or lease a product to a state agency is a proposal to offer a product, not a service, and the item offered must meet the requirements of these rules governing products. If the product is offered for lease by the community rehabilitation program, the unit cost of the product, for purposes of applying the standards set forth in these rules, is the total cost to the state agency of leasing the product over its expected useful life.

(h) Any necessary subcontracted services shall be performed to the maximum extent possible by other community rehabilitation programs and in a manner that maximizes the employment of persons with disabilities.

(i) Raw materials or components may be obtained from companies operated for profit, but a community rehabilitation program must own any product that it offers for sale to state agencies or political subdivisions through the state use program and make an appreciable contribution to the product which accounts for a substantial amount of the value added to the product.

(j) The organization must not serve, in whole or in part, as an outlet or front for any entity whose primary purpose is not the employment of persons with disabilities.

(k) The council may:

(1) recognize a CRP that maintains accreditation by a nationally accepted vocational rehabilitation accrediting organization, and

(2) approve CRP services that have been approved for purchase by a state habilitation or rehabilitation agency.

(l) The council, at its sole discretion, may review, or have reviewed, any CRP approved to participate in this program to verify that the CRP meets the applicable qualifications contained in this chapter.

(m) Violation of any of the criteria given in this chapter may result in suspension of approval or in disapproval of a CRP's eligibility to participate in this program, and/or may result in suspension or disqualification of any product or service.

(n) Neither the council, nor any individual member, the State of Texas, nor any other Texas state agency will be responsible for any loss or losses, financial or otherwise, incurred by any CRP should its product not be approved for the state use program as provided by law.

§189.7. Contracting with a Central Nonprofit Agency.

(a) The council shall contract with a central nonprofit agency to perform, at a minimum, the duties set forth in §122.019(a)(b) of Chapter 122 of the Human Resources Code.

(b) The management fee rate charged by a central nonprofit agency for its services to the CRP(s) and its method of calculation must be approved by the council. The maximum management fee rate must be:

(1) computed as a percentage of the selling price of the product; or

(2) the contract price of a service; and

(3) must be included in the selling price or contract price; and

(4) must be paid at the time of sale.

(c) The council, at its sole discretion, may negotiate and approve varying management fees for a CNA to provide a fee structure that corresponds to the level of service being given by a CNA to each of the CRPs.

(d) A percentage of the management fee described in subsection (b) of this section shall be set by the council and paid to the council in an amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the commission in administering its duties under Chapter 122.

(e) In accordance with the Texas Human Resources Code, §122.019(d), the council shall, at least once during the two year contract period, but more often if the council deems necessary, review services by and the performance of a CNA, and the revenue required to accomplish the program. The purpose of the review shall be to determine whether a CNA has complied with statutory requirements, contract requirements, and performance standards set forth in §189.12 of this title (relating to performance standards for a central nonprofit agency). Following the review of a CNA as required by §122.019(d) of the Human Resources Code, the council at its sole discretion, may:

(1) approve the performance of the central nonprofit agency and the continuation of the contract through its termination date; or

(2) if the contract expires within twelve months after the completion of the review and the council has approved the performance of the central nonprofit agency, the council may negotiate a new contract with the same CNA to begin upon expiration of the current contract or enter into a new contract in accordance with Subtitle D, Title 10, Government Code, using competitive bidding or competitive sealed proposals, as recommended by the commission.

(f) The council may use competitive bidding, competitive sealed proposals pursuant to Subtitle D, Title 10, Texas Government Code, or negotiate an emergency contract not to exceed one year, when a contract with a CNA is terminated by the council because:

(1) the central nonprofit agency ceases operations;

(2) the central nonprofit agency gives notice that it can not complete the contract;

(3) the central nonprofit agency's performance contract has been terminated due to its failure to perform its contractual obligations; or

(4) review of the central nonprofit agency results in disapproval of its performance.

(g) In the event a new CNA succeeds to the contract for any reason provided in these rules, the prior CNA shall cooperate fully and assist the new CNA to take over CNA duties and responsibilities as soon as possible with minimal disruption to the operations of the program. Such cooperation and assistance will include turning over to the council the terminated CNA's records described in the Texas Human Resources Code §122.009(a), which includes but is not limited to a marketing plan, a listing of CRPs participating in the state use program, copies of all contracts with CRPs participating in the state use program, a listing of state agencies that purchase state use products and services, program funding requirements, and job descriptions for staffing a CNA to perform its duties under its contract with the council.

(h) Not later than the 60th day before the date the council adopts or renews a contract, the council shall publish notice of the proposed contract in the Texas Register.

(i) No later than October 1st of each year the CNA will provide to the council, regarding CRP(s) which have contracted with the CNA, the following information for the period of July 1st through June 30th of each year:

(1) from each CRP:

(A) summary data from CRP annual business reports;

(B) the number of disabled persons employed by type of disability in programs managed by the CRP(s);

(C) the amount of annual wages paid to disabled employees in CRPs;

(D) a summary of the sale of products offered by the CRP(s);

(E) a list of products and/or services offered by a CRP;

(F) the geographic distribution of CRP(s); and

(G) a report of all CRPs that have not met the criteria for participation in the state use program in a format approved by the council.

(2) from each CRP data on individual outplacement or supported employment to include:

(A) the number of individuals in outplacement employed;

(B) the hourly wage range;

(C) the range of hours worked; and

(D) the number of disabled persons employed by primary type of disability.

(j) In accordance with the Texas Human Resource Code, §122.019 (c) and (d), a CNA will provide or make available to the council:

(1) quarterly reports for each calendar quarter of its contract of sales of products or services, wages paid and hours worked by persons with disabilities for each CRP participating in the state use program;

(2) quarterly reports for each calendar quarter listing CRPs that do not meet criteria for participation in the state use program and the reasons that each CRP listed does not meet the criteria;

(3) at least once a year by October 31st, and prior to any review and/or renegotiation of the contract:

(A) an updated marketing plan;

(B) a proposed annual budget with estimated sales, commissions, and expenses;

(C) a program budget with details on how the expected revenue and expenses will be allocated to directly support and expand the state use program and other programs that expand direct services and/or the enhancement of employment opportunities for persons with disabilities; and

(D) an audited annual financial statement which should include information on FDIC coverage of all cash balances, earnings attributed to the management fee for the state use program, accounts receivable, cash reserves, line of credit borrowings, interest payments, bad debt, administrative overhead and any detailed supporting documentation requested by the council;

(4) quarterly reports of categories of expenditures in reporting format approved by the council;

(5) records in accordance with the Texas Human Resources Code §122.009 (a) and 122.0019(d) for audit purposes, provided however, that any records provided by a CNA which may be subject to any exception to Chapter 552 of the Texas Government Code, would not be disclosed to any third party except with the permission of the CNA or in accordance with the provisions of Chapter 552, Government Code (the "Public Information Act"); and

(6) any other information the council requests as set forth in Chapter 189 of this title (relating to Purchase of Products and Services from Persons with Disabilities).

(k) Duties of a CNA include, but not be limited to:

(1) recruit and assist community rehabilitation programs in developing and submitting applications for the selection of suitable products and services;

(2) facilitate the distribution of orders among community rehabilitation programs;

(3) manage and coordinate the day-to-day operations of the program, including the general administration of contracts with community rehabilitation programs;

(4) promote increased supported employment opportunities for persons with disabilities;

(5) investigate products and services before they are proposed by CRPs for the state use program and after their approval for compliance with Texas Government Code §§2155.138 and 2155.069; and

(6) monitor CRPs to ensure that all criteria for participation in the state use program are met.

(l) The services of a central nonprofit agency may include marketing and marketing support services, such as:

(1) assistance to CRPs regarding solicitation and negotiation of contracts;

(2) direct marketing of products and services to state agencies and political subdivisions;

(3) research and development of products and services;

(4) public relations activities to promote the program;

(5) customer relations;

(6) education and training;

(7) accounting services related to purchase orders, invoices, and payments to CRPs; and

(8) other duties as designated by the council that may include:

(A) establishing a payment system with a goal to pay CRPs within fourteen (14) to twenty-one (21) calendar days, but not less than thirty (30) days of completion of work and proper invoicing;

(B) resolving contract issues and/or problems as they arise between the CRPs and customers of the program, referring those that cannot be resolved to the council;

(C) maintaining a system that tracks and monitors product and service sales; and

(D) tracking and reporting quality and delivery times of products and services.

(m) Each year by October 31st, a central nonprofit agency will establish performance goals for the next fiscal year in support of objectives set by the council. Those performance goals will include, but not be limited to:

(1) sales of products or services;

(2) wages paid to persons with disabilities;

(3) hours worked by persons with disabilities;

(4) response time to customers' inquiries and/or complaints; and

(5) quality standards and delivery goals for CRP programs operations.

(n) The CNA shall have an authorized representative present at all council meetings who can bind the CNA to any representations, agreements or decisions regarding agenda items subject to the council's authority.

§189.12. Performance Standards for a Central Nonprofit Agency (CNA).

(a) A CNA shall meet performance standards in carrying out the terms and conditions of the contract.

(b) Operating pursuant to the statute and rules of the council, a CNA must manage and coordinate the day-to-day operation of the state use program including, but not limited to the following activities:

(1) strive to increase employment for persons with disabilities by ten percent (10%) per year by researching new products, services and markets, improving existing products and services, and reporting to the council on a quarterly basis the status of these activities;

(2) provide superior customer relations by monitoring customer satisfaction with products and services, responding to customer complaints within one business day or less, and reporting to the council on a quarterly basis the level of consumer satisfaction for each CRP based on complaints as to products or services provided by each CRP with a goal of incurring no more than five complaints per year that have not been resolved to the customer's satisfaction;

(3) provide quarterly regional information workshops to promote the state use program;

(4) provide quarterly regional training programs to the CRPs on the requirements to participate in the state use program, governmental contracting, and procurement procedures and laws;

(5) resolve contract issues and/or problems as they arise between the CRPs, the CNA, and/or customers, referring those that cannot be resolved to the council and submit quarterly status reports on issues and referrals;

(6) provide an annual report that includes audited financial statements of the CNA, an updated strategic plan, and an updated projected schedule of expenses that details how the management fee is being allocated to directly support the state use program and what amount of funds are being devoted to expanding direct services to programs that enhance the disabled and what percentage of funds will be used for administrative overhead, such as salaries;

(7) demonstrate compliance with state and federal tax laws and payroll laws by submitting quarterly reports of sales and taxes paid to the Texas Comptroller of Public Accounts and the Internal Revenue Service;

(8) maintain a system in accordance with generally accepted accounting principles that will record information related to purchase orders, invoices and payments to each CRP in order to facilitate the preparation and submission of the annual report;

(9) create a database of state agency and political subdivision purchases to promote sales of state use program products and services;

(10) conduct business ethically and submit detailed reports on a quarterly basis of any conflicts between the CRPs and the CNA;

(11) create and maintain automated tracking and monitoring of product/service sales and submit quarterly reports to the council regarding delivery turnaround times and contract performance for each CRP;

(12) respond to inquiries about individual sales and/or total sales within five (5) business days or sooner and submit quarterly reports regarding the number of inquiries and average response time in conjunction with the above described report;

(13) maintain knowledge of governmental contracting and procurement processes and laws;

(14) provide general administration of the state use program with performance criteria and timely submission of reports required by these above rules; and

(15) maintain all necessary records for audit purposes that are in accordance with the law and directives set forth by the council and submit any or all records requested by the council within three (3) weeks of the request. Disclosure to the public of any and all records of a CNA shall be subject to the Public Information Act.

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

Filed with the Office of the Secretary of State on December 18, 2000.

TRD-200008748
Juliet U. King
Legal Counsel
Texas Council on Purchasing from People with Disabilities
Effective date: January 8, 2001
Proposal publication date: October 13, 2000
For further information, please call: (512) 475-2400

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40 TAC §189.6, §189.12

The Texas Council on Purchasing from People with Disabilities (TCPPD or the council) adopts the repeal of §189.6 (Criteria for Recognition and Approval of Community Rehabilitation Programs) and §189.12 (Reports: Strategic Plan; Final Operation Plan) without changes to the proposal published in the October 13, 2000 issue of the *Texas Register* (25 TexReg. 10323).

The repeal will allow the council to adopt new and amended rules relating to the management and administration of the state use program. The new rules will help ensure that purposes and goals of the state use program are achieved.

No comments were received regarding the proposal to repeal these sections.

The repeals are adopted under Texas Human Resources Code, Title 8, Chapter 122, §122.013, which authorizes the council to adopt rules for the implementation, extension, administration, or improvement of the state use program.

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

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Juliet U. King
Legal Counsel
Texas Council on Purchasing from People with Disabilities
Effective date: January 8, 2001
Proposal publication date: October 13, 2000
For further information, please call: (512) 475-2400

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER B. ALLOCATIONS AND FUNDING

The Texas Workforce Commission (Commission) adopts amendments to §§800.51 - 800.53, 800.57, 800.58, 800.61 and 800.62 and the repeal of §§800.55, 800.56, and 800.59, relating to allocations and funding, without changes to the proposed text as published in the October 27, 2000 issue of the *Texas Register* (25 TexReg 10711). The text will not be republished. Section 800.54 is adopted with change to correct a typographical error.

Concurrent with the amendments and repeal, the Commission is adopting the review of the sections being amended in Chapter 800, Subchapter B, pursuant to Texas Government Code §2001.039. No comments were received on the proposed review.

Purpose: The purpose of the adopted amendments and repeals is to update the allocations and funding rules consistent with the preliminary review of the rules. The Commission's allocations and funding rules set forth the methods or criteria used by the Commission to allocate or utilize funds primarily using the need-based formulas or other formula set forth in federal and state statutes applicable to the services to be provided.

The specific changes to the rules are generally for the following purposes:

(1) replacing the reference to "JOBS/TANF" with "Choices" throughout the subchapter,

(2) clarifying the roles of the "Commission" and "Agency" throughout the subchapter;

(3) changing the format of the beginning of each rule to make the style more consistent and parallel;

(4) removing the definitions of "allocation" and "workforce area" so those definitions may be incorporated in the future into §800.2 for applicability to all Commission chapters contained in Part 20;

(5) removing, in §800.52, the definition of "average net unit rate" because it is no longer needed due to the concurrent repeal of §800.56;

(6) removing §800.55 because all Job Training Partnership Act (JTPA) funds have been allocated and the JTPA was repealed and replaced with the new Workforce Investment Act;

(7) removing §800.56 because the rule was no longer needed after §800.58 was adopted in January of 1999;

(8) adding within §800.58(b) the reference to the Welfare to Work Governor's Reserve funds to make clear that the criteria set forth in §800.58(b) are used as the method of allocating those funds;

(9) removing §800.58(f)(3) because the rule repeats the provisions relating to priorities for child care services that are contained in §§ 809.221 and 809.225 regarding Child Care General Funds Management and Continuity of Care;

(10) removing §800.58(g) because the reason for the subsection no longer exists;

(11) removing §800.59 to relocate the provisions into the more general location within §800.51; and

(12) removing §800.61(b) because of guidance from the United States Department of Labor that indicated that the provision is not required.

No comments received on the proposed amendments and repeal.

For information regarding the Texas Workforce Commission please visit our web page at www.texasworkforce.org.

40 TAC §§800.51-800.54, 800.57, 800.58, 800.61, 800.62

The rules are adopted under Texas Labor Code §801.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

§800.54. Food Stamp Employment and Training.

(a) Funds available to the Commission to provide FS E&T services under 7 U.S.C.A §2015(d) will be allocated to the workforce areas using a need-based formula, as set forth in subsection (b) of this section.

(b) At least 80% of the FS E & T funds will be allocated to the workforce areas on the basis of the relative proportion of the total unduplicated number of mandatory work registrants receiving food stamps residing within the workforce area to the statewide total unduplicated number of mandatory work registrants receiving food stamps.

(c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by the appropriate federal regulations and Commission policy.

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 December 14, 2000.

TRD-200008669
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: January 3, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 463-2573

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40 TAC §§800.55, 800.56, 800.59

The repeals are adopted under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

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 December 14, 2000.

TRD-200008670
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: January 3, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 463-2573

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §1.5

The Texas Department of Transportation adopts amendments to §1.5, concerning public hearings. The amendments are adopted without changes to the text as proposed by publication in the October 13, 2000, issue of the *Texas Register* (25 TexReg 10324), and will not be republished.

EXPLANATION OF ADOPTED AMENDMENT

Transportation Code, §21.111 requires the Texas Transportation Commission (commission) or the commission's authorized representative to hold a public hearing before approving financial assistance for airport development grants and loans.

Subsection (b) is amended to allow the executive director to designate an employee of the department to conduct public hearings in regards to receiving comments from interested parties prior to the approval of financial assistance under Transportation Code, §21.111. Delegation of authority allows for the hearings to be conducted at times necessary and convenient to the public.

Subsection (a)(4) is amended to update statutory references.

Subsection (a)(5) is deleted to remove reference to Transportation Code, §545.362, which expired due to the repeal of the national maximum speed limits.

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and more specifically, Transportation Code, §21.111, which authorizes the commission to delegate responsibility for conducting public hearings regarding financial assistance for airport development grants and loans.

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 December 15, 2000.

TRD-200008702
Richard D. Monroe
General Counsel
Texas Department of Transportation
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Proposal publication date: October 13, 2000
For further information, please call: (512) 463-8630

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CHAPTER 9. CONTRACT MANAGEMENT
SUBCHAPTER B. HIGHWAY IMPROVEMENT CONTRACTS

43 TAC §§9.11, 9.12, 9.14 - 9.16, 9.18

The Texas Department of Transportation adopts amendments to §9.11, §9.12, §§9.14-9.16, and §9.18, concerning highway improvement contracts. Section 9.18 is adopted with changes to the proposed text as published in the October 13, 2000, issue of the *Texas Register* (25 TexReg 10330). The amendments to §9.11, §9.12, and §§9.14-9.16 are adopted without changes to the proposed text and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, Chapter 223, Subchapter A, prescribes the method by which the Texas Department of Transportation receives competitive bids for the improvement of highways that are a part of the state highway system. Pursuant to this authority, the commission has previously adopted §§9.10-9.20 to specify the process by which the department will award highway improvement contracts.

Section 9.11

Definitions have been added, revised, and numbered to provide clarification regarding proposal bid items. Definitions for an alternate bid item and a regular bid item have been added to provide clarification and uniformity for these frequently used terms.

Section 9.12

Subsection (a)(2)(C)(i) is revised to provide that a bidder with a negative working capital position as reflected in the financial statements submitted for bidder qualification will receive a bidding capacity of $300,000. This revision is necessary to ensure that only those bidders with adequate financial resources are eligible to bid on highway improvement contracts in excess of $300,000.

Subsection (a)(2)(C)(ii)(II) is amended to allow for the consideration of additional work experience of bidders submitting compiled financial information in order to become eligible to bid on waived projects. Bidders possessing more than two years work experience in construction and/or maintenance will receive an additional $250,000 in bidding capacity for each additional year of experience obtained, with a maximum bidding capacity of $3,000,000 applicable.

The experience and project completion requirements for bidders submitting reviewed financial information as contained in subsection (a)(2)(C)(ii)(III) are revised to parallel the experience and project completion requirements for bidders submitting compiled financial information contained in subsection (a)(2)(C)(ii)(II). Subsection (a)(2)(C)(ii)(III) has also been revised to clarify the exact bidding capacity available for a bidder when the calculation of the bidding capacity does not result in an amount greater than $1,000,000.

The revisions to this section are made to provide additional opportunity for increased competition related to highway improvement contracts.

Section 9.14

Revisions have been made to this section to ensure that the terms "alternate bid item" and "regular bid item" are listed properly as previously defined. Subsection (a) is amended to properly reference the title of the department letting official. The required certification for computer printouts listed in subsection (c)(1) has been replaced with the requirement that an authorized signature accompany a computer printout sheet with the bid proposal. The department has determined that the submission of an original computer printout sheet with an authorized signature is sufficient for the purposes of bid proposal submission.

Subsection (d)(2) has been revised to provide additional information regarding requirements for the submission of a bid bond acceptable to the department. These revisions are necessary in order to protect the integrity of the competitive bidding process.

Section 9.15

Subsection (b) is revised to remove the requirement that a proposal will not be read if the unit prices are written in the proposal in numerals. An additional reason for not reading a proposal due to the bidder modifying the proposal has been added. The department has determined that the requirement that a proposal

not be read due to the unit prices being written in numerals is obsolete. The additional reason for not reading a proposal is necessary to preserve the uniformity of the bidding process by ensuring that all bids submitted for a specific contract are based on the same criteria.

Subsection (b)(1)(I) is revised to remove the certification requirement associated with a computer printout sheet in accordance with the adopted revision made to §9.14(c)(1).

Subsection (d) is revised to provide that a bidder may not withdraw a bid subsequent to the time for the receipt of bids with exceptions provided for the withdrawal of a bid as outlined in §9.16(c) relating to tie bids and §9.17(d) relating to award to second bidder. The addition regarding the time for bid withdrawal and the exceptions provided are necessary to provide additional clarification regarding the requirements associated with the withdrawal of bids.

Section 9.16

Clarification is provided with revisions to subsection (b) regarding department interpretations for regular and alternate bid items. Additional clarification is also provided regarding department interpretation and procedure for bid item unit price entries extended to more than three decimal places.

New paragraph (1) has been added to subsection (b) to provide that a proposal where unit bid prices have been left blank for regular bid items with no corresponding alternate bid items, will be considered to be incomplete and nonresponsive. This paragraph further clarifies that regular or alternate bid item groups must have a unit bid price listed for each bid item contained within the group in order for the bid to be considered responsive. These revisions provide additional clarification concerning the proposal unit bid item entries needed thereby enabling the department to uniformly tabulate the bids received.

Paragraph (2) of subsection (b) is revised to reflect the department procedure for rounding when a unit bid price contains an amount extended to more than three decimal places. As with the revisions made to subsection (b)(1), these revisions provide additional clarification regarding procedures for department interpretations necessary in order to enable the department to tabulate the bids received in a uniform and consistent manner.

Subsection (b)(6) is revised for additional clarification regarding department interpretations related to alternate and regular bid items, or groups of items. As stated previously, regular or alternate bid item groups must have a unit bid price listed for each bid item contained within the group in order for the bid to be considered responsive. When both the regular and alternate bid items, or groups of items, have unit bid price entries such as no dollars and no cents, zero dollars and zero cents or numerical entries of $0.00, the department will make two calculations using one-tenth of a cent ($.001) for each item. The department will then determine the option that results in the lowest cost to the state and tabulate as such. In those instances where a unit bid price greater than zero has been entered for either a regular or alternate bid item, or group of items, and the corresponding regular or alternate bid item has a unit bid price of no dollars and no cents, zero dollars and zero cents or numerical entries of $0.00, the department will interpret the intent of the bidder and use the unit bid price that is greater than zero for bid tabulation. These revisions are necessary to provide uniform criteria for bid tabulation.

New subsection (c) has been added to provide a procedure in the event of tie bids. Should tie bids occur, the low bidder will be determined by coin toss governed by the letting official or designee. This revision is necessary to provide a fair and impartial procedure in the event of tie bids.

Section 9.18

Subsection (a)(1)(A) has been revised to provide clarification regarding the determination of the contract amount for providing a payment and performance bond, if required. This subsection is clarified by referencing the contract amount determined as provided in §9.16(b)(2) relating to department interpretation.

New subparagraph (D) is added to subsection (a)(1) stating that the successful bidder must provide a list of all quoting subcontractors and suppliers within 15 days after written notification of contract award. This addition is necessary to comply with new federal regulations contained in Title 49, Code of Federal Regulations, §26.11.

COMMENTS

No comments were received on the proposed amended sections.

Section 9.18 is adopted with changes to correct a typographical error in the abbreviation of Small Business Enterprise.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §§223.001-223.013, which requires the Texas Department of Transportation to competitively bid highway improvement contracts.

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

§9.18. After Contract Award.

(a) Contract execution.

(1) Except as provided in paragraphs (2) and (3) of this subsection, within 15 days after written notification of award of a contract, the successful bidder must execute and furnish to the department the contract with:

(A) a performance bond and a payment bond, if required and as required by the Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law (Department interpretations made in accordance with §9.16(b)(2) of this chapter (relating to Tabulation of Bids) will be used to determine the contract amount for providing a performance bond and payment bond, if required, and as required by the Government Code, Chapter 2253.);

(B) a certificate of insurance showing coverages in accordance with contract requirements;

(C) when required, written evidence of current good standing from the Comptroller of Public Accounts; and

(D) a list of all quoting subcontractors and suppliers.

(2) A successful bidder on a routine maintenance contract will be required to provide the certificate of insurance prior to the date

the contractor begins work as specified in the department's order to begin work.

(3) Within the time specified in the contract, the successful bidder on a construction contract containing a DBE or SBE goal, who is not a DBE or SBE, must submit all the information required by the department in accordance with §9.53(e) of this title (relating to Disadvantaged Business Enterprise (DBE) Program) and §9.55(c) of this title (relating to Small Business Enterprise (SBE) Program). The successful bidder must comply with paragraph (1) of this subsection within 15 days after written notification of acceptance by the department of the successful bidder's documentation to achieve the DBE or SBE goal.

(b) Proposal guaranty.

(1) Apparent low bidder. The department will retain the proposal guaranty of the successful bidder until after the contract has been awarded, executed, and bonded. If the successful bidder does not comply with subsection (a) of this section, the proposal guaranty will become the property of the state, not as a penalty but as liquidated damages; provided, however, the department may, based on documentation submitted by the contractor, grant a 15-day extension to comply with the requirements under subsection (a)(3) of this section. A bidder who forfeits a proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the proposal guaranty.

(2) Other bidders. Not later than 72 hours after bids are opened, the department will mail the proposal guaranty of all bidders except the apparent low bidder to the address specified on each bidder's return bidder's check form included in the proposal.

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

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Richard D. Monroe
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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SUBCHAPTER F. CONTRACTS FOR SCIENTIFIC, REAL ESTATE APPRAISAL, RIGHT OF WAY ACQUISITION, AND LANDSCAPE ARCHITECTURAL SERVICES

43 TAC §§9.80 - 9.83, 9.85 - 9.87, 9.89

The Texas Department of Transportation adopts amendments to §§9.80-9.83 and §§9.85-9.87, and new §9.89 concerning contracts for scientific, real estate appraisal, right of way acquisition, and landscape architectural services. The amendments and new section are adopted without changes to the text as proposed by publication in the October 13, 2000, issue of the *Texas Register* (25 TexReg 10336), and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

Transportation Code, Chapter 223, Subchapter D, provides that the department may follow a procedure using competitive sealed proposals to procure the services of technical experts including archeologists, biologists, geologists, historians, or other technical experts to conduct environmental and cultural assessments for transportation projects within the authority or jurisdiction of the department.

Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, includes real estate appraisers (appraisers) and landscape architects as professional services.

The amendments and new section set forth procedures for the selection of appraisers, and extend the time period for tasks within scientific services work authorizations. Appraisers were already included in these sections if their services were required for the selection of a right of way provider.

The amendments to §9.80 add appraisers to the types of services that can be procured by the department with the use of a precertification procedure and competitive sealed proposals. The selection by competitive sealed proposals complies with a revision to Government Code, §2254.003 in 1997 which requires selection and award to be made on the basis of demonstrated competence and qualifications to perform the services, and for a fair and reasonable price.

The amendments to §9.81 provide a definition for the term appraiser.

The amendments to §9.82 provide that the department may use competitive sealed proposals for appraisal services.

The amendments to §9.83 provide that the department will give notice of appraisal procurements and the process for a potential provider to obtain a Request for Proposal packet. As another method to inform an appraiser of the precertification application requirement, the notice will contain a statement that an appraiser must be precertified.

The amendments to §9.85 provide that the appraiser must be precertified in order to be evaluated. A precertified appraiser will be evaluated on the experience of the individual; demonstrated understanding of the scope of services to be provided; references including the ability to meet deadlines over the past three years; ability to meet department scheduling requirements; and reasonableness of fee.

The amendments to §9.86 provide that the department may discuss best and final offers for appraisal services in order to obtain a contract that is in the best interest of the state.

The amendments to §9.87 provide that all work authorizations under an indefinite delivery contract shall be issued within two years of the effective date of the contract, except for scientific services. For scientific services, the initial work authorization for any specific project must be issued within two years. The work authorization for tasks or subtasks, within the specific project, may be issued after the initial two years provided that the task or subtask does not initiate a new project. The additional time is needed to begin tasks or subtasks because often the complete scope of a scientific services project cannot be determined until the initial scope of the project is complete.

New §9.89 lists the qualification requirements for appraisers. The qualifications establish a minimum education and experience threshold that an appraiser must meet in order to provide work for the department. An appraiser may be precertified if the individual has demonstrated experience after licensure

in the performance of appraisals associated with residences, apartments, commercial property, industrial property, farms, or other special purpose property; and is licensed to practice in Texas by the Texas Appraiser Licensing and Certification. To be precertified, an appraiser must submit an application, including, but not limited to, information regarding education, training, experience, and copies of licenses and certifications. The precertification of an appraiser does not guarantee that work will be awarded to such appraiser. The new section also sets a time period for review of the application by the department and a process for renewing precertification every five years. An appraiser may appeal denial of precertification by submitting additional information to the Director of the Right of Way Division in Austin who will review the information and make a determination. An appraiser may appeal that determination by filing a written complaint with the executive director or his or her designee.

COMMENTS

No comments were received on the proposed amendments and new section.

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Texas Transportation Code, Chapter 223, Subchapter D, which provides for the selection of technical experts, and Government Code, Chapter 2254, Subchapter A, which provides for the selection of appraisers and landscape architects.

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 December 15, 2000.

TRD-200008704
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: January 4, 2001
Proposal publication date: October 13, 2000
For further information, please call: (512) 463-8630

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Juvenile Probation Commission

Title 37, Part 11

The Texas Juvenile Probation Commission files this notice of intention to review §347.1 Introduction; §347.3 Definitions; §347.5 Eligibility Requirements Documented in the Initial Court Order that Removes the Child from Home or the Subsequent Court Order; §347.7 Screening and Certification of IV-E Juveniles; §347.9 Placement in IV-E Approved Facilities; §347.11 Aid to Families with Dependent Children Foster Care Recertification; §347.13 Family Reunification; §347.15 Case Plan and Review System; §347.17 Information System; §347.19 Foster Care Assistance Payments; §347.21 Monitoring Compliance with IV-E.

As a part of this review process, the Commission may propose amendments. If proposed, amendments will be found in the Proposed Rules Section of the *Texas Register*.

The Commission will accept comments within 30 days after publication of this notice to review on the Section 167 requirement as to whether the reason for adopting the rules continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Erika Sipiora, Staff Attorney Legal and Legislative Affairs Division, Texas Juvenile Probation Commission, 4900 N. Lamar Austin, Texas 78758 or at voice telephone (512) 424-6739 or email at Erika.Sipiora@tjpc.state.t.x.us.

TRD-200008792
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Filed: December 18, 2000

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 303, Operation of the Rio Grande. This review of Chapter 303 is proposed in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 303, Subchapter A contains introductory provisions; Subchapter B outlines the regulatory functions of the watermaster for the Rio Grande; Subchapter C specifies the allocation and distribution of waters of the Rio Grande; Subchapter D provides for enforcement of watermaster operations; Subchapter E addresses amendments and sales of water rights; Subchapter F addresses contractual sales of water; Subchapter G authorizes an excess flow permit; and Subchapter H provides for financing of the Rio Grande Watermaster operations.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 303 continue to exist. These rules are necessary to implement the procedures and powers provided to the commission relating to watermaster operations contained in Texas Water Code, §§11.325 - 11.458. The commission plans to revise portions of this rule in future rulemaking. Specifically, the commission plans to revise Subchapter A, §303.2, Definitions, to clarify geographical information which has inconsistencies in the descriptions of the reaches of the Rio Grande relative to water balance accounting by the watermaster. In Subchapter C, §303.21 and §303.22, the commission will consider modifications to reviewing and adjusting the operating reserves. In Subchapter E, §303.42, the commission will clarify provisions relating to sale, point of diversion, and place of use of water rights. The commission plans to make additional changes involving grammatical corrections and clarifying rule language.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999. The commission invites public comment on whether the reasons for the rules in Chapter 303 continue to exist. Comments may be submitted to Joyce

Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P. O. Box 13087, Austin, Texas 78711- 1966 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-025-303- WT. Comments must be received by 5:00 p.m, January 29, 2001. For further information, please contact Melissa Estes, Policy and Regulations Division, (512) 239-3937.

TRD-200008683
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: December 14, 2000

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Texas Turnpike Authority Division of the Texas Department of Transportation

Title 43, Part 2

Notice of Intention to Review: In accordance with the General Appropriation Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature, the Texas Turnpike Authority (authority) of the Texas Department of Transportation files this notice of intention to review Title 43 TAC, Part 2, §§50.41-45, management employee practices; §§50.50-54, management indemnification, and §§50.60-62 management public records, complaint procedures and debt collection.

§50.41. General Policy

§50.42. Sick Leave Pool Program

§50.43. Employee Training and Education

§50.44. Termination of Employees

§50.45. Standards of Conduct

§50.50. Indemnification by the Authority

§50.51. Expenses

§50.52. Procedure

§50.53. Additional Indemnification

§50.54. Definitions

§50.60. Public Records

§50.61. Complaints Procedure

§50.62. Debt Collection

The authority will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted in writing to Teresa Lemons, Director of Finance and Administration, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas, 78701-2438, or at (512) 936-0980.

TRD-200008798
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: December 18, 2000

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Texas Water Development Board

Title 31, Part 10

Chapter 373. Grants Administration

The Texas Water Development Board files this notice of intent to review 31 TAC, Part 10, Chapter 373, Grants Administration, in accordance with the Government Code, §2001.039. The board finds that the reason for adopting the chapter continues to exist.

As required by statute, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 373 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Jonathan Steinberg, Assistant General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax (512) 463-5580.

TRD-200008675
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: December 14, 2000

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Texas Workers' Compensation Commission

Title 28, Part 2

Notice of Intention to Review

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 116 concerning General Provisions - Subsequent Injury Fund. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt Chapter 116.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on January 29, 2001 and submitted to Cherie Zavitson, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

Chapter 116 General Provisions - Subsequent Injury Fund

§116.11 Request for Reimbursement or Refund from the Subsequent Injury Fund

§116.12 Subsequent Injury Fund Payment/Reimbursement Schedule

TRD-200008838
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: December 19, 2000

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Adopted Rule Reviews

State Office of Administrative Hearing

Title 1, Part 7

The State Office of Administrative Hearings (SOAH) has completed the review of 1 TAC, Part 7, Chapter 157, concerning Temporary Administrative Law Judges, and Chapter 161 of the same Title and Part, concerning Requests for Records, as noticed in the December 31, 1999 issue of the *Texas Register* (24 TexReg 12079). SOAH has determined that the reason for the initial adoption of the rules relating to Temporary Administrative Law Judges and Requests for Records continues to exist and that the rules should be readopted. No comments were received concerning readoption of Chapters 157 and 161.

TRD-200008677
Paul Elliot
Director of Hearings
State Office of Administrative Hearings
Filed: December 14, 2000

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Anatomical Board of the State of Texas

Title 25, Part 4

The Anatomical Board of the State of Texas (board) adopts the review of Title 25, Texas Administrative Code, Part, 4 Chapter 471, concerning officers, pursuant to Texas Government Code, §2001.039 and readopts this Chapter with the amendments proposed in the notice of intent to review. The notice of intent to review was published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6817).

As part of the review process the board proposed amendments to §§471.1, 471.3, 471.4. The board published notice of the proposed amendments in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6642). The board received no comments on the proposed amendments or on its notice of intent to review.

The adopted amendments appear in the Adopted Rules Section of this edition of the *Texas Register*.

The board is authorized by Health and Safety Code, §691.007 to adopt rules for its administration. Because the Chapter 471 rules relate to the board's organization and governance, the reasons for originally adopting them continue to exist.

This concludes the review of Chapter 471.

TRD-200008811
Dr. Andrew F. Payer, Ph.D.
Board's Secretary-Treasurer
Anatomical Board of the State of Texas
Filed: December 18, 2000

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The Anatomical Board of the State of Texas (board) adopts the review of Title 25, Texas Administrative Code, Part, 4 Chapter 473, concerning the executive committee, pursuant to Texas Government Code, §2001.039 and readopts this Chapter with the amendments proposed in the notice of intent to review. The notice of intent to review was published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6817).

As part of the review process the board proposed an amendment to §473.1. The board published notice of the proposed amendment in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6643). The board received no comments on the proposed amendment or on its notice of intent to review.

The adopted amendment appears in the Adopted Rules Section of this edition of the *Texas Register*.

The board is authorized by Health and Safety Code, §691.007 to adopt rules for its administration. Because the Chapter 473 rules relate to the board's organization and governance, the reasons for originally adopting them continue to exist.

This concludes the review of Chapter 473.

TRD-200008812
Dr. Andrew F. Payer, Ph.D.
Board's Secretary-Treasurer
Anatomical Board of the State of Texas
Filed: December 18, 2000

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The Anatomical Board of the State of Texas (board) adopts the review of Title 25, Texas Administrative Code, Part, 4 Chapter 475, concerning meetings, pursuant to Texas Government Code, §2001.039 and readopts this Chapter with the amendments proposed in the notice of intent to review. The notice of intent to review was published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6817).

As part of the review process the board proposed amendments to §§475.1-475.3 and 475.5. The board published notice of the proposed amendments in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6644). The board received no comments on the proposed amendments or on its notice of intent to review.

The adopted amendments appear in the Adopted Rules Section of this edition of the *Texas Register*.

The board is authorized by Health and Safety Code, §691.007 to adopt rules for its administration. Because the Chapter 475 rules relate to the board's organization and governance, the reasons for originally adopting them continue to exist.

This concludes the review of Chapter 475.

TRD-200008813
Dr. Andrew F. Payer, Ph.D.
Board's Secretary-Treasurer
Anatomical Board of the State of Texas
Filed: December 18, 2000

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The Anatomical Board of the State of Texas (board) adopts the review of Title 25, Texas Administrative Code, Part, 4 Chapter 477, distribution of bodies, pursuant to Texas Government Code, §2001.039 and readopts this Chapter with the amendments proposed in the notice of intent to review. The notice of intent to review was published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6818).

As part of the review process the board proposed amendments to §§477.1 and 477.4-477.8. The board published notice of the proposed amendments in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6644). The board received no comments on the proposed amendments or on its notice of intent to review.

The adopted amendments appear in the Adopted Rules Section of this edition of the *Texas Register*.

The board is required by Health and Safety Code, §691.031 to adopt rules ensuring that bodies received or distributed by it are properly transported. Because the Chapter 477 rules relate to transportation of bodies, the reasons for originally adopting them continue to exist.

This concludes the review of Chapter 477.

TRD-200008814

Dr. Andrew F. Payer, Ph.D.
Board's Secretary-Treasurer
Anatomical Board of the State of Texas
Filed: December 18, 2000

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The Anatomical Board of the State of Texas (board) adopts the review of Title 25, Texas Administrative Code, Part, 4 Chapter 479, concerning standards and inspections of facilities, pursuant to Texas Government Code §2001.039 and readopts this Chapter with the amendments proposed in the notice of intent to review. The notice of intent to review was published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6818).

As part of the review process the board proposed amendments to §479.2 and §479.5. The board published notice of the proposed amendments in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6646). The board received no comments on the proposed amendments or on its notice of intent to review.

The adopted amendments appear in the Adopted Rules Section of this edition of the *Texas Register*.

The board is authorized Health and Safety Code, §691.007 to adopt rules for its administration and required by §691.022 to adopt rules to ensure that bodies in the custody of the board or one of its member institutions are treated with respect. Because the Chapter 479 rules relate to the board's organization and governance and to standards and inspections of facilities, the reasons for originally adopting the rules continue to exist.

This concludes the review of Chapter 479.

TRD-200008815
Dr. Andrew F. Payer, Ph.D.
Board's Secretary-Treasurer
Anatomical Board of the State of Texas
Filed: December 18, 2000

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The Anatomical Board of the State of Texas (board) adopts the review of Title 25, Texas Administrative Code, Part, 4 Chapter 481, concerning willed body programs, pursuant to Texas Government Code, §2001.039 and readopts this Chapter with the amendments proposed in the notice of intent to review. The notice of intent to review was published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6818).

As part of the review process the board proposed an amendment to §481.1. The board published notice of the proposed amendment in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6648). The board received no comments on the proposed amendment or on its notice of intent to review.

The adopted amendment appears in the Adopted Rules Section of this edition of the *Texas Register*.

The board is required by Health and Safety Code, §691.022 to adopt rules to ensure that bodies in the custody of the board or one of its member institutions are treated with respect and authorized by §691.007 to adopt rules for its administration. Because the Chapter 481 rules relate to willed body programs and to the board's organization, the reasons for originally adopting the rules continue to exist.

This concludes the review of Chapter 481.

TRD-200008816
Dr. Andrew F. Payer, Ph.D.
Board's Secretary-Treasurer
Anatomical Board of the State of Texas
Filed: December 18, 2000

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The Anatomical Board of the State of Texas (board) adopts the review of Title 25, Texas Administrative Code, Part, 4 Chapter 483, concerning hearing procedures, pursuant to Texas Government Code, §2001.039 and readopts this Chapter with the amendments proposed in the notice of intent to review. The notice of intent to review was published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6819).

As part of the review process the board proposed an amendment to §483.1. The board published notice of the proposed amendment in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6649). The board received no comments on the proposed amendments or on its notice of intent to review.

The adopted amendment appears in the Adopted Rules Section of this edition of the *Texas Register*.

The board is required by Health and Safety Code, §691.034 to provide a hearing before revoking or suspending the authority of an institution or individual to receive and dissect bodies. Because the Chapter 483 rules relate to hearing procedures, the reasons for originally adopting the rules continue to exist.

This concludes the review of Chapter 483.

TRD-200008817
Dr. Andrew F. Payer, Ph.D.
Board's Secretary-Treasurer
Anatomical Board of the State of Texas
Filed: December 18, 2000

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Texas Commission on the Arts

Title 13, Part 3

The Texas Commission on the Arts adopts the review of the following sections from Chapter 31, concerning Agency Procedures, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

§31.1. Purpose

§31.2. Officers

§31.3. Meetings

§31.4. Committees

§31.5. Staff

§31.6. Required Advisory Panel Meetings and Required Advisory Panel Member Resignation upon Relocation Out-of-State

§31.7. Advisory Councils

§31.8. Travel

§31.9. Parliamentary Authority

§31.10. Financial Assistance Application Form

The proposed rule review was published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11527).

The agency finds that the need for the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the rule review.

The Texas Commission on the Arts contemporaneously adopts amendments to §§31.2, 31.4, 31.5, 31.6, 31.8 and 31.10, concerning Agency Procedures, elsewhere in this issue of the *Texas Register*.

This concludes the review of Chapter 31, Agency Procedures.

TRD-200008752
John Paul Batiste
Executive Director
Texas Commission on the Arts
Filed: December 18, 2000

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The Texas Commission on the Arts adopts the review of the following sections from Chapter 35, concerning A Guide to Operations, Programs and Services, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

§35.1. A Guide to Operations

§35.2. A Guide to Programs and Services

The proposed rule review was published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11527).

The agency finds that the need for the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the rule review.

This concludes the review of Chapter 35, A Guide to Operations, Programs and Services.

TRD-200008753
John Paul Batiste
Executive Director
Texas Commission on the Arts
Filed: December 18, 2000

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The Texas Commission on the Arts adopts the review of the following sections from Chapter 37, concerning Application Forms and Instructions for Financial Assistance, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

§37.22. Application Form and Instructions for Artist-in-Education Program--Artist

§37.23. Application Form and Instructions for Arts in Education Program--Sponsors

§37.24. Application Form and Instructions for Texas Touring Arts Program--Company/Artist

§37.26. Application Form and Instructions for Texas Touring Arts Program--Sponsors

§37.28. Application Form and Instructions for Arts Education Service Provider

The proposed rule review was published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11527).

The agency finds that the need for the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the rule review.

The Texas Commission on the Arts contemporaneously adopts amendments to §§37.22, 37.23, 37.24, 37.26 and 37.28, concerning, Application Forms and Instructions for Financial Assistance, elsewhere in this issue of the *Texas Register*.

This concludes the review of Chapter 37, Application Forms and Instructions for Financial Assistance.

TRD-200008754
John Paul Batiste
Executive Director
Texas Commission on the Arts
Filed: December 18, 2000

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Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas, on behalf of the Texas Department of Banking (department), has completed the review of Texas Administrative Code, Title 7, Chapter 4, consisting of §§4.2-4.12, regarding Currency Exchange.

Notice of the review was published in the September 1, 2000, issue of the *Texas Register* (25 TexReg 8745). No comments were received with respect to these rules. The department is aware that a few specific provisions of §4.6, relating to exemptions from licensing, are no longer necessary because of several amendments to Finance Code, §153.117, enacted by the 76th legislature specifically incorporating them into the Finance Code. Specifically, §4.6(d) and (e) should be deleted in their entirety, as should an obsolete reference in §4.6(a). The department is proposing to amend §4.6 to remove the superfluous provisions. Other than the provisions proposed for deletion, the department believes that the reasons for adopting these rules continue to exist.

The finance commission readopts these sections, subject to the proposed rule amendment approved for publication by the Commission at this meeting, pursuant to the requirements of Government Code, §2001.039, and finds that the reason for adopting these rules, as proposed to be amended, continues to exist.

TRD-200008707
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Filed: December 15, 2000

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Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners adopts the review of Chapter 199 (§§199.1-199.4), concerning public information, to be in compliance with Senate Bill 1233.

The proposed review was published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11298).

No comments were received regarding the review.

As a result of the review, the sections were proposed for amendment in the November 10, 2000 issue of the *Texas Register* (25 TexReg 11232). The amendments are being adopted elsewhere in this issue of the *Texas Register* without changes.

This concludes the review of Chapter 199.

TRD-200008741
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Filed: December 18, 2000

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Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.71- 291.76), concerning Institutional Pharmacies (Class C), pursuant to the Appropriations Act, 76th Legislature, Section 9-10.13. The proposed rule review was published in the June 16, 2000, issue of the *Texas Register* (25 TexReg 5950).

In conjunction with this review, the agency adopts amendments to Chapter 291 (§§291.71-291.76) published elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of this review. The agency finds that the reason for adopting the rule continues to exist.

TRD-200008692
Gay Dodson, R. Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: December 14, 2000

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The Texas State Board of Pharmacy adopts the review of Chapter 295 (§295.11), concerning notification to consumers, pursuant to the Appropriations Act, 76th Legislature, Section 9-10.13. The proposed rule review was published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9648).

No comments were received regarding adoption of this review. The agency finds that the reason for adopting the rule continues to exist.

TRD-200008693
Gay Dodson, R. Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: December 14, 2000

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Texas Department of Transportation

Title 43, Part 1

Notice of Readopted Rule: The Texas Department of Transportation readopts without changes Title 43 TAC, Part I, Chapter 18, Motor Carriers, and Chapter 28, Oversize and Overweight Vehicles and Loads.

This review was conducted in accordance with the General Appropriations Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature.

The proposed review was published in the October 6, 2000, edition of the *Texas Register* (25 TexReg 10201). No comments were received regarding the readoption of these rules. The Texas Transportation Commission has reviewed these rules and determined that the reasons for adopting them continue to exist.

TRD-200008698
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 15, 2000

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Texas Turnpike Authority Division of the Texas Department of Transportation

Title 43, Part 2

Notice of Readopted Rule: The Texas Turnpike Authority of the Texas Department of Transportation readopts without changes Title 43 TAC, Part 2, §§50.1-50.2, general provisions; §§50.3-50.30, governance of the authority; and §§50.32-50.33 public meetings and public access.

§50.1. The Authority.

§50.2. Definitions.

§ 50.3. Principal Office.

§50.4. General Powers.

§50.5. Number.

§50.6. Appointment.

§50.7. Qualifications.

§50.8. Term.

§50.9. Vacancies.

§50.10. Resignation and Removal.

§50.11. Compensation of Directors.

§50.12. Meetings.

§50.13. Quorum.

§50.14. Meetings by Telephone.

§50.15. Procedure.

§50.16. Committees.

§50.17. Notice.

§50.18. Waiver of Notice.

§50.19. Attendance as Waiver.

§50.20. Officers.

§50.21. Election and Term of Office.

§50.22. Removal and Vacancies.

§50.23. Chair.

§50.24. Vice Chair.

§50.25. Secretary.

§50.26. Treasurer.

§50.27. Administrators.

§50.28. Director.

§50.29. Assistant Secretary.

§50.30. Assistant Treasurer.

§50.32. Public Access to Board Meetings.

§50.33. Public Access to Information and Auxiliary Aids.

This review was conducted in accordance with the General Appropriation Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature.

The proposed review was published in the October 13, 2000, edition of the *Texas Register* (25 TexReg 10381). No comments were received regarding the readoption of these rules. The Texas Turnpike Authority has reviewed these rules and determined that the reasons for adopting them continue to exist.

TRD-200008797

Phillip Russell

Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Filed: December 18, 2000

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Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) adopts the review of Chapter 800, Subchapter B, §§800.51 - 800.54, 800.57 - 800.58, and 800.61 - 800.62 pursuant to Texas Government Code §2001.039.

Concurrent with the adoption of the review, the Commission adopts amendments to §§800.51 - 800.54, 800.57, 800.58, 800.61 and 800.62 and the repeal of §§800.55, 800.56, and 800.59, relating to allocations and funding, without changes to the proposed text as published in the October 27, 2000 issue of the *Texas Register* (25 TexReg 10711). The text will not be republished.

The purpose of the amendments and repeals is to update the allocations and funding rules consistent with the preliminary review of the rules. The Commission's allocations and funding rules set forth the methods or criteria used by the Commission to allocate or utilize funds primarily using the need-based formulas or other formula set forth in federal and state statutes applicable to the services to be provided.

No comments were received on the proposed review of the rules.

For more information regarding the Texas Workforce Commission visit our web page at http://www.texasworkforce.org.

The rule review is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308. §800.51. Scope and Purpose. §800.52. Definitions. §800.53. Choices §800.54. Food Stamp Employment and Training. §800.57. Employment Services. §800.58. Child Care §800.61. Welfare to Work §800.62. School-to-Careers.

TRD-200008671

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: December 14, 2000

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearings: Organic Cotton Program Rules

The Texas Department of Agriculture (the department) will hold two public hearings on January 8, 2001, to take public comment on its Organic Cotton Program rules found at 4 Texas Administrative Code, Chapter 3, Subchapter J. The hearings will be held as follows:

Beginning at 11:00 a.m., at the Texas A&M University Agricultural Research and Extension Center Auditorium, 1100 East FM 1294(1 3/4 miles east of Interstate Highway 27 on FM 1294), Lubbock, Texas; and, beginning at 3:00 p.m., at the Dawson County Community Center, 910 South Houston, Lamesa, Texas.

For more information, please contact , John McFerrin, Producer Relations Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711 (512) 463-7593.

TRD-200008725
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: December 15, 2000

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Office of the Attorney General

Request for Proposal - Indirect Cost Recovery and Cost Allocation Plans for FY2000 and FY2002

This Request for Proposal is filed pursuant to Texas Government Code section 2254.021 et seq.

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 2000 ("FY00") (based on actual expenditures) and 2002 ("FY02") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code section 2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY02.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars($49,000.00).

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

Prepare two (2) Indirect Cost Plans in accordance with OMB Circular A-87 one based on FY00 actual expenditures and one based on FY02 budgeted expenditures

* Identify the sources of financial information;

* Inventory all federal and other programs administered by the OAG;

* Classify all OAG divisions;

* Determine administrative divisions;

* Determine allocation bases for allotting services to benefitting divisions;

* Develop allocation data for each allocation base;

* Prepare allocation worksheets based upon actual FY00 expenditures and budgeted FY02 expenditures;

* Summarize costs by benefitting division;

* Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

* Determine indirect cost rates throughout the OAG on an annual basis;

* Prepare and present draft Indirect Cost Plans to the OAG by June 7, 2001;

* Formalize the Actual FY00 and Budgeted FY02 Indirect Cost Plans and present them to HHS by June 29, 2001; and

* Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2001.

2. Develop standardized billing rates for legal services

* Review current criteria used by the OAG for charging various agencies;

* Determine the types of legal services provided to the agencies;

* Compile direct hours for each type of service;

* Determine effort reporting requirements;

* Re-examine billing rate options;

* Determine the actual cost of services;

* Analyze and confirm revenues and cost analyses;

* Prepare and present a draft Legal Services Billing Schedule for FY 2000 actual costs to the OAG by July 13, 2001;

* Prepare and present a draft Legal Services Billing Schedule for FY 2002 budgeted costs to the OAG by August 10, 2001; and

* Formalize a Legal Services Billing Schedule by August 17, 2001.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and

4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;

2. Detailed information on the consultant staff to be assigned to the project; and

3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m.,Central Standard Time, January 29, 2001. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code section 2245.028, the OAG anticipates entering into the resultant contract on or about February 9, 2001.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG."

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the

OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);

2. the date(s) the employment(s) terminated; and

3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

2. consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.

3. consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.

4. consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.

5. consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

6. consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for noncompliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.

7. consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

8. The consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly its response to any competitor or any other person engaged in such line or business.

10. Under §231.006 Family Code (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

12. consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

13. consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

14. consultant must answer the following questions:

* If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

* If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

* If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

* Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 12,2001 or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to: **Ms. Julie Geeslin Budget and Purchasing Division Office of the Attorney General of Texas 300 W. 15th Street, Third Floor Austin, Texas 78701 (Phone: 512-475-4495)**

TRD-200008795
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: December 18, 2000
For further information, call A.G. Younger at 512-463-2110.

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Coastal Coordination Council

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of November 30, 2000, through December 7, 2000. The public comment period for these projects will close at 5:00 p.m. on January 19, 2001.

FEDERAL AGENCY ACTIONS

Applicant: Henry Stevenson; Location: The project site is located at the Bonner Turnaround approximately 6,200 feet southwest of the intersection of Texas State Highway 105 and Interstate Highway 10, on the north side of IH-10, at 1200 West Freeway, near Vidor, in Orange County, Texas. CCC Project Number: 00-0432-F1; Description of Proposed Action: The applicant proposes to modify the original mitigation plan which authorized the retention of 1.58 acres of wetlands to construct a mobile home retail facility. The applicant now proposes to amend the original mitigation to purchase 8 acre-credits from the Neches River Cypress Swamp Mitigation Bank in Jefferson County, Texas. Type of Application: U.S.A.C.E. permit application #21790(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act.

Applicant: Metropolitan Transit Authority; Location: The project site extends from the University of Houston/Downtown Campus at its north

end, through the Houston Downtown Central Business District, Midtown, through to the Astrodome area, ending at Fannin Street Station/Park & Ride in Harris County, Houston, Texas. CCC Project Number: 00-0433-F1; Description of Proposed Action: The applicant is seeking to revise their project to identify additional wetlands that will be impacted by the proposed work. The original public notice issued on September 20, 2000 stated that 1.6 acres of isolated wetlands would be impacted. It has now been determined that 8.15 acres of isolated wetlands will be impacted. Type of Application: U.S.A.C.E. permit application #22117 under §404 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

FEDERAL AGENCY ACTIVITY

Applicant: U.S. Department of Transportation/United States Coast Guard; Location: The project site is located in the vicinity of the Texas Highway 99 bridge that crosses over Goose Creek in Baytown, Texas. CCC Project Number: 00-0438-F2; Description of Proposed Action: The applicant proposes to construct an aid to navigation structure on land in the vicinity of the State Highway 99 bridge that crosses over Goose Creek in Baytown. Type of Application: U.S. Coast Guard Aid to Navigation Project.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200008865
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: December 20, 2000

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Comptroller of Public Accounts

Notice of Contract Award

Notice of Award: Pursuant to Chapters 403, 2305 and 2156, and Sections 2156.121 and 2156.122, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract award.

The notice of request for proposals (RFP #107f) was published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6413).

The contractor will assist Comptroller in designing and delivering an aggressive renewable energy marketing and education campaign. The outreach efforts are targeted at K-12 schools, sustainability practitioners, regulators and policy makers, electric utilities, renewable energy companies, and the general public.

The contract was awarded to: CSGServices, Inc., 1515 S. Capital of Texas Highway, Suite 210, Austin, Texas 78746. The total amount is not to exceed $400,000.00. The term of the contract is September 1, 2000 through August 31, 2001.

TRD-200008818
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 19, 2000

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Section 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP #118a) from qualified, independent firms to provide consulting services to the Comptroller. The successful respondent will assist the Comptroller in conducting management and performance reviews of the following independent school districts (ISDs): San Angelo, Christoval, Grape Creek, Veribest, Wall, and Water Valley. The Comptroller reserves the discretion to award one or more contracts for a review of one or all of the districts under this RFP. The services sought under this RFP will culminate in final reports, which shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review of each district involved. The successful respondent will be expected to begin performance of the contract on or about March 1, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, 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 was made available for pick-up at the above-referenced address on Friday, December 29, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the complete RFP available electronically on the Texas Marketplace after Friday, December 29, 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 Friday, January 19, 2001. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Mandatory Letters of Intent and Questions received after this time and date will not be considered. The responses to questions and other information pertaining to this procurement will be posted on Wednesday, January 24, 2001, on the Texas Marketplace http://www.marketplace.state.tx.us.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Monday, February 5, 2001. 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 - December 29, 2000, 2 p.m. CZT; Mandatory Letters of Intent and Questions Due - January 19, 2001, 2 p.m. CZT; Responses to Questions -

January 24, 2001; Proposals Due - February 5, 2001, 2 p.m. CZT; Contract Execution - February 23, 2001, or as soon thereafter as practical; Commencement of Project Activities - March 1, 2001.

TRD-200008857
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 20, 2000

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 12/25/00 - 12/31/00 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 12/25/00 - 12/31/00 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 01/01/01 - 01/31/01 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 01/01/01 - 01/31/01 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-200008823
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 19, 2000

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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 Resource One Credit Union (Dallas) seeking approval to merge with Texas Associates Federal Credit Union (Garland) with Resource One Credit Union 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-200008862
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 20, 2000

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Application(s) for Foreign Credit Union to Operate a Branch Office

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Star One Federal Credit Union, Sunnyvale, California to operate a Foreign (out-of-state) Branch Office at 6800 Burleson Road, Austin, Texas. This application is contingent upon approval of the credit union's application to convert to a California State Chartered 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-200008864
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 20, 2000

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Application(s) to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application for a name change was received for Temple Santa Fe Credit Union, Temple, Texas. The proposed new name is Temple Santa Fe Community Credit Union.

An application for a name change was received for Cabot & IRI Employees Credit Union, Pampa, Texas. The proposed new name is Cabot & NOI Employees 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-200008863
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 20, 2000

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Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Texas Telcom Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit Tyco International Ltd. employees working at or out of the plan (manufacturing facility) located at 3000 Skyline Drive, Mesquite, Texas to be eligible for membership in the credit union.

An application was received from Temple Santa Fe Credit Union, Temple, Texas to expand its field of membership. The proposal would permit persons who live or work in Bell County, Texas, excluding any individuals eligible for primary membership in any occupational or associational credit union with a full service office within the geographic area on January 1, 2001 to be eligible for membership in the credit union.

An application was received from Temple Santa Fe Credit Union, Temple, Texas to expand its field of membership. The proposal would permit the employees of Burlington Northern Santa Fe Railway to be eligible for membership in the credit union.

An application was received from Cabot & IRI Employees Credit Union, Pampa, Texas to expand its field of membership. The proposal would permit the employees of National Oil Well to be eligible for membership in the credit union.

An application was received from Austin Metropolitan Financial Credit Union, Austin, Texas to expand its field of membership. The proposal would permit persons who live or work within the boundaries of Williamson County, Texas, excluding persons eligible for primary membership in any occupation or association-based credit union with a total membership of less than 20,000 members that has, on December 1, 2000, a full service facility within the geographic area to be eligible for membership in the credit union.

An application was received from Premier America Credit Union, Chatsworth, California to expand the field of membership of its out-of-state branch office located in Houston, Texas. The proposal would permit the employees, retirees, annuitants, and their family members, of Metzdorf, Inc., who work in or are paid from Nacogdoches, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200008860
Harold F. Feeney
Commissioner
Credit Union Department
Filed: December 20, 2000

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

First Educators Credit Union, Houston, Texas - See *Texas Register* issue dated August 25, 2000

First Energy Credit Union, Houston, Texas (2 Appls.) - See *Texas Register* issue dated September 29, 2000

Skel-Tex Credit Union, Skellytown, Texas (3 Appls.) - See *Texas Register* issue dated September 29, 2000

Resource One Credit Union, Dallas, Texas (2 Appls.) - See *Texas Register* issue dated September 29, 2000

MemberSource Credit Union, Houston, Texas - See *Texas Register* issue dated September 29, 2000

Kraft America Credit Union, Garland, Texas - See *Texas Register* issue dated September 29, 2000

Enserch Credit Union, Dallas, Texas (Amended) - People who live and/or work in and business entities in the following six counties: Delta, Hopkins, Hunt, Kaufman, Rains and Rockwall; excluding persons eligible for primary membership in Terrell Community Credit Union for a period ending January 1, 2003

Premier America Credit Union, Chatsworth, California (2 Appls.) - See *Texas Register* issue dated September 29, 2000

Members Choice Credit Union, Houston, Texas - See *Texas Register* issue dated October 27, 2000

Associated Credit Union, Deer Park, Texas - See *Texas Register* issue dated October 27, 2000

Houston Postal Credit Union, Houston, Texas - See *Texas Register* issue dated October 27, 2000

TRD-200008861
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 20, 2000

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Texas Department of Criminal Justice

Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Hamilton #2 Fire Code Issues, Requisition Number: 696-FD-1-B004.

The Contract was awarded to Britt Rice Electric, L.P., as a full award for a dollar amount of $177,971.

TRD-200008819
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: December 19, 2000

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Notice of Award - 696-FD-0-B056

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Southern Regional Medical Facility Chiller Installation Texas City, Requisition Number: 696-FD-0-B056.

The Contract was awarded to C-AIR-S Mechanical L.P., as a full award for a dollar amount of $366,263.

TRD-200008820
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: December 19, 2000

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Texas Education Agency

Request for Applications Concerning the Christa McAuliffe Fellowship Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-01-009 from qualified teachers for the Christa McAuliffe Fellowship Program. This program honors the memory of the late Christa McAuliffe, the New Hampshire teacher who served as an astronaut on the space shuttle Challenger in January 1986. All applicants must have at least eight years of teaching experience in elementary or secondary public or private schools.

One fellowship will be offered. Teachers of all grade levels and subject areas are encouraged to submit applications that focus on the implementation of education reform that addresses, directly or indirectly, the goals outlined in the state's systemic education plan.

Description. The Christa McAuliffe Fellowship must be focused on making improvements in educator preparation, educational research, and the use of technology to enhance classroom instruction in one or more of the priority areas in the state's systemic education improvement plan. The priority areas are: (1) ensure that all students demonstrate exemplary performance in reading and writing; (2) ensure that all students demonstrate exemplary performance in the understanding of mathematics; (3) ensure that all students demonstrate exemplary performance in the understanding of science; and (4) ensure that all students demonstrate exemplary performance in the understanding of social studies.

The fellowship may be used for: (1) sabbaticals for study, research, or academic improvement; (2) consultation with or assistance to other school districts or private school systems; (3) development of special innovative programs; (4) projects or partnerships that involve the business community and the schools; (5) programs that incorporate the use and sharing of technologies to help students learn; or (6) expanding or replicating model programs of staff development.

Dates of Project. The Christa McAuliffe Fellowship Program will be implemented during the 2001-2002 school year. Applicants should plan for a starting date of August 1, 2001, and ending date of July 31, 2002.

Project Amount. Funds will be available to full-time teachers currently teaching in elementary or secondary public or private schools. Applications for the Christa McAuliffe Fellowship Program are competitive and will be funded until grant funds are depleted.

Selection Criteria. Distribution of the awards will be based on the applications prepared by the teachers and reviewed by a statewide panel composed of teachers, parents, school administrators, representatives of higher education, and members of professional education organizations. Each application will be judged on: (1) the applicant's proposal abstract and project description; (2) research, evaluation, dissemination, and educational benefits of the proposal; (3) professional education, experience in education, and professional activities; (4) the proposal budget; and (5) letters of support. The statewide panel will make the final selection of recipients for the fellowship awards and will present the names to the commissioner of education who in turn will present them to the Council of Chief State School Officers.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any application that is submitted in response to this RFA. This RFA does not commit TEA to pay any costs incurred before a contract is executed. The issuance of the RFA does not obligate TEA to award a contract or pay any costs incurred in the preparation of a response.

Requesting the Application. A complete copy of RFA #701-01-009 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463- 9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number in your request.

Further Information. For clarifying information about this request, contact Bobby W. West, TEA, (512) 475-1233. The announcement letter and complete RFA will be posted on the TEA web site at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, March 29, 2001, to be considered.

TRD-200008852
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: December 20, 2000

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Commission on State Emergency Communications

Notice of Proposed 9-1-1 Fees and 9-1-1 Equalization/Poison Control Surcharges and Allocations

Notice is given to the public of the Commission on State Emergency Communications' proposed rates for the 9-1-1 emergency services fees established pursuant to Texas Health and Safety Code Annotated §771.071 for each of the 24 councils of governments' areas participating in the state 9-1-1 program and of the proposed rates of the 9-1-1 equalization and poison control surcharges on intrastate long distance service established pursuant to Texas Health and Safety Code Annotated §771.072 and the budgeting and allocations of the fees and surcharges to 9-1-1 entities, poison control centers, and telecommunications and operations costs.

For each council of governments' area, the rate of the wireline 9-1-1 emergency service fee is proposed to remain unchanged at $0.50 per month for each wireline local access line or equivalent local access line as defined in 1 Texas Administrative Code §255.4. This does not include areas for the following counties and cities within councils of governments' areas that are not participating in the state 9-1-1 program. The counties not participating include: Smith, Taylor, Austin, Bexar, Comal, Guadalupe, Brazos, Calhoun, Cameron, Denton, El Paso, Ector, Galveston, Harris, Henderson, Howard, Kerr, Lubbock, McLennan, Medina, Midland, Montgomery, Wichita, Wilbarger, Potter, Randall, Tarrant, Rusk and Harrison. The cities not participating include: Addison, Aransas Pass, Dallas, Plano, Coppell, DeSoto, Ennis, Cedar Hill, Longview, Wylie, Denison, Duncanville, Farmers Branch, Garland, Highland Park, Mesquite, Richardson, Sherman, University Park, Glenn Heights, Hutchins, Lancaster, Portland, Rowlett and Sunnyvale. Wireless 9-1-1 emergency services fees are set at a fixed $0.50 per month by statute for each wireless telecommunications connection pursuant to Texas Health and Safety Code Annotated §771.0711. The 9-1-1 equalization surcharge is proposed to remain unchanged at 3/10 of one percent of intrastate long distance service pursuant to 1 Texas Administrative Code §255.1. The poison control surcharge is proposed to remain unchanged at 3/10 of one percent of intrastate long distance service pursuant to 1 Texas Administrative Code §255.9.

The proposed budgeting and allocations of the 9-1-1 emergency service fees, the 9-1-1 equalization surcharge, and the poison control surcharge are represented in the charts below. The expenditures outlined for the

9-1-1 program represent the combined funding priorities of regional operations Level I, Level II, and Level III pursuant to 1 Texas Administrative Code §251.6. Included within theses levels are the costs for provisioning 9-1-1 emergency services to include equipment, network, database, addressing, and related maintenance. The first chart shows the total revenues budgeted for each council of governments from the $0.50 per month wireline 9-1-1 emergency service fee, the revenues budgeted for each council of governments from the $0.50 per month wireless 9-1-1 emergency service fee, and the councils of governments' anticipated budgeted expenditures. The Commission has determined that at this time, 30% of the total wireless 9-1-1 emergency service fee revenue may be spent in conjunction with the wireline service fee. In the case where revenue minus expenditures results in a negative fund balance, 9-1-1 equalization surcharge funds may be used to reimburse councils of governments. Should the statewide 9-1-1 equalization surcharge demand exceed 100% of the available equalization surcharge funds, then an allocation process is approved by the Commission and applied to 9-1-1 equalization surcharge requests. As shown in the second chart, the revenues and expenditures outlined for the Poison program represents the Poison Control Answering Point (PCAP) operations and network operations. The PCAP operations include the expenditures related to the triaging of poison calls into the six individual PCAPs. The network operations represent the telecommunications, equipment, and administrative costs for the implementation of the Poison Control Network.

graphic

Figure 1:

graphic

Figure 2:

The Commission on State Emergency Communications may ultimately revise these proposed budgets and allocations during their strategic planning process, which will occur through action or direction given during the Commission on State Emergency Communications' open meetings on these issues. More specific details on these proposed budgets and allocations and other related information can be obtained by request from Julie Warton, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. This more specific detailed information has been provided to

the Public Utility Commission of Texas pursuant to Texas Health and Safety Code Annotated. §771.0725(b) and proposed PUC Substantive Rule §26.431(c)(3).

Pursuant to Texas Health and Safety Code Annotated §771.0725(c) and proposed PUC Substantive Rule §26.431, the Public Utility Commission of Texas is reviewing the specific fee and surcharge documentation provided by the Commission on State Emergency Communications and the proposed rates and allocations. Persons who wish to comment on these matters should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call Eric White, Assistant General Counsel, at (512) 936-7297 no later than 20 days after publication of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Public Utility Commission at (512) 936-7136. All comments should reference PUC Project Number 23406.

TRD-200008867
James D. Goerke
Executive Director
Commission on State Emergency Communications
Filed: December 20, 2000

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General Services Commission

Notice to Bidders for Construction Project No. 00-001-306

SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 00-001-306, Site Paving and Renovations of the TSL Sam Houston Library and Research Center, FM 1011, Liberty, Texas, 77575, on Wednesday, January 24, 2001, at 3:00 PM. HUB Subcontracting Plans are due Thursday, January 25, 2001, at 3:00 PM. At that time, HUB Subcontracting Plans will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

The approximate total cost for contract: 00-001-306 - Renovations of the TSL Sam Houston Library and Research Center is approximately $400,000.

Bid & HUB Subcontracting Plan Receipt Location: General Services Commission/FCSM will receive bids at Room 180, Bid Tabulation or, if mailed or shipped, Room 176, Mail Room, Central Services Building, 1711 San Jacinto, Austin, Texas 78701.

Contractor Qualifications: Contractors should submit information to FCSM on GSC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-3417. This form should be submitted as soon as possible, but no later than 5:00 PM on Wednesday, January 17, 2001, to document compliance with contractor's qualification requirements for the project. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A review by FCSM of contractor qualification statements is required **prior to opening bid proposals**.

Good Faith Effort for use of Historically Underutilized Businesses (HUB): GENERAL SERVICES COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING OPPORTUNITIES. THEREFORE, A HUB SUBCONTRACTING PLAN WILL BE REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE. Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. General Services Commission's goal for HUB participation in Building Construction projects is 26.1% of the total contract. Ms. Bettie Simpson, telephone (512) 463-3232, with General Services Commission can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at **www.gsc.state.tx.us** and other web sites, see the Project Manual.

Bid Documents: Plans and specifications are available for prime contractors from Prozign Architects, 5701 Woodway, Suite 200, Houston, Texas 77057, Phone: (713) 977-6060, Fax: (713) 977-6086, upon delivery of a refundable deposit of $100.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, the architect's office and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, the Builder's Exchange of Texas and the Associated Builder's and Contractors in **Houston**. **Pre-Bid Conference**: There will be MANDATORY Pre-Bid Conference on **Thursday, January 11, 2001, at 1:00 PM,** at the Sam Houston Library & Research Center, FM 1011, Liberty, Texas 77575.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TO BE RUN IN: HOUSTON CHRONICLE, BEAUMONT ENTERPRISE 2 TIMES: Monday, December 18, 2000, and Friday, January 5, 2001

TRD-200008724
Ann Dillon
General Counsel
General Services Commission
Filed: December 15, 2000

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Texas Department of Health

Notice of Local Emergency Planning Committee Development Grants Request for Proposals

Introduction

The Texas Department of Health (department) is requesting proposals for an LEPC Emergency Planning & Response Grants to be awarded to counties, cities, or non-profit LEPCs governing Local Emergency Planning Committees (LEPCs) to further the LEPCs' work in emergency planning and response.

Description of Activities

LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA), also known as the Superfund Amendment Reauthorization Act (SARA), Title III, to provide planning and information for the community relating to chemicals. A grant may be used by an LEPC to purchase emergency planning and response equipment, supplies, and services for the purpose of improving hazardous chemicals emergency planning and response throughout Texas.

Eligible Applicants

Each proposal shall be developed by an LEPC, in cooperation with the county and local governments. The proposal must be approved by a majority vote of the LEPC and endorsed by the county judge or the head of a local government entity, whichever exercises control over the LEPC. The county or local supporters must support the costs until reimbursement is made by the department through monthly billings.

Budget Limitations

The grants will have a total funding of $50,000 (one time only) from state fee funds. Grants to each LEPC will be capped at $6,000 each. The department is accepting proposals for LEPC purchases of equipment, supplies, and services that would better enable the LEPC to meet its un-funded mandates under the federal Emergency Planning & Community Right-to-Know Act (EPCRA or SARA, Title III). All proposals for planning and response equipment, supplies, and services must describe a positive impact on emergency planning and response in the jurisdiction of the LEPC.

Examples of Proposals

A grant may be used by the LEPC to purchase emergency planning and response equipment, supplies, and services for the purpose of improving emergency planning and response, such as computer equipment, communication equipment, office supplies, and advertising.

Final Selection and Contract Period

The Hazard Communication Branch at the department shall review the proposals. The department is under no obligation to award all of the grant money. Grant contracts begin June 1, 2001 and end August 31, 2001.

Application Forms and Deadline

A more complete Request for Proposals and application package can be obtained from Keith Helmers, Outreach Program Specialist, Hazard Communication Branch, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (800) 452-2791, or (512) 834-6603. Completed applications must be received at the Exchange Building, Hazard Communication Branch, 8407 Wall Street, Suite N320, Austin, Texas or postmarked and mailed to Hazard Communication Branch, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 by March 29, 2001.

TRD-200008858
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 20, 2000

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Notice of Request for Proposals for Emergency Medical Services Local Projects Grant Program

PURPOSE: The Emergency Medical Services (EMS) Local Projects Grant (LPG) program was established in 1990 for the purpose of improving EMS throughout Texas by providing money and technical assistance to eligible organizations. This program is administered by the Bureau of Emergency Management (bureau) of the Texas Department of Health (department). The program provides reimbursement for approved cost incurred for a specific project completed during a specified contract period, September 1, 2001 - August 31, 2002.

DESCRIPTION: The department is accepting proposals for local EMS projects to increase the availability and quality of emergency pre-hospital health care. Applicable projects are those which upon completion, will demonstrate a positive impact on the delivery of emergency pre-hospital health care in the area implemented. Types of projects acceptable for funding include: EMS certification training; specialty training related to pre-hospital health management; EMS equipment; computers for data collection; injury prevention projects; continuing education programs; ambulances; and system development programs.

Contracts will be developed between the department and successful applicants for a specified period of time. The contracts will detail items such as budget, reporting requirements, department general provisions, and any other specifies that might apply to the award. All registered, licensed, or certified organizations as determined by the bureau (e.g. licensed EMS providers, registered first responder organizations) must maintain the appropriate credentials throughout the specified contract period. The grant provides reimbursement for an approved project and associated cost deemed reasonable and necessary and incurred after the award is made and during the stated contract period only. Reimbursement may be withheld and a request for return of funds may be necessary if any of the stated requirements of this grant are not met. The Chief of the Bureau of Financial Services or the department's designee, is the only individual who may legally commit the department to expenditure of public funds. No cost chargeable to the proposed contract may be reimbursed before receipt of a fully executed contract. For EMS certification projects, proof of successful certification must be submitted within 45 days following the end of the contract period. In addition, it will be the responsibility of the grant recipient to maintain a record of all costs and activities related to the administration of the project. Projects must start on or after September 1, 2001, and be completed prior to August 31, 2002.

The average award in 2000-2001 was approximately $11,772 with a range of $250 to $49,861. The maximum grant for a new ambulance will be $35,000.

Matching funds may come from sources such as local funds, private donations, other state grants, federal grants, or private foundations. A soft, or in-kind, matching funds are not acceptable. Matching funds will be required for the following:

Any individual equipment item with a useful life of more than one year and a cost greater than $1,000 (including shipping costs) requires 50% matching funds, with the following exceptions:

(1) Fax machines, stereo equipment, cameras, video recorders/players, computers, software and printers. These items require a 50% match if the individual cost exceeds $500 and the useful life is greater than one year.

(2) Medical laboratory equipment (defined as microscopes, oscilloscopes, centrifuges, balances, and incubators) will require a 50% match if the unit cost exceeds $500.

The maximum grant for a new ambulance will be $35,000. The maximum grant for a computer will be $1,500. The maximum total for this grant will be $50,000 per organization represented.

Any project that involves advanced life support (ALS) will require the signature of a medical director on the application page. Advanced life support projects include, but are not limited to, items such as the purchase of monitor/defibrillator/pacer units, automated external defibrillators, and ALS training.

Any project that involves hosting of an initial certification course or continuing education course will require prior discussion of the potential course with EMS staff at the local public health region (PHR) office. On-site training requests must indicate the distance to the nearest training facility.

Any project involving the purchase of computers and computer related items, including accessories and software, must be thoroughly described within the proposal. An appropriate description would be "300 MHz Pentium Processor, 64 MG RAM, 6.0 GB hard drive, 56K modem, 24X CD ROM." Also, a similar description of make and model for the printer, monitor, and any software is essential.

The program only provides reimbursement for approved costs associated with the implementation of the approved project. Projects will be funded until funds have been exhausted or preset limits reached. Examples of costs that are not applicable for funding include items

such as salaries, fringe benefits, indirect costs, disposable supplies, and day-to-day operating expenses (e.g. fuel, insurance, loan payments, rent, etc.). Land purchases or building funds do not qualify as applicable projects under this program.

Should a project not be completed or the full allocation of funding not be used, the department may redistribute funds at its discretion. The department reserves the right to fund projects at any level considered appropriate, according to the availability of funds and justification for need. Any costs incurred prior to the contract start date (September 1, 2001) will not be eligible for reimbursement.

ELIGIBLE APPLICANTS: Proposals will be accepted from approved EMS organizations responsible for providing prehospital emergency care. Organizations must be in good standing with no disciplinary actions other than administrative penalties (not to exceed $1,000 total), for a two-year period immediately preceding submission of the LPG request. Organizations that have had actions taken against them by the department may be ineligible for funding. Applicants should contact the appropriate PHR for more information. These organizations include:

(1) licensed EMS providers providing 911 service;

(2) registered first responder organizations. Registered first responder organizations have the proper Bureau first responder paperwork, based on 25 Texas Administrative Code, §157.21 First Responder Organization Registry, entered into the department's network as active no later than deadline date of this application; and

(3) other approved EMS organizations

Failure to comply with these requirements of the grant constitutes grounds for revocation of any award made as part of the Local Projects Grant Program.

CONTACT: Information concerning the Request for Proposals (RFP) may be obtained from Al Lewis, Local Project Grants Program, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin Texas 78756, Telephone (512) 834-6700 ext. 2376, Fax (512) 834-6611 or email (al.lewis@tdh.state.tx.us)

LIMITATIONS: The department reserves the right to reject any or all applications and is not liable for costs incurred by the applicant in the development, submission, or review of the application. Costs incurred in the preparation of the application shall be borne by the applicant and are not allowable in the RFP.

The department reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant thereto, if in the best interest of the department or the State of Texas to do so. The decision of the department will be administratively final in this regard.

DEADLINE: The deadline for submitting the application, original proposal, applicable forms, plus three copies of each will be midnight, April 13, 2001. Only those original proposals and copies, which are postmarked or received by midnight on or before April 13, 2001 will be reviewed regardless of the circumstances. Applications may be mailed or hand delivered. If delivered by hand, the proposal must be taken to the Exchange Building, Bureau of Emergency, 8407 Wall Street, Suite S220, Austin, Texas Management (by close of business 5:00 P.M. on April 13, 2000).

The original and one copy of the completed application, applicable forms, and proposal should be submitted to Kathryn C. Perkins, Chief, Attention: Local Projects Grant Program, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Two copies of the completed application, applicable forms, and proposal must also be submitted to your regional office of the department.

EVALUATION AND SELECTION: Proposals will be reviewed and evaluated based on information provided by the applicant. Eligibility criteria includes:

(1) evaluation of all information in the application;

(2) applicant's local project grants funding history;

(3) the applicant's numerical local project grants application score; and

(4) the history of disciplinary actions other than administrative penalties.

Proposals will be reviewed to ensure all budget items requested are applicable and appropriate, that matching funds are available and that implementation of the proposed project is possible. Tentative approval will be given by the Chief of the Bureau of Emergency Management and the Associate Commissioner for Health Care Quality and Standards. Final approval will be given by the Commissioner of Health or the Commissioner's appointed agent. All projects not funded will remain active until the end of the funding cycle for consideration in the event funding becomes available.

The department strongly supports the concept of cooperative applications between multiple providers and/or registered first responder programs, and applications that clearly demonstrate and document regional projects involving multiple service organizations. In the event of a cooperative application between multiple entities being submitted, an itemized proposal must be provided to clearly identify equipment/training allocation. Though not a prerequisite for this grant, the department encourages all applicants to pursue such cooperative agreements. Additionally, preference will be given to proposals that are most economical (i.e. refurbished ambulances will be given preference over new ambulances). For additional information contact the EMS Local Projects Grant Program, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700 extension 2329.

TRD-200008822
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 19, 2000

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Texas Department of Housing and Community Affairs

Request for Proposals to Provide Technical Assistance Educational Services to a Thirty-Two County Area in the Alamo Area, Coastal Bend, Concho Valley, Lower Rio Grande Valley, Middle Rio Grande, Permian Basin, Rio Grande, South Texas Development, and the West Central Texas

The Texas Department of Housing and Community Affairs (TDHCA), Office of Colonia Initiatives (OCI), is accepting proposals for a one-year contract with a competent entity or individual to provide contract for deed consumer education workshops in designated counties located within 200 miles of the Texas-Mexico border. The entity or individual will provide executory contract for deed consumer education workshops on the new provisions of the executory contract for deed transaction and the rights of a buyer who purchases residential land with a contract for deed.

1. Andrews

2. Brooks
3. Cameron
4. Coleman
5. Culberson
6. Dimmit
7. Duval
8. El Paso
9. Frio
10. Hidalgo
11. Jim Hogg
12. Jim Wells
13. Kinney
14. Kleberg
15. La Salle
16. Maverick
17. Mitchell
18. Nolan
19. Pecos
20. Presidio
21. Reagan
22. Reeves
23. San Patricio
24. Starr
25. Uvalde
26. Val Verde
27. Ward
28. Webb
29. Willacy
30. Winkler
31. Zapata
32. Zavala

The successful candidate will provide contract for deed consumer education as outlined in the workshop curriculum: Contract For Deed; Negative Aspects of the Contract For Deed; Determination & Notice of Applicability; Spanish Language Requirement; Seller's Disclosure of Condition of the Property; Seller's Disclosure of Financial Terms; Contract Terms Prohibited; Annual Accounting Statement; Buyer's Right to Cancel Contract Without Cause; Forfeiture and Acceleration or of Rescission; Notice of Forfeiture and Acceleration or of Rescission; Equity Protection: Sale of Property, Placement of Lien for Utility Service; The Buyer's Right to Pledge Interest In Property On Contracts Entered Into Before September 1, 1995; Recording Requirements; and Title Transfer.

Interested parties should have experience in executing educational workshops, considerable experience working with colonia residents and/or low income populations, experience teaching workshops in Spanish, have geographical knowledge of colonias and/or substandard living conditions in the designated counties, experience in affordable housing, real estate, or home ownership counseling programs, knowledge of the basic process of a contract for deed transaction, knowledge of or previous experience with state government or related entities, and experience with marketing to colonia residents or low income populations.

Proposals must be received at TDHCA headquarters no later than 5 p.m. on Friday, January 12, 2001. To obtain an application and/or additional information, please contact Juan Palacios or Susana Garza with the OCI at 1-800-462-4251, or visit our website at www.tdhca.state.tx.us.

TRD-200008722
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 15, 2000

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Texas State Affordable Housing Corporation

Notice of Public Hearing

MULTIFAMILY HOUSING REVENUE BONDS (AGAPE IRVING HOUSING, INC. DEVELOPMENT) SERIES 2001

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on January 8, 2001 at 12:00 noon at MacArthur Office Plaza, 3501 North MacArthur Boulevard, Irving Arts Center, Building 700, Classroom One, Irving, Texas, 75062, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in the aggregate amount not to exceed $25,000,000, the proceeds of which will be loaned to Agape Irving Housing, Inc., an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition, construction and equipment of a multifamily housing project (the "Project") located within Dallas County, Texas, as described as follows: The Reserve Apartments containing 261 units, located at 4213 Las Brisas Drive, Irving, Texas 75038. The Project will be owned by Agape Irving Housing, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or request for additional information may be direct to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Michael A. Sullivan, ADA Responsible Employee, at 1-888-638-3555, ext.417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda Houchin David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at dowen@tsahc.com.

TRD-200008794

Michael A. Sullivan
President
Texas State Affordable Housing Corporation
Filed: December 18, 2000

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Texas Department of Insurance

Insurer Services

Application to change the name of AFBA LIFE INSURANCE COMPANY to 5 STAR LIFE INSURANCE COMPANY, a foreign life company. The home office is in Alexandria, Virginia.

Application to change the name of GREENTREE INSURANCE COMPANY, INC. to THE ARIES INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Miami, Florida.

Application to change the name of AXARE LIFE INSURANCE COMPANY to AXA CORPORATE SOLUTIONS LIFE REINSURANCE COMPANY, a foreign life company. The home office is in Wilimington, Delaware.

Application to change the name of AXA REINSURANCE COMPANY to AXA CORPORATE SOLUTIONS REINSURANCE COMPANY, a foreign life company. The home office is in Wilimington, Delaware.

Application to change the name of SPECTERA DENTAL, INC. to NATIONAL PACIFIC DENTAL, a domestic health maintenance organization. The home office is in Houston, Texas.

Application for admission to the State of Texas by DEALERS ASSURANCE COMPANY, a foreign fire and casualty company. The home office is in Upper Arlington, Ohio.

Application for admission to the State of Texas by OMNI INDEMNITY COMPANY, a foreign fire and casualty company. The home office is in Chicago, Illinois.

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-200008859
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 20, 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 incorporation in Texas of Steven Goldstein, M.D. & Associates, P.A., (using the assumed name of Medirect), domestic third party administrator. The home office is Houston, Texas.

Application for admission to Texas of Benefit Management, Inc., (using the assumed name of BMI-Health Plans Inc.), a foreign third party administrator. The home office is Bartlesville, Oklahoma.

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-200008825
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: December 19, 2000

♦ ♦ ♦

Texas Department of Mental Health and Mental Retardation

Public Hearing Notice on Reimbursement Rates for State-Operated Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on the proposed reimbursement rates for state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR). The start-up rate will become effective on the date the facility is certified and remain in effect for ninety days. The normal daily rate will become effective on the 91st day following certification and remain in effect through December 31, 2001. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs. Payment rates are proposed to be effective as indicated above as follows:

graphic

[GRAPHIC]

Methodology and justification: The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter D (relating to Reimbursement Methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program), §355.451(b)(2), §355.456(c), and subsequently adjusted in accordance with §355.456(e)(3) (relating to Rate Determination).

The public hearing will be held on Wednesday, January 10, 2001, at 1:00 p.m. in the auditorium, room 164, of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by 4:00 p.m. on Wednesday, January 10, 2001.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation should contact Tom Wooldridge by calling (512) 206-5753 or the TDY phone number of Texas Relay, which is (800) 735-2988, at least 72 hours prior to the hearing.

TRD-200008868
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: December 20, 2000

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission (Commission) proposed new §285.13 and §285.21 in the December 8, 2000, issue of the *Texas Register* (25 TexReg 12105).

Due to errors, by the Commission, the following corrections are needed.

On page 12096, 1st column, 6th paragraph, 4th line, the phone number reads: (512) 239-0348. The correct phone number should be: (512) 239-4808.

On page 12107, under §285.13(a), third line, it reads: "fee of $200 per permit to local governmental..." The correct phrase should read: "fee of $350 per permit to local governmental..."

On page 12108 under §285.21(a)(1), it reads: "$200 for an OSSF serving a single family dwelling; or." Subsection (a)(1) should read: "$350 for an OSSF serving a single family dwelling; or."

TRD-200008866

♦ ♦ ♦

Correction of Error

The Texas Natural Resource Conservation Commission (Commission) published a public hearing notice in the December 8, 2000, issue of the *Texas Register* (25 TexReg 12250).

Due to an error, by the Commission, the following correction is needed.

On page 12251, 1st column, 3rd paragraph, 3rd line, the phone number reads: (512) 239-0348. The correct telephone number should be: (512) 239-4808.

TRD-200008883

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Notice of Extension of Comment Period

In the December 1, 2000 issue of the *Texas Register*, the Texas Natural Resource Conservation Commission (commission) published a proposed amendment to 30 TAC Chapter 335, concerning Industrial Solid Waste and Municipal Hazardous Waste (25 TexReg 11889). The preamble to the proposal stated that the commission must receive all written comments by 5:00 p.m., January 2, 2001. The commission has extended the deadline for receipt of written comments to 5:00 p.m., January 17, 2001 for this proposed amendment.

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808. All comments should reference Rule Log Number 1997-174-335-WS. For further information, please contact Ray Henry Austin at (512) 239-6814.

TRD-200008696
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: December 14, 2000

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Notice of Water Rights Applications

Colonial Country Club, 3735 Country Club Circle, Fort Worth, Texas 76109, applicant seeks to amend Certificate of Adjudication No. 08-3374, as amended, pursuant to Texas Water Code §11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Certificate of Adjudication No. 08-3374, as amended, authorizes owners to maintain an off-channel reservoir and to impound therein not to exceed 11 acre-feet of water to be diverted from the Clear Fork Trinity River. The reservoir is located in the A.B. Conner Survey, Abstract No. 305, Tarrant County, Texas. Owner is also authorized to directly divert into the reservoir not to exceed 700 acre-feet of water per annum from the Clear Fork Trinity River and subsequently divert and use from the reservoir not to exceed 292 acre-feet of water per annum to irrigate 146 acres of land out of a larger tract located in aforesaid survey. Water is divert from two diversion

points on the Clear Fork Trinity River and from the perimeter of the reservoir at a maximum combined rate of 7.24 cfs (3250 gpm). The permit contains three (3) special condition as follows: Water divert from Clear Fork Trinity River, but not consumed will be returned to the river via seepage under and through the dam forming the off-channel reservoir. 1. Owner is authorized to divert water from the river only when the remaining flow at the USGS Gage on the Clear Fork Trinity River at Fort Worth is at least 0.60 cfs. 2. This Certificate will expire and become null and void on December 31, 1999 unless extension is granted prior to the expiration date. Applicant is seeking to extend special condition 5. (c) expiration date from December 31, 1999 to December 31, 2010.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the 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 permit and will 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, 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-200008678
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: December 14, 2000

♦ ♦ ♦

Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on December 5, 2000. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Seabrook Seafood, Inc, Respondent; SOAH Docket No. 582-00- 0762;TNRCC Docket No.1998-0376-AIR-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200008679
Doug Kitts
Certifying Official
Texas Natural Resource Conservation Commission
Filed: December 14, 2000

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Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on December 8, 2000. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Felix Rodriquez; Respondent; SOAH Docket No.582-01-0311; TNRCC Docket No.1999-1200-PST-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087 ,Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200008680
Doug Kitts
Certifying Official
Texas Natural Resource Conservation Commission
Filed: December 14, 2000

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Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on December 8, 2000 Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Danny Visconti ; Respondent; SOAH Docket No.582-00-2371; TNRCC Docket No.1999-1227-AIR-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087 ,Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200008681

Doug Kitts
Certifying Official
Texas Natural Resource Conservation Commission
Filed: December 14, 2000

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission is soliciting bids for a contract to provide Team Building and Development Training to Texas Workforce Center staff.

Proposers should submit bids to provide three one-day identical sessions on consecutive days, preferably Wednesday through Friday, in order to train all team members. Each session should accommodate 30-40 attendees. Training must be conducted and invoicing completed by February 21, 2001.

Subjects covered should be accommodating and facilitating changes in governing legislation, work processes and co-workers; conflict resolution and problem solving; developing effective meeting practices, operating agreements, and other collaborative processes and skills; and helping teams how to understand team goals that will ensure all performance measures are met.

Bids must be submitted to the Panhandle Regional Planning Commission no later than 5:00 p.m., January 15, 2001. Bids received after the indicated date and time will not be accepted or considered for award. PRPC reserves the right to reject any and all bids, to waive any irregularities in any bids or in the bidding process, and may accept the bid or bids deemed to be in its best interest.

To obtain the bid specifications or for further information, please contact Leslie Hardin, Workforce Development Program Specialist at (806) 372-3381 or lhardin@prpc.cog.tx.us.

TRD-200008869
Tom Dressler
Workforce Development Director
Panhandle Regional Planning Commission
Filed: December 20, 2000

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Legal Notice

The Panhandle Regional Planning Commission is soliciting bids for a contract to purchase twelve (12) personal computers (PCs) and related equipment. Delivery and invoicing must be completed by February 21, 2001.

To comply with our funding agency's requirements, PRPC will only accept bids for PCs produced by a Tier1/Tier2 manufacturer as designated by the Gartner Group. Tier 1/Tier 2 manufacturers include: Acer, AST, Compaq, Digital, Dell, Gateway, HP, IBM, Micron, NEC, Unisys and Zenith Data Systems.

Bid specifications may be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 West Eighth Ave., Amarillo, Texas 79101. For further information, please contact Mark Dubina, mdubina@prpc.cog.tx.us, or Leslie Hardin, lhardin@prpc.cog.tx.us, or at (806) 372-3381.

Bids must be submitted to the Panhandle Regional Planning Commission no later than 5:00 p.m., January 15, 2001. Bids received after the indicated date and time will not be accepted or considered for award. PRPC reserves the right to reject any and all bids, to waive any irregularities in any bids or in the bidding process, and may accept the bid or bids deemed to be in its best interest.

TRD-200008870
Tom Dressler
Workforce Development Director
Panhandle Regional Planning Commission
Filed: December 20, 2000

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 11, 2000, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Green Mountain Energy Company for Retail Electric Provider (REP) certification, Docket Number 23409 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than January 8, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008673
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 14, 2000

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

On December 11, 2000, Looking Glass Networks, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60372. Applicant intends to reflect a *pro forma* reorganization whereby all stock of Looking Glass Networks, Inc. will be transferred from its parent company to a newly created holding company, Looking Glass Networks Holding, Inc.

The Application: Application of Looking Glass Networks, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23408.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than January 4, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23408.

TRD-200008672

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 14, 2000

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

On December 11, 2000, Waller Creek Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60112. Applicant intends to reflect the purchase by El Paso Energy Corporation on November 30, 2000, and on December 1, 2000, the transfer of ownership and management responsibilities to Quanta Investors, L.L.C., as well as change its name to El Paso Networks, L.L.C., and expand its geographic area to include the entire state of Texas.

The Application: Application of Waller Creek Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23410.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than January 4, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23410.

TRD-200008674
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 14, 2000

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

On December 14, 2000, Dialtone Depot, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60364. Applicant intends to reflect the sale of 100% of its stock to Paul and Amy Chapman, President and majority stockholder of Pathwayz Communications, Inc. holding SPCOA Certificate Number 60344; and expand its geographic scope to include all Local Access and Transport Areas in the state of Texas currently served by Southwestern Bell Telephone Company, GTE Southwest, Inc., and United Telephone Company of Texas, Inc.

The Application: Application of Dialtone Depot, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23425.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than January 4, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23425.

TRD-200008847
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Notice of Application for Approval of Intrastate Tariffs Pursuant to P.U.C. Substantive Rule §26.207

Notice is given to the public of the filing with the Public Utility Commission of Texas (P.U.C. or commission) on October 31, 2000 of Tariff Control Number 23208 - An Application of Valor Telecommunications of Texas, LP (Valor) for Approval of Intrastate Tariffs Pursuant to Substantive Rule §26.207. A summary of the application follows.

The purpose of the filing is to correct all tariff pages/sheets footer information to reflect the Valor's officer's name and corporate address, and to change selected GTE Southwest, Inc. trademark names to Valor names.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than January 8, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008828
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Notice of Application for Authority to Recover Lost Revenues and Cost of Implementing Expanded Local Calling Service Pursuant to P.U.C. Substantive Rule §26.221

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 20, 2000, for authority to recover lost revenues and costs of implementing expanded local calling service pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-64.158 and P.U.C. Substantive Rule §26.221. A summary of the application follows.

Project Title and Number: Application of Texas Alltel, Inc. for Authority to Recover Lost Revenues and Cost of Implementing Expanded Local Calling Service Pursuant to P.U.C. Substantive Rule §26.221. Project Number 23301 before the Public Utility Commission of Texas.

Texas Alltel Inc.'s application encompasses costs and lost toll revenues for petitioned exchanges and petitioning exchanges where costs and lost toll revenues are in excess of the $3.50 or $7.00 maximum monthly expanded local calling service fee. Texas Alltel, Inc.'s total toll revenue losses and additional costs to be recovered through this proceeding are $619,608. Currently, there are 31,218 Texas Alltel customers, of which 25,893 are residential customers; 5,194 are business customers; and 131 are Tel-Assistance customers. Texas Alltel, Inc. proposes an additional monthly surcharge rate of $1.42 per residential line; $2.84 per business line; and $0.50 for Tel-Assistance.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than January 21, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008843
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.25

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 12, 2000, for waiver of the requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of Verizon Southwest for Short-Term Waiver of Certain Aspects of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23414.

The Application: Verizon seeks waiver of the February 15, 2001 deadline until its May 2001 billing cycle as to certain bill format provisions. Verizon states that its bill format is already in compliance with the bulk of the §26.25 standards, and there are several formatting changes that it will be able to effect by the deadline of February 15, 2001. However, Verizon asserts that additional time beyond February 15, 2001, will be needed in order to re-write extensive computer code, to adequately test the changes embodied in those changes, and to train consumer associate personnel regarding those changes. Verizon states that it has allocated both the monetary and the human resources necessary to effect all changes specified by P.U.C. Substantive Rule §26.25, but requires approximately three additional billing cycles to effect certain of the changes required by the rule and ensure complete compliance.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 23414.

TRD-200008834
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on November 7, 2000, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the County Line Exchange for Expanded Local Calling Service, Project Number 23239.

The petitioners in the County Line Exchange request ELCS to the exchanges of Anton, Hub Center, Littlefield, Lubbock, and Plainview.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than January 4, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008829
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on November 7, 2000, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Hollandville Exchange for Expanded Local Calling Service, Project Number 23241.

The petitioners in the Hollandville Exchange request ELCS to the exchanges of Hale Center, Idalou, Lubbock, Petersburg, and Plainview.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than January 4, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008830
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on November 22, 2000, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Van Exchange for Expanded Local Calling Service, Project Number 23311.

The petitioners in the Van Exchange request ELCS to the exchanges of Lindale/Swan, and Mineola.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than January 17, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200008844
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Amendment to Interconnection Agreement

On December 12, 2000, ICG ChoiceCom, LP and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under

§252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23413. 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 23413. 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 January 11, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23413.

TRD-200008833
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Amendment to Interconnection Agreement

On December 14, 2000, Digital Teleport, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23420. 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 23420. 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 January 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23420.

TRD-200008835
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Amendment to Interconnection Agreement

On December 14, 2000, Southwestern Bell Telephone Company and Sage Telecom, 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 23422. 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 23422. 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 January 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23422.

TRD-200008846
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Amendment to Interconnection Agreement

On December 15, 2000, Advanced Communications, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23433. 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 23433. 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 January 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23433.

TRD-200008849

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Interconnection Agreement

On December 8, 2000, Servisense.com, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23401. 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 23401. 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 January 11, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23401.

TRD-200008831

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Interconnection Agreement

On December 8, 2000, Winstar Wireless, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23402. 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 23402. 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 January 11, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23402.

TRD-200008832

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Interconnection Agreement

On December 15, 2000, Coleman County Telecommunications, Inc. doing business as Trans Texas PCS and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23428. 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 23428. 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 January 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23428.

TRD-200008848

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Workshop and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will host a workshop in Project Number 23157, *PUC Rulemaking Proceeding to Revise PUC Transmission Rules Consistent with the New ERCOT Market Design*. The workshop will be held on Friday, January 12, 2001 beginning at 9:30 a.m. in Hearing Room Gee located on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

The purpose of the workshop will be to receive oral comments and discuss possible revisions to current rules concerning transmission and distribution for the purpose of consistency with the new Electric Reliability Council of Texas (ERCOT) market design, as outlined in a staff strawman document. The staff strawman draft rules will be posted on the commission's Internet site on January 5, 2001.

The strawman draft rules and other information pertaining to this proceeding may be found by selecting "Electric Competition - SB7" from the commission's Internet site located at www.puc.state.tx.us.

If interested persons wish to enter written comments on the strawman draft rules, the comments must be filed on the same day as the workshop. Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 until January 12, 2001. All comments should reference Project Number 23157.

Questions concerning Project Number 23157 may be referred to Jan Bargen, Policy Development Division, (512) 936-7243. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200008850
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Public Notice of Workshop and Request for Comments

The Public Utility Commission of Texas (commission) will host a second workshop on rules pertaining to terms and conditions under which telecommunications services are made available for resale on Friday, January 26, 2001 beginning at 9:30 a.m. in the Commissioners' Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 23227, *PUC Rulemaking to Establish the Terms and Conditions Under Which Telecommunications Services are Made Available for Resale*, has been established for this proceeding. The purpose of the workshop is to provide interested persons an opportunity to comment on the second draft of new Substantive Rule §26.277 relating to Resale. The second draft will be filed with the commission's filing clerk under Project Number 23227 on or about Wednesday, January 17, 2001. Comments from interested persons will assist the commission staff in formulating a cohesive policy that harmonizes federal and state requirements pertaining to resale.

While not required, written comments may be filed by any person interested in commenting on the second draft of Substantive Rule §26.277

by filing 16 copies with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, no later than Wednesday, January 24, 2001. Additionally, written comments may be distributed electronically by any person registered on the listserver for Project Number 23227. To register with the Project Number 23227 listserver so that you can send and receive information electronically, visit the 'Mailing Lists' page on the commission's website at http://puclist.puc.state.tx.us/Scripts/telesubscribe.asp. All comments, whether filed with the commission's filing clerk or distributed electronically, should reference Project Number 23227.

An agenda will be distributed at the workshop. Questions about the workshop or this notice should be referred to Lynne LeMon, Telecommunications Division, at (512) 936-7382. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200008705
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2000

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Request for Proposals for the Low Income Discount Administrator to Administer the Enrollment of Eligible Low Income Customers into the Low Income Discount Program

The Public Utility Commission of Texas (commission) is issuing a Request for Proposals (RFP) for the Low Income Discount Administrator to administer the enrollment of eligible low income customers into the low income discount program, which is one program under the System Benefit fund. The contract for a Low Income Discount Administrator is being undertaken pursuant to the commission's statutory responsibility to implement automatic enrollment into the low income discount program. Further information regarding the low income discount program and the system benefit fund may be found in the Texas Utilities Code §39.903.

To be considered, the proposal must arrive at the commission on or before 3:00 p.m., C.S.T., Monday, March 5, 2001.

Eligible Proposers. The Public Utility Commission of Texas is requesting proposals from entities with any relevant experience in administering comparable databases. Entities that meet the definition of a historically underutilized business (HUB), as defined in Texas Government Code, Chapter 2161, §2161.001, are encouraged to submit a proposal.

Project Description. The Public Utility Commission of Texas requests proposals to create and maintain a database of customers eligible for the low-income discount program and provide a means for retail electric providers to access the database to identify which of their customers are eligible. Such database will include customers automatically enrolled by virtue of being enrolled in certain programs administered by the Texas Department of Human Services, as well as, customers who self certify their eligibility.

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 may be obtained by writing Margarita Fournier, Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or email Margarita.Fournier@puc.state.tx.us, or faxing (512) 936-7208. The RFP will be available Friday, January 5, 2001 and will be mailed on that date to all parties who have requested a copy. The RFP will also be available at the commission's website, www.puc.state.tx.us, under Project Number 23372.

Deadline for Receipt of Proposals. Proposals must be received no later than 3:00 p.m. on Monday, March 5, 2001, in the Central Records Division of the Public Utility Commission of Texas, Room G-113, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Proposals received in Central Records after 3:00 p.m., Monday, March 5, 2001, will not be considered. Proposals may be filed 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 Central Records' time/date stamp in establishing the time and date of receipt. Proposals should be filed under Project Number 23372.

TRD-200008845
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2000

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Southwest Texas State University

Award of Consultant Contract

Southwest Texas State University will issue a contract (contract #000442) to The Advocacy Group for cultivating new ventures and identifying potential funding sources. The company advises SWT in the preparation of appropriate documents, interfaces with congressional staff and staff of funding agencies and in proposal development and negotiations. The contract award will not exceed $54,200 for the period January 1, 2001 through December 31, 2001.

TRD-200008842
William A. Nance
Vice President for Finance and Support Services
Southwest Texas State University
Filed: December 19, 2000

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The Texas A&M University, Board of Regents

Request for Proposals

Texas A&M University requests proposals from consulting firms qualified to assist in the development of a natural gas procurement strategy. Interested firms should be thoroughly versed and experienced in the natural gas industry and possess the knowledge to forecast natural gas pricing and ability to review and recommend gas transportation options.

Information can be obtained by contacting Rex Janne, Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-0013 or e-mail at r-janne@tamu.edu .

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Historically Underutilized Businesses are encouraged to participate in this request for proposal.

All things being equal, a preference will be given to a consultant firm whose principal place of business is within the State of Texas. Proposals must be received on or before 2:00 p.m., January 12, 2001.

TRD-200008732
Vickie Burt Spillers
Executive Secretary to the Board
The Texas A&M University, Board of Regents
Filed: December 18, 2000

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Texas Water Development Board

Request for Comments, 31 TAC Chapters 355 & 357 Concerning Regional Water Planning Guidelines

Chapter 355, Subchapter C, Regional Water Planning Grants

The Texas Water Development Board (the board) is considering changes to §355.91, §355.93, and §355.100 concerning the Regional Water Planning Grants and submits this request for public comment prior to publication of the proposed amendments in the Texas Register. The proposed changes are based on recommendations received from regional water planning groups, their consultants, board staff, and the public regarding the first round of regional water planning. The changes are designed to improve the regional water planning process.

Amendments to §355.91 would add the Texas Department of Agriculture as a consultant to the board in determining state population and demand projections. This amendment will enhance the reliability and accuracy of the projections, which will ensure a more complete planning process by the regional water planning groups.

Amendments to §355.93 revise the list of activities for which the regional water planning groups can receive funding from the board. The amendments broaden the scope of eligible activities by including certain administrative costs in §355.93(b)(5). Several regional water planning groups requested that the board fund some or all of the administrative costs incurred in the planning process because the financial burden on the regional entities has been significant. The board agrees that some of these costs should be funded by the state to ensure that the planning process continues without hindrance. Therefore, the board proposes changes to §355.93(b)(5)(A) to fund the costs of travel to and from regional water planning group related meetings for group members who are not paid by their employer for the regional water planning group activities. The board discovered in the first round of planning that some regional water planning members were bearing the cost of travel personally at substantial burden to themselves, which could cause the members to end their membership with the regional water planning group and cause the regional water planning group to lose a member who has been educated in the planning process and has direct knowledge of the planning activities that have occurred. The board proposes changes to §355.93(b)(5)(B) to bear the costs associated with providing necessary translators at regional water planning group activities and meetings. This will ensure public participation by everyone in the region, regardless of language barriers. The amendments also propose changes to §355.93(b)(5)(C) to fund the direct costs for placing public notices in newspapers for the public hearings required by Chapter 357 of this title. The public hearings are required by Texas Water Code §16.053 and Chapter 357 of this title. These hearings exceed the regular requirements of the Open Meetings Act, and impose a substantial fiscal burden on the regional water planning groups. Funding this expense will ensure regional water planning is able to continue with the appropriate public participation. The board also proposes changes to §355.93(b)(5)(D) to fund the costs of mailing notices to mayors, county judges, special and general law districts, river authorities, and water rights holders. These notification requirements in Texas Water Code §16.053(h) are extensive and go beyond the usual notification requirements of the Open Meetings Act. It is important that these people and entities receive notice of certain planning activities because they have a vested interest or ownership in the water supplies involved. Lastly, the board proposes changes to §355.93(b)(5)(E) to fund the direct costs of providing copies of information to regional water planning group members if that information is relevant to their work on the regional planning group. Copying expenses were high in the first round of planning and the board believes the sharing of information is vital to the education of the regional water planning members and the thoroughness of the planning process. Therefore, funding this activity is appropriate.

The amendments to §355.93(b)(6) require the regional water planning groups to certify that any expenses incurred under §355.93(b)(5) are correct and necessary. This safeguards state funds and ensures that the regional water planning groups will keep track of expenses to avoid exceeding contractual limitations.

The amendments to §355.100 provide the regional water planning groups with alternative places they may place copies of their adopted regional water plans. Some of the regional water planning groups had been required to pay a substantial fee to county clerks for posting their initially prepared regional water plans in county clerks' offices. This amendment will provide less costly alternatives but still provide the public with an opportunity to access the regional water plan.

Ms. Pam Gulley, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there could be fiscal implications on state and local government as a result of enforcement and administration of the sections. The impact to the state cannot be determined exactly, but rough estimates are as follows: It is estimated that the fiscal impact to the state for the amendments to §355.93(b)(5)(A) will be $268,000, assuming that each region has 4 voting members who will qualify for reimbursement to go to 36 meetings with travel being 200 miles round trip and hotel lodging being needed on half of those trips with all expenses reimbursed at state rates. The fiscal impact to the state for the amendments to §355.93(b)(5)(B) cannot be determined. It is estimated that the direct costs for the amendments to §355.93(b)(5)(C) will be $38,400 assuming that each regional water planning group will publish notice in three newspapers for two public hearings. It is estimated that the fiscal impact to the state for amendments to §355.93(b)(5)(D) will be $10,453.64 assuming that there are 750 mayors, 254 county judges, 1,269 special districts, 100 river authorities, 6,700 water systems, and 6,300 water rights holder statewide who will receive notifications twice in 5 years and the cost of first class mail will be $0.34 a stamp in 2001. The fiscal impact to the state for amendments to §355.93(b)(5)(D) cannot be determined. Administrative costs to local government would be correspondingly reduced by same amount as that incurred by the state, which is estimated to be $316,853.64.

Ms. Gulley has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide additional coordination to the regional water planning process, assisting the regional water planning groups with the funding of additional costs associated with the regional water planning process, thereby ensuring the planning process will continue, and clarification of the existing provisions regarding the regional water planning group's responsibilities. Ms. Gulley has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

To obtain a complete copy of the proposed rule changes, contact Mr. Bill Mullican at (512) 936-0813, by e-mail to bill.mullican@twdb.state.tx.us, or refer to the Board's web site at www.twdb.state.tx.us. Comments on the proposed changes will be accepted for 30 days following publication of this request for

comments and may be submitted to Ms. Phyllis Thomas, @ (512) 463-7926, by e-mail to phyllis@twdb.state.tx.us, or by mail to the attention of Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231. Further, the board will hold a public meeting on January 24, 2001 at 1:30 p.m. in Room 118 of the Stephen F. Austin Building, 1700 N. Congress Avenue, Austin, Texas, 78701 to discuss these proposed rules.

Chapter 357, Regional Water Planning Guidelines

The Texas Water Development Board (the board) is considering changes to §§357.2, 357.4 - 357.7, and 357.10 - 357.13 concerning the Regional Water Planning Guidelines and submits this request for public comment prior to publication of the proposed amendments in the Texas Register. The proposed changes are based on recommendations received from regional water planning groups, their consultants, board staff, and the public regarding the first round of regional water planning. These proposed amendments are designed to improve the regional water planning process.

The proposed amendment to §357.2 adds a definition for wholesale water provider. This assists the regional water planning groups in more accurately identifying suppliers of water for regional needs pursuant to §16.053 of the Texas Water Code. It will also broaden the scope of the planning performed because it requires the regional water planning groups to identify the wholesale water providers in their regions whereas they currently designate major water providers at their discretion. This change will provide a more complete planning process and recognizes the complex water transactions that occur in Texas where water may be sold several times before reaching the ultimate user.

Amendments to §357.4 are proposed to require non-voting regional water planning group members to be provided the same notification and materials that voting members are provided. This will enable non-voting members to be more effective on the group and ensure more participation in the planning process. The rest of the changes to this section are renumbering changes to account for this new requirement.

The proposed amendments to §357.5(d) add the Texas Department of Agriculture as an agency that the board will consult when adopting state population and water demand projections. This amendment is to ensure that the board has gathered as much information as possible to provide accurate projections.

The proposed amendments to §357.5(e)(1) and (4) are to clarify the regional water planning groups' responsibility to include environmental analyses in the planning process and to clarify the information about environmental impacts of water management strategies that must be included in the regional water plans. This amendment will help protect natural resources as required by Texas Water Code §16.053(a) and provide environmental information for evaluating water management strategies as required by Water Code §16.053(e)(5)(F).

In addition, the changes to §357.5(e)(4) will also require the regional water planning groups to state and document why cost-effective water management strategies that are environmentally sensitive are not considered and adopted and submit to the public for comment, during a public meeting, the process by which the regional water planning group will identify those water management strategies that are potentially feasible for the needs of the region. These changes will provide a better public understanding of the process, thus improving the public's participation, and ensure a better description of the regional planning groups' analysis process, including their analysis of environmental impacts.

The proposed amendment to §357.5(e)(5) remove unnecessary language to clarify that regional water plans must incorporate water conservation planning and drought contingency planning as required by Texas Water Code §16.053(e).

The proposed amendment to §357.5(e)(7) clarifies that the drought triggers must apply to the sources of water used to supply water users. This change is to clarify an incorrect reference and will provide the regional water planning groups more guidance on the use of drought triggers in their regional water plans.

The proposed deletion of §357.5(m) is to remove a subsection that will no longer apply. This subsection applied to actions of a regional water planning group before the adoption of a regional water plan. Before these proposed changes are effective, the regional water planning groups will have adopted regional water plans.

Amendments to §357.6 are proposed to remove the requirement that regional water planning groups send inquiry letters to all other regional water planning groups about the need to form informational subareas. The amendment changes this to a discretionary function of the regional water planning groups. This will save costs associated with sending out numerous letters inquiring about informational subareas and lets the regions choose when and where the subareas would best be formed. The section does retain, however, the requirement that the information subarea be formed if one regional planning group has asked for it and the conditions of the section are met.

Amendments throughout §357.7 would remove the term major water provider and replace it with wholesale water provider. As noted above, wholesale water provider is a broader term and will enhance the scope of water planning by requiring a more detailed review of projected demands, adequacy of existing supplies, needs and potential solutions for these wholesale water providers.

The proposed amendments to §357.7(a)(1) add the phrase "businesses dependent on natural water resources" to the analysis required of the regional water planning groups of the economic activities in the region. This is to encourage the regional water planning groups to identify and consider those businesses that operate on natural water resources, such as boat rental businesses and guided fishing tours, and provide a more complete analysis of the regions.

Amendments to §357.7(a)(2) through (5) would break the paragraphs into two subparagraphs to clarify that analysis should be by city, utility, and category, as well as wholesale water provider. This will result in regional water plans that are more detailed and comprehensive, thus increasing the quality of the regional water plans.

Amendments to §357.7(a)(3) would require the regional water planning groups to consider the water supply that may be obtained from water savings based on the use of plumbing fixtures that are identified in Chapter 372 of the Texas Health and Safety Code. This change will enhance the use of conservation in the regions and provide a more accurate analysis of water supply, thus improving the quality of the regional water plans and better pursuing the goals of Section 16.053 of the Texas Water Code. The changes would also allow the regional water planning groups to use an operational procedure other than firm yield when analyzing surface water during the drought of record so long as the amount of water available does not exceed the firm yield. This will delegate more authority to the regional water planning groups in determining the best procedure to use to determine water availability and drought response. Amendments to this section also require the regional water planning groups to use the groundwater availability model information once it is available. This will provide the regional water planning groups with the most accurate data and enhance the value of the regional water plans. Proposed changes also allow regional water planning groups to assume that water supplies based on contractual agreements will continue past the existing term of the contract if the

contract contemplates renewal or extension. This reflects the reality that such contracts are typically renewed or extended.

Amendment to §357.7(a)(5) will require the water management strategies recommended by the regional water plans to meet the water supply obligations necessary to implement recommended water management strategies of wholesale water providers and water users for which drought of record plans are developed under the paragraph. This change will improve the quality and effectiveness of the plans for drought of record to provide a sufficient supply of water.

Amendments to §357.7(a)(6) allow the regional water planning groups to present data in units smaller than those required by §357.7(a)(2) through (5). This allows the regional water planning groups to determine the appropriate reporting unit if they wish to focus on smaller units.

The amendments to §357.7(a)(7) require the regional water planning groups to consider and adopt water conservation strategies unless it is inappropriate and documents its reasons. This change will enhance the consideration of water conservation in regional water plans. Further, several regions recommended this change as a means of more specifically addressing conservation in the regional water plans. The amendments also simplify the evaluation requirements for water management strategies. This will simplify the data that the regional water planning groups need to report in their regional water plans.

The amendments to §357.7(a)(8) require the regional water planning groups to include, in their regional water plans, a clear discussion of the cost, quantity, and environmental impacts associated with each water management strategy evaluated. The amendments also add the effects on water quality as a factor that must be considered when evaluating water management strategies. This will assist the regional water planning groups in evaluating water management strategies and will ensure that all of the required analyses of Texas Water Code §16.053 are included. It more thoroughly defines the environmental analysis that must be done for water management strategies. It will also provide the public with a clear discussion of alternatives and means to make comparisons.

The amendments to §357.7(a)(9) remove a redundant term from §357.7(a)(9)(B). This subsection requires the regional water planning groups to make specific recommendations of water management strategies or long-term scenarios to meet long-term needs. It further defines long-term scenario as a combination of various water management strategies. Removing the word "alternatives" from this subsection clarifies the meaning of scenarios and removes confusion of the work to be performed.

The addition of §357.7(a)(11) requires the regional water planning groups to have a separate chapter in the regional water plans to consolidate the water conservation and drought management recommendation of the regional water plans. This will make it much easier for the board and the public to identify the water conservation and drought management strategies of the regional water plans, which will facilitate the board and the public making effective, timely comments on initially prepared plans. This will also enhance the public participation, which is a cornerstone of the Section 16.053 of the Texas Water Code.

The amendments to §357.10 clarify that the regional water planning groups must submit their initially prepared regional water plans, adopted regional water plans, and data in the format required by this chapter and the executive administrator. This ensures consistency of the plans and data submitted and ensures that the requirements of §16.053 of the Texas Water Code and this chapter are met. The amendments require the regional water planning groups to include, in their regional water plans, a summary of the comments received from the public, the board, other Texas state agencies, and federal agencies. The amendments also clarify that the regional water planning groups are required to explain how the regional water plan was changed based on the comments received or state why a change was unnecessary. These amendments ensure meaningful public participation in the planning process, a cornerstone of Texas Water Code §16.053, by making sure they have the ability to address the initially prepared regional water plans and that their comments will be considered by the regional water planning groups. It also results in regional water plans that have considered comments from all sources.

Amendments to §357.11 would change some of the requirements for submitting initially prepared regional water plans and clarify that the regional water planning groups submit their initially prepared regional water plans to the public at the same time they are submitted to the board. The changes require the regional water planning groups to certify that the initially prepared plan is complete and that it has been adopted by the group. This will help ensure that the requirements of Texas Water Code §16.053 and chapters 355, 357, and 358 of this title are met. The changes will improve the efficiency of plan adoption process, allow the regional water planning groups to start collecting comments on the initially prepared plan from all sources at the same time, and assures the public that it is receiving an initially prepared plan that is thoroughly considered.

The amendments to §357.11 would also extend the time the board has to provide comments on the initially prepared plans from 30 to 120 days. The changes establish that the time period state and federal agencies have to submit comments is also 120 days. This will provide the board and other governmental agencies with sufficient time to study the initially prepared plans and make appropriate and comprehensive comments. Each of these entities is reviewing plans from all regions and should be given a longer time to review the plans. Also, the short time deadlines of the initial regional water planning cycle are not a factor in the future cycles.

The amendments to §357.12 would clarify that the regional water planning groups must adopt an initially prepared plan before the public hearing. This change is similar to the one in §357.11 and assures the public that it is receiving and commenting on a thoroughly considered initially prepared plan. It provides the public with an initially prepared plan that is one step away from becoming the adopted plan of the regional water planning group. Therefore, comments made by the public and others would be directly considered for potential revision and adoption in the regional water plan.

The amendments to §357.12(b) provide the regional water planning groups with alternative places they may place copies of their initially prepared regional water plan in compliance with §16.053(h)(3) of the Texas Water Code. That section requires placement of the initially prepared plan in each county courthouse in the region. Existing rules require the initially prepared plan to be placed in the county clerk's office. Some of the regional water planning groups had been required to pay a substantial fee to county clerks for posting their initially prepared regional water plans in county clerks' offices. This amendment will provide less costly alternatives that fit the requirements of the state law.

The amendments to §357.12(d) require the regional water planning groups to publish their agenda, meeting notices, initially prepared regional water plans, and adopted regional water plans on the Internet. The amendments provide that the regional water planning groups can satisfy this requirement by submitting their material to the board for publishing on the board's web site. This will provide the public with an easy way to access regional water planning material and enhance public participation.

Lastly, the amendments to §357.13 would clarify that projects brought to the board for funding must be consistent with the approved regional water plans, as required by §16.053(j) of the Texas Water Code. The changes describe how the board will determine if a project is consistent with an approved regional water plan.

Ms. Pam Gulley, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there could be fiscal implications on state and local government as a result of enforcement and administration of the sections during the five-year planning cycle. The impact to the state cannot be determined exactly as funds have not been appropriated by the legislature for the entire five-year planning cycle, but rough estimates are as follows: It is estimated that the amendments to §357.7(a) related to replacing the term "major water provider" with "wholesale water provider" will have no net fiscal impact because the number of wholesale water providers expected to be identified in the second round of planning is anticipated to be approximately the same as the number of major water providers identified during the first round of planning. This expectation is based on TWDB records from 1998 that identify entities that would qualify as wholesale water providers under the new definition in the amendments to §357.2 of this title. It is also estimated that the fiscal impact of changes in §357.7(a)(2)-(5) will be approximately $1.4 million. This is based on the assumption that requiring the regional water plans to include utilities that provide more than 250,000 gallons of water per day will increase the identification of utilities that have needs for additional water supply using the costs from the first round of planning as a comparator. The fiscal impact to the state for other amendments to §357 is negligible or cannot be determined. It is estimated that the changes proposed will result in a direct savings to local government. It is estimated that the amendments to §357.6 will save local governmental entities approximately $6,500. This estimate is based on the assumption that the regional water planning groups will only send inquiries about forming informational subareas to three, instead of 15, other regional water planning groups and will only be expected to respond to the inquiries from three other regions. The change in §357.12(b) related to placement of adopted plans in county clerk offices could save local government approximately $12,000, assuming that 10 of the 254 county clerks charged a $2 per page filing fee on plans containing 500 pages during the first round of planning. Therefore, the proposed amendments have a net savings of $18,500 to local government.

Ms. Gulley has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide additional details in the regional water planning process resulting in increased reliability of the water supplies in Texas and increased effectiveness of public participation in the planning process. Ms. Gulley has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

To obtain a complete copy of the proposed rule changes, contact Mr. Bill Mullican at (512) 936-0813, by e-mail to bill.mullican@twdb.state.tx.us, or refer to the Board's web site at www.twdb.state.tx.us. Comments on the proposed changes will be accepted for 30 days following publication of this request for comments and may be submitted to Ms. Phyllis Thomas, @ (512) 463-7926, by e-mail to phyllis@twdb.state.tx.us, or by mail to the attention of Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231. Further, the board will hold a public meeting on January 24, 2001 at 1:30 p.m. in Room 118 of the Stephen F. Austin Building, 1700 N. Congress Avenue, Austin, Texas, 78701 to discuss these proposed rules.

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Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: December 19, 2000

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