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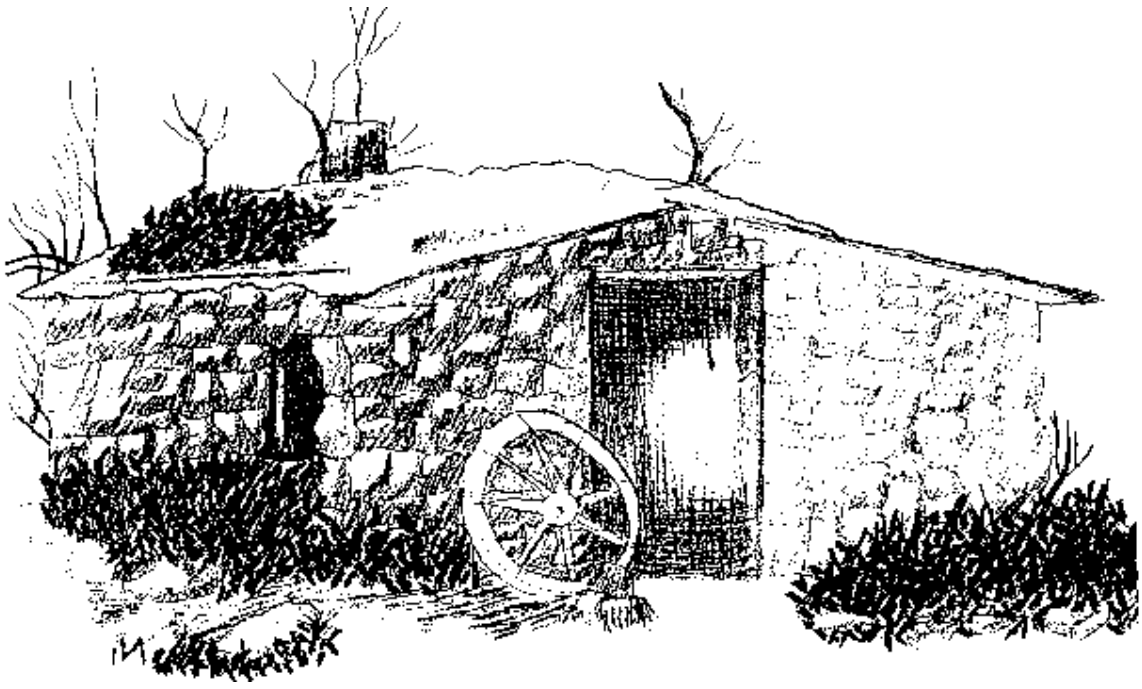

This month's front cover artwork:

Artist: *Chad Dieter*
7th grade
Lindsay ISD

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

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

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

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ATTORNEY GENERAL

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IN ADDITION

OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0336

The Honorable Laura Garza Jimenez Nueces County Attorney 901 Leopard, Room 207 Corpus Christi, Texas 78401-3680

Re: Whether a police chief who has authority under a collective-bargaining agreement to finally select the senior officer who will be promoted to lieutenant may promote his nephew to a vacant lieutenant position, and related questions (RQ-0283-JC)

S U M M A R Y

A police chief who, under a collective-bargaining agreement, exercises discretion to finally select from a list of three qualified senior officers one person to promote to lieutenant, may not select his nephew. See Tex. Gov't Code Ann. § 573.062(b) (Vernon 1994). A collective- bargaining agreement may be amended to take from the chief final authority to decide promotions where the chief's close relative is among the list of those qualified and to give final authority in that instance to another city official. If a collective-bargaining agreement is so amended, the nephew may be promoted by the other official to lieutenant. The police chief may allocate duties among lieutenants, including a newly promoted nephew, as he or she deems necessary to accomplish the functions of the office. A changed assignment may not, as a matter of fact, change the related employee's status.

Opinion No. JC-0337

Mr. Thomas A. Davis, Jr., Director Texas Department of Public Safety P.O. Box 4087 Austin, Texas 78773-0001

Re: Proper use of magnetic stripe information on a driver's license (RQ-0316-JC)

S U M M A R Y

Magnetic stripe information contained on a driver's license or identification card issued by the Department of Public Safety may be utilized only by law enforcement and other governmental agency personnel acting in their official capacities.

Opinion No. JC-0338

The Honorable Jim Solis Chair, Committee on Economic Development Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910

Re: Whether an Economic Development Board may vote to approve funding for a business owned by a member of the board (RQ-0279-JC)

S U M M A R Y

The board of an economic development corporation may not approve a loan to a director of the corporation. An economic development corporation is not prohibited by law from entering into other transactions with a member of the board or with an entity in which a board member is interested if it complies with the provisions of the Texas Non-Profit Corporation Act governing transactions between corporations and directors, or, in the event the corporation bylaws impose a stricter standard, with the bylaws.

Opinion No. JC-0339

The Honorable Rodney Ellis Chair, Finance Committee Texas State Senate P.O. Box 12068 Austin, Texas 78711-2068

Re: Whether an individual may simultaneously serve as director of a municipal utility district and member of the city zoning commission (RQ-0281-JC)

S U M M A R Y

A director of a Municipal Utility District holds a public office, as does a member of the Planning and Zoning Commission of the City of Missouri City. Because the duties of the two offices are in conflict where they have overlapping jurisdiction, the common-law doctrine of incompatibility bars one person from holding both offices. A Missouri City ordinance also prohibits a member of the Planning and Zoning Commission from holding another public office while serving as a Planning and Zoning Commission member.

Opinion No. JC-0340

The Honorable Jim Solis Chair, Committee on Economic Development Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910

Re: Eligibility of a police officer for a promotional examination under the terms of section 143.031 of the Local Government Code (RQ-0282-JC)

S U M M A R Y

Police officers who have two years of continuous service as either Police Officer II or Police Officer III with the City of San Benito, Texas are eligible to take that city's civil service promotional examination for the rank of sergeant.

Opinion No. JC-0341

The Honorable Toby Goodman Chair, Committee on Juvenile Justice and Family Issues Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910

Re: Whether a Texas State Board of Pharmacy rule specifying that no drugs shall be included on a list of narrow therapeutic index drugs is consistent with section 562.014 of the Texas Occupations Code, which requires the Board, by rule, to "establish a list of narrow therapeutic index drugs" (RQ-0289-JC)

S U M M A R Y

A Texas State Board of Pharmacy rule, 22 T.A.C. § 309.3(d)(2) (2000) (Tex. State Bd. of Pharm., Prescription Drug Orders), which specifies that no drugs shall be included on a list of narrow therapeutic index drugs to which special refill rules should apply, is consistent with section 562.014 of the Texas Pharmacy Act, Tex. Occ. Code Ann. § 562.014 (Vernon 2001).

For further information, please call (512) 463-2110

TRD-200100933
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 14, 2001

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Request for Opinions

RQ-0343-JC

The Honorable Jim Solis Chair, Economic Development Committee Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910

Re: Furnishing of a social security number as a requirement for obtaining a Texas driver's license (Request No. 0343-JC)

Briefs requested by March 14, 2001

RQ-0344-JC

Ms. Victoria J.L. Hsu, P.E. Executive Director Texas Board of Professional Engineers 1917 IH 35 South Austin, Texas 78741

Re: Whether a corporation that is located on a federal enclave is subject to the Texas Engineering Practice Act (Request No. 0344-JC)

Briefs requested by March 14, 2001

RQ-0345-JC

The Honorable Juan J. Hinojosa Chair, Criminal Justice Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910

Re: Transportation of suspected mentally ill persons on magistrates warrants (Request No. 0345-JC)

Briefs requested by March 14, 2001

For further information, please call 512 463-2110.

TRD-200100934
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 14, 2001

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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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. CENTRAL PURCHASING
SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

1 TAC §69.25

The Office of the Attorney General ("OAG") proposes new Subchapter B, §69.25, relating to its historically underutilized business ("HUB") program. The purpose of the new subchapter is to comply with the Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003, which requires state agencies to adopt General Services Commission ("GSC") rules governing their HUB program for construction projects and purchases of goods and services paid for with state-appropriated funds. The OAG proposes one addition to the text. The GSC rules are found at 1 Texas Administrative Code ("TAC"), Title 1 Administration, Part 5 General Services Commission, Chapter 111 Executive Administration Division, Subchapter B Historically Underutilized Business Program, §§111.11-111.28. ("TAC")

Dave Liebich, Purchasing Manager, Budget and Purchasing Division, has determined that for each year of the first five years that the proposed rules are in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone;

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone;

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone.

Mr. Liebich has also determined that for each year of the first five years that the proposed rules are in effect, the public will benefit because of an increased awareness of business opportunities for HUB's and increased opportunities for purchase and contract awards to HUB's.

The proposed rules will have no adverse economic effect on small or large businesses and/or persons who seek to contract with the state, because the proposed rules do not place additional economic burdens on small or large businesses and/or persons who seek to contract with the state. There are no anticipated economic costs to persons who are required to comply with the proposed rules, because there are no additional economic burdens to persons who are required to comply with the proposed rules.

The OAG requests comments on the proposed rules from any interested person. Comments may be submitted, in writing, no later than thirty (30) days after the date of publication of this notice to Beth Page, assistant attorney general, General Counsel Division, Office of the Attorney General, Box 12548, Capitol Station, Austin, Texas 78711-2548, or faxed to (512) 477-6040, or e-mailed to Beth.Page@oag.state.tx.us.

The new subchapter is proposed under Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003, which directs state agencies to adopt the GSC's rules under §2161.002 as the agency's own rules. Those rules apply to agencies' construction projects and purchase of goods and services paid for with appropriated money.

This new subchapter implements the Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003.

§69.25. Historically Underutilized Business Program.

The OAG adopts by reference the GSC rules found at 1 TAC, Title 1 Administration, Part 5 General Services Commission, Chapter 111 Executive Administration Division, Subchapter B Historically Underutilized Business Program, §§111.11-111.28, relating to Historically Underutilized Business Program, with the following addition: For the purpose of Subchapter B §69.25 "Commission" refers to General Services 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 February 9, 2001.

TRD-200100856
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 463-2110

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.6

The Department of Information Resources (department) proposes new §201.6 concerning geographic information standards. The department is also publishing for comment the proposed repeal of subsection (a) of §201.13 concerning geographic information system standards applicable to state agencies and institutions of higher education. Institutions of higher education that acquire geographic information systems or develop geospatial data solely for research or instructional purposes are exempt from the proposed rule. Due to extensive proposed revisions to subsection (a) of §201.13 and the desire to shorten the length of existing §201.13, the department is proposing new §201.6.

Subsection (a) addresses the applicability of the rule. Subsection (b) sets forth the implementation timeframe for new and existing datasets and maintenance. Subsection (c) references additional technical information that would be provided by the Texas Geographic Information Council to aid implementation of the rule. Subsection (d) provides a waiver process for the proposed rule. Subsection (e) contains the standards for geospatial data acquisition and development, geospatial data exchange, geospatial data documentation, mapping datum and the statewide mapping system.

The new rule is proposed in accordance with Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities and Water Code §16.021(b), which requires the department to develop rules related to statewide geo-spatial data and technology standards.

Mr. Eddie Esquivel, director of the Enterprise Operations Division, has determined that for each year of the first five years the proposed rule will be in effect, there will be few fiscal implications for state government as a result of enforcing or administering the proposed rule. Only state agencies and institutions of higher education that use or develop digital geospatial data and geographic information systems are affected by the proposed rule. Those affected may incur administrative and training costs of approximately $1,000 to $2,000 during the first year of the rule being in effect, and no costs during the second through fifth years. The department will provide training for geospatial data documentation for those agencies requiring such training. There will be no fiscal implications for local government as a result of enforcing or administering the proposed rule.

Mr. Esquivel has determined that for each year of the first five years the proposed rule will be in effect, the benefit to the public will be improved access to public domain geospatial datasets and the detailed documentation required to make productive use of these datasets. There will be no effect on small businesses. Mr. Esquivel believes that there is no additional anticipated economic cost to persons who are required to comply with the amended rule.

Comments on proposed §201.6 may be submitted to Renee Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m., within 30 days after publication.

The rule is proposed under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management and Water Code, §16.021(b), which requires the department to develop rules related to statewide geo-spatial data and technology standards.

Water Code §16.021(b) is affected by the proposed amendment.

§201.6. Geographic Information Standards.

(a) Applicability. All users and developers of digital geospatial data and geographic information systems in state agencies and state-supported universities must comply with the technical standards specified in this section. Institutions of higher education, as defined by the Education Code, §61.003, are exempt from these standards when geographic information systems are acquired, or digital geospatial data developed, solely for research or instructional purposes. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Art. 5282c, VTCS) are exempt from these standards.

(b) Implementation timeframe.

(1) New datasets and dataset enhancement. These standards go into effect immediately for activities involving the acquisition or development of new digital geospatial data, or the enhancement of existing digital geospatial data.

(2) Existing datasets and dataset maintenance. These standards go into effect one year from the date of adoption for digital geospatial datasets, including related maintenance and field data collection procedures, that were in existence prior to adoption.

(c) Implementation guidance. Pursuant to Water Code §16.021(b), the Texas Geographic Information Council provides guidance to the executive administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the Texas Geographic Information Council to the department relates to rules developed by the department for geospatial data and technology standards. In fulfilling its duties under Water Code §16.021(b), the Texas Geographic Information Council publishes and maintains guidance information relating to the implementation of geographic information standards at www.tgic.state.tx.us. State agencies and institutions of higher education are encouraged to utilize the Texas Geographic Information

Council guidance in implementing the standards set forth in this rule. However, only the department may modify, or grant waivers from, these standards.

(d) Waivers. The information resource manager of an agency or institution of higher education that wants to obtain a waiver from the department shall submit a written waiver request to the executive director of the department, 300 West 15th Street, Suite 1300, Austin, Texas 78701. Within ten days of receipt of the request, the department shall notify the requesting agency of any additional information that may be needed to act on the waiver request. The department shall grant or deny the waiver request within the later of thirty days of receipt of the request or thirty days of receipt of the additional information requested by the department in order to act on the waiver request. The department may request that the Texas Geographic Information Council review and comment on the waiver request. The decision of the department regarding the granting or denial of a waiver is final and may not be appealed.

(e) Standards.

(1) Geospatial data acquisition and development.

(A) Standard. An agency planning to acquire, develop, or enhance a digital geospatial dataset that corresponds to a current or planned Texas framework layer shall coordinate such activity with the Texas Geographic Information Council. Texas framework layers are defined as digital orthoimagery, digital elevation models, elevation contours, soil surveys, water features, political boundaries, and transportation.

(B) Exclusions. This standard excludes geospatial dataset acquisition, development or improvement projects that involve an expenditure of $100,000 or less, or which are performed under contract for an external entity.

(2) Geospatial data exchange.

(A) Data format. An agency that originates or adds data content to a digital geospatial dataset and distributes the dataset to other agencies or the public must make the dataset available in at least one digital format which is readily usable by a variety of geographic information system software packages. This requirement does not preclude the agency from offering the dataset in other data formats. Readily usable formats are defined as: Spatial Data Transfer Standard, Digital Line Graph, Digital Elevation Model, Environmental Systems Research Institute ArcInfo Export File, Environmental Systems Research Institute Shape File (and associated files), Bentley MicroStation Design File, AutoDesk AutoCAD Drawing Exchange File, MapInfo, GeoTIFF, TIFF World File, JPEG World File, Lizard Tech Multi-Resolution Seamless Image Database, and ER Mapper Encapsulated Wavelet.

(B) Purchase of public domain datasets. An agency that purchases a copy of a federal or other public domain geospatial dataset shall make the dataset available to the Texas Natural Resources Information System. Such datasets shall be made available to other agencies and the public via the Texas Natural Resources Information System and/or by the acquiring agency following Texas Natural Resources Information System guidelines.

(3) Geospatial data documentation.

(A) Preparation. An agency shall prepare standardized documentation for each digital geospatial dataset that it both (1) originates and/or adds data content to and (2) distributes as a standard product to other governmental entities or the public.

(B) Format. This standardized documentation shall be in compliance with the Federal Geographic Data Committee's Content Standard for Digital Geospatial Metadata, Version 2 (FGDC-STD-001-1998) or later.

(C) Delivery. In responding to a request for a digital geospatial dataset, an agency shall provide the requestor a copy of the corresponding metadata documentation.

(D) Purpose of dataset. Documentation shall include a statement of the purpose or intended use of the dataset and a disclaimer warning against unintended uses of the dataset. If an agency is aware of specific inappropriate uses of the dataset which some users may be inclined to make, the dataset disclaimer shall specifically warn against those uses.

(E) Geographic information system map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the agency, shall include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer shall clearly state that the map is not a survey product.

(4) Mapping Datum.

(A) Horizontal datum. All horizontal positional data obtained by an agency or its contractor using on-site measurement techniques shall be referenced to the North American Datum of 1983 (NAD83).

(B) Vertical datum. All vertical elevation data obtained by an agency or its contractor using on-site measurement techniques shall be referenced to the North American Vertical Datum of 1988 (NAVD88).

(C) Horizontal datum transformation. Coordinates obtained in a specific horizontal datum may be transformed to another datum for the purposes of compatibility with existing data. The horizontal datum transformation method shall directly use, or be directly traceable to the North American Datum Conversion (NADCON) algorithm. A horizontal datum transformation shall not be performed on positions obtained through high accuracy survey techniques unless the transformation method employs a closed mathematical formula.

(D) Vertical datum transformation. Coordinates obtained in a specific vertical datum may be transformed to another datum for the purposes of compatibility with existing data. The vertical datum transformation method shall directly use, or be directly traceable to the North American Vertical Datum Conversion (VERTCON) algorithm.

(5) Statewide mapping system.

(A) Usage. No existing mapping system has been generally recognized as a standard for minimum-distortion mapping of the entire State of Texas. This section defines such a mapping system, in both a conformal and an equal area version. Either version of this mapping system may be employed for a single geospatial dataset that covers all of, or a large portion of, the State of Texas. Usage of this mapping system is not required. Existing standard mapping systems such as Universal Transverse Mercator and State Plane Coordinate System may be more appropriate for geospatial datasets that cover smaller regions of the State.

(B) Conformal version. A mapping system named "Texas Centric Mapping System/Lambert Conformal" is hereby defined, and the terms "Texas Centric Mapping System/Lambert Conformal" and its abbreviated form "TCMS/LC" shall be used only in strict accord with this definition: Mapping System Name: Texas Centric Mapping System/Lambert Conformal Abbreviation: TCMS/LC Projection: Lambert Conformal Conic Longitude of Origin: 100 degrees West (-100) Latitude of Origin: 18 degrees North

(18) Lower Standard Parallel: 27 degrees, 30 minutes (27.5) Upper Standard Parallel: 35 degrees (35.0) False Easting: 1,500,000 meters False Northing: 5,000,000 meters Datum: North American Datum of 1983 (NAD83) Unit of Measure: meter

(C) Equal area version. A mapping system named "Texas Centric Mapping System/Albers Equal Area" is hereby defined, and the terms "Texas Centric Mapping System/Albers Equal Area" and its abbreviated form "TCMS/AEA" shall be used only in strict accord with this definition: Mapping System Name: Texas Centric Mapping System/Albers Equal Area Abbreviation: TCMS/AEA Projection: Albers Equal Area Conic Longitude of Origin: 100 degrees West (-100) Latitude of Origin: 18 degrees North (18) Lower Standard Parallel: 27 degrees, 30 minutes (27.5) Upper Standard Parallel: 35 degrees (35.0) False Easting: 1,500,000 meters False Northing: 6,000,000 meters Datum: North American Datum of 1983 (NAD83) Unit of Measure: meter

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 February 12, 2001.

TRD-200100864
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 475-2153

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE
SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

16 TAC §1.10

The Railroad Commission of Texas proposes new §1.10, concerning commissioner conduct. The new section is intended to promote public confidence in the integrity and impartiality of the commission and is to be construed and applied to that end. A commissioner should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards of conduct so that the integrity and independence of the commission is preserved. A commissioner shall avoid impropriety and the appearance of impropriety in all activities; be knowledgeable of, and comply with, the law; and neither allow any relationship to influence commission business, quasi-judicial conduct or judgment nor lend the prestige of public office to advance the private interests of the commissioner or others. Further, a commissioner shall not convey, or permit others to convey, the impression that any person is in a special position to influence the commissioner.

Subsection (a) of the proposed rule sets forth the standards applicable to commissioners in contested cases. The rule would require that a commissioner, when considering contested case issues, not allow any relationship, personal or pecuniary, to influence decisions or policies. In addition, a commissioner must not convey, or permit others to convey, the impression that any person is in a special position to influence commission decisions.

Under the proposed rule, a commissioner will recuse himself or herself from a contested case issue any time his or her impartiality might reasonably be questioned, including but not limited to, any time he or she, or anyone within the third degree of kinship by affinity or consanguinity with the commissioner is a party to the proceeding; is acting as counsel to a party; or has a financial or any other interest in the matter in controversy that could be substantially affected by the outcome of the proceeding. Should the commissioner choose not to recuse himself or herself, the commissioner will place in the record, and in the *Texas Register*, a written explanation of any potential conflict and a reasoned justification for not complying with the recusal standards. A commissioner who believes another commissioner has violated this section is required to raise the issue in a posted meeting at the first opportunity.

Subsection (b) of the proposed rule provides interpretation and guidance in applying the provisions of subsection (a). Disqualification (or a written explanation of the reason a commissioner did not disqualify himself or herself) would be required in all proceedings in which the commissioner served as a lawyer in the matter in controversy, or a lawyer with whom the commissioner previously practiced law served during such association as a lawyer concerning the matter; or the commissioner knows that, individually or as a fiduciary, he or she has an interest in the subject matter in controversy; or any of the parties is related to the commissioner by affinity or consanguinity within the third degree of kinship.

The guidance further provides that a commissioner is required to recuse himself or herself in any proceeding in which the commissioner's impartiality might reasonably be questioned; or the commissioner has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; or the commissioner or a lawyer with whom the commissioner previously practiced law has been a material witness concerning it; or the commissioner participated as counsel, adviser or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service; or the commissioner has knowledge that, individually or as a fiduciary, the commissioner or the commissioner's spouse or minor child is a party to the proceeding or has a substantial interest (financial, legal or equitable) in the subject matter in controversy that could be substantially affected by the outcome of the proceeding; or the commissioner or commissioner's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person, is a party to the proceeding, or is an officer, director, or employee of a party; is known by the commissioner to have an interest that could be substantially affected by the outcome of the proceeding; or is, to the commissioner's knowledge, likely to be a material witness in the proceeding.

A commissioner should be informed about his or her personal and fiduciary financial interests, and should make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children. In these guidelines, the term "proceeding" includes all issues related to contested cases, as defined in the Texas Administrative Procedure Act; the degree of relationship is calculated according to the civil law system; "fiduciary" includes such relationships as executor,

administrator, trustee, and guardian; "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except: (i) for ownership in a mutual or common investment fund that holds securities unless the commissioner participates in the management of the fund; (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization; (iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities; (v) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the commissioner or a person related to him or her within the third degree more than the outcome would affect the other commissioners.

An individual's relatives within the third degree by consanguinity are the individual's (1) parent or child (relatives in the first degree); (2) brother, sister, grandparent, or grandchild (relatives in the second degree); and (3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree). Spouses are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example, if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity. An individual's relatives within the third degree by affinity are anyone related by consanguinity to the individual's spouse, and the spouse of anyone related to the individual by consanguinity, in one of the ways named in examples (1), (2), and (3), above.

Mary Ross McDonald, Deputy General Counsel, Office of General Counsel, has determined that for each of the first five years the proposed section will be in effect, there will be no fiscal implications for state or local governments. For each year of the first five years the new section is in effect, the public benefit anticipated as a result of this rule will be the benefit associated with increased public confidence in commission deliberations and decisions. There will be no cost of compliance for small businesses and micro-businesses as a result of the adoption of the new rule; the only individuals affected by this rule are the three Railroad Commissioners.

Comments may be submitted to Mary Ross McDonald, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 or via e-mail at polly.mcdonald@rrc.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register*.

The Commission proposes the section under Texas Government Code, §2001.004, which, among other things, requires the Commission to make available for public inspection all written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions. The Commission elects to make this policy statement through the proposal and adoption of a procedural rule.

Texas Government Code, §2001.004, is affected by the proposed new section.

Issued in Austin, Texas on February 6, 2001.

§1.10. Commissioner Conduct.

(a) Participation in Contested Cases.

(1) When considering contested case issues, a Railroad Commissioner shall not allow any relationship, personal or pecuniary, to influence decisions or policies, and shall not convey, or permit others to convey, the impression that any person is in a special position to influence commission decisions.

(2) A commissioner will recuse himself or herself from a contested case issue any time his or her impartiality might reasonably be questioned, including but not limited to, any time he or she, or anyone within the third degree of kinship by affinity or consanguinity with the commissioner:

(A) is a party to the proceeding;

(B) is acting as counsel to a party; or

(C) has a financial or other interest in the matter in controversy that could be substantially affected by the outcome of the proceeding.

(3) A commissioner otherwise subject to the provisions of paragraph (2) of this subsection who elects not to recuse himself or herself will place in the record, and in the *Texas Register*, a written explanation of any potential conflict and a reasoned justification for not complying with paragraph (2) of this subsection.

(4) A commissioner who believes another commissioner has violated this section shall raise the issue in a posted meeting at the first opportunity.

(b) Interpretation guidance. The following commentary is to assist in the application of this section.

(1) Disqualification. A commissioner shall either disqualify himself or herself, or place in the record a written explanation for not disqualifying himself or herself, in all proceedings in which:

(A) the commissioner served as a lawyer in the matter in controversy, or a lawyer with whom the commissioner previously practiced law served during such association as a lawyer concerning the matter; or

(B) the commissioner knows that, individually or as a fiduciary, he or she has an interest in the subject matter in controversy; or

(C) any of the parties is related to the commissioner by affinity or consanguinity within the third degree of kinship.

(2) Recusal. A commissioner shall recuse himself or herself in any proceeding in which:

(A) the commissioner's impartiality might reasonably be questioned; or

(B) the commissioner has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; or

(C) the commissioner or a lawyer with whom the commissioner previously practiced law has been a material witness concerning it; or

(D) the commissioner participated as counsel, adviser or material witness in the matter in controversy, or expressed an opinion

concerning the merits of it, while acting as an attorney in government service; or

(E) the commissioner has knowledge that, individually or as a fiduciary, the commissioner or the commissioner's spouse or minor child:

(i) is a party to the proceeding, or

(ii) has a substantial interest (financial, legal or equitable) in the subject matter in controversy that could be substantially affected by the outcome of the proceeding; or

(F) the commissioner or commissioner's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or is an officer, director, or employee of a party;

(ii) is known by the commissioner to have an interest that could be substantially affected by the outcome of the proceeding; or

(iii) is, to the commissioner's knowledge, likely to be a material witness in the proceeding.

(3) A commissioner should be informed about his or her personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his spouse and minor children.

(4) In these guidelines:

(A) "proceeding" includes all issues related to a contested case as defined in the Texas Administrative Procedure Act;

(B) the degree of relationship is calculated according to the civil law system, as follows:

(i) Two individuals are related to each other by consanguinity if one is a descendant of the other or they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose.

(ii) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.

(iii) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

(I) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and

(II) the number of generations between the relative and the nearest common ancestor.

(iv) An individual's relatives within the third degree by consanguinity are the individual's:

(I) parent or child (relatives in the first degree);

(II) brother, sister, grandparent, or grandchild (relatives in the second degree); and

(III) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

(v) Two individuals are related to each other by affinity if:

(I) they are married to each other; or

(II) the spouse of one of the individuals is related by consanguinity to the other individual.

(vi) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(vii) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(viii) An individual's relatives within the third degree by affinity are:

(I) anyone related by consanguinity to the individual's spouse in one of the ways named in clause (iv) of this subparagraph; and

(II) the spouse of anyone related to the individual by consanguinity in one of the ways named in clause (iv) of this subparagraph.

(C) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(D) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" unless the commissioner participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(v) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the commissioner or a person related to him or her within the third degree more than it could affect the other commissioners.

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

Filed with the Office of the Secretary of State, on February 6, 2001.

TRD-200100762
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER D. STANDARDS OF CONDUCT

19 TAC §§1.60 - 1.67

The Texas Higher Education Coordinating Board proposes new §§1.60 -- 1.67 concerning Agency Administration (Standards of Conduct). Specifically, these new sections govern all aspects of conduct of the Board and its employees in these relationships, including the administration and investment of funds received for the benefit of the Board, the use of an employee or property by the donor or organization, service by an officer or employee of the Board as an officer or director of the donor or organization, and monetary enrichment of an officer or employee of the agency of the donor or organization.

Jan Greenberg, General Counsel, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new rules as proposed.

Ms. Greenberg has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering the new rules will be the new opportunities and methods available to the Board in carrying out its duties. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, Texas Education Code, §61.038, which authorizes the Board to accept donations, and Texas Government Code, §2255.001, which authorizes a state agency to adopt rules governing the relationship between a donor or organization, and the agency and its employees.

The new rules affect Texas Government Code, §2255.001.

§1.60. Scope and Purpose.

(a) This subchapter establishes the criteria, procedures, and standards of conduct governing the relationship between the Texas Higher Education Coordinating Board (Board) and its officers and employees with private donors and private organizations that exist to further the duties and purposes of the Board.

(b) The purpose of this subchapter is to comply with the provisions of Texas Government Code, §2255.001.

§1.61. Definitions.

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

(1) Commissioner -- The Commissioner of the Texas Higher Education Coordinating Board.

(2) Board -- The Texas Higher Education Coordinating Board

(3) Donation -- A contribution of anything of value (financial or in-kind gifts such as goods or services) given to the Board for public higher education purposes or to a private organization that exists to further the duties or functions of the Board. The Board may not accept donations of real property (real estate) without the express permission and authorization of the legislature.

(4) Employee -- A regular, acting, exempt, full-time or part-time employee of the Board.

(5) Private donor -- One or more persons or private organizations which give a donation to the Board for higher education purposes or to a private organization which exists to further the duties and purposes of the Board.

(6) Private organization -- A private organization that exists to further the purposes and duties of the Board.

§1.62. Donations by Private Donors to the Board.

(a) A private donor may make donations to the Board to be spent for specified or unspecified public higher education purposes. If the donor specifies the purpose, the Board must expend the donation only for that purpose.

(b) All donations shall be expended in accordance with the provisions of the State Appropriations Act and shall be deposited in the state treasury unless exempted by specific statutory authority.

(c) All donations shall be coordinated through the Commissioner.

(d) The Board may not transfer a private donation to a foundation or private/public development fund without specific written permission from the donor and the written approval of the Commissioner.

§1.63. Donations by a Private Donor to a Private Organization That Exists To Further the Purposes and Duties of the Board.

(a) A private donor may make donations to a private organization that exists to further the purposes and duties of the Board.

(b) The private organization shall administer and use the donation in accordance with the provisions in the memorandum of understanding between the private organization and the Board, as described in §1.65(c) of this title (relating to Relationship between a Private Organization and the Board).

§1.64. Organizing a Private Organization That Exists To Further the Duties and Purposes of the Board.

(a) The Commissioner and the membership of a private organization covered by these sections may cooperatively appoint a board of directors for the organization. The Commissioner shall be a non-voting member. Board employees may hold office and vote provided there is no conflict of interest in accordance with all federal and state laws and Board policies. This provision applies to the employee's spouse and children.

(b) As an alternative to the method described in subsection (a) of this section, the private organization may decide not to have its board cooperatively appointed.

§1.65. Relationship between a Private Organization and the Board.

(a) The Board may provide to a private organization covered by these sections:

(1) fundraising and solicitation assistance;

(2) staff services to coordinate activities;

(3) administrative and clerical services;

(4) office and meeting space;

(5) training; and

(6) other miscellaneous services as needed to further the duties and purposes of the Board.

(b) The private organization may provide:

(1) postage;

(2) printing, including letterhead and newsletters;

(3) special event insurance;

(4) recognition of donors; and

(5) bond and liability insurance for organization officers.

(c) The private organization and the Board shall enter into a memorandum of understanding (MOU) which contains specific provisions regarding:

(1) the relationship between the private organization and the Board, and a mechanism for solving any conflicts or disputes;

(2) fundraising and solicitation;

(3) the use of all funds and other donations from fundraising or solicitation, less legitimate expenses as described in the MOU, for the benefit of the Board;

(4) the maintenance by the private organization of receipts and documentation of all funds and other donations received, including furnishing such records to the Board; and

(5) the furnishing to the Board of any audit of the private organization by the Internal Revenue Service or a private firm.

§1.66. Standards of Conduct Between Board Employees and Private Donors.

(a) A Board officer or employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence his/her official conduct.

(b) An officer or employee shall not accept employment or engage in any business or professional activity with a private donor which the officer or employee might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position.

(c) An officer or employee shall not accept other employment or compensation from a private donor that would reasonably be expected to impair the officer or employee's independence of judgment in the performance of his/her official position.

(d) An officer or employee shall not make personal investments in association with a private donor that could reasonably be expected to create a substantial conflict between the officer or employee's private interest and the interest of the Board.

(e) An officer or employee shall not solicit, accept, or agree to accept any benefits for having exercised his/her official powers on behalf of a private donor or performed his official duties in favor of private donor.

(f) An officer or employee who has policy direction over the Board and who serves as an officer or director of a private donor shall not vote on any measure, proposal, or decision pending before the private donor if the Board might reasonably be expected to have an interest in such measure, proposal, or decision.

(g) An officer or employee shall not authorize a private donor to use property of the Board unless the property is used in accordance with a contract or memorandum of understanding between the Board and the private donor, or the Board is otherwise compensated for the use of the property.

§1.67. Miscellaneous.

The relationship between a private donor and a private organization and the Board, including fundraising and solicitation activities, is subject to all applicable federal and state laws, rules and regulations, and local ordinances governing each entity and its employees.

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 February 7, 2001.

TRD-200100831
Gary Prevost
Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 20, 2001
For further information, please call: (512) 427-6162

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CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§13.1 - 13.3

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

The Texas Higher Education Coordinating Board proposes the repeal of §§13.1 - 13.3 concerning financial planning for public institutions of higher education (General Provisions). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal of the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of rules will be the continued financial accountability of public higher education institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the proposed repeal.

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

The repeal of the rules is proposed under the Texas Education Code, §§61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (General Provisions).

The repeal of the rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.1. Formulas.

§13.2. Financial Reporting System for Public Junior Colleges.

§13.3. Financial Reporting System for Public Senior Colleges.

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 February 7, 2001.

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Gary Prevost
Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

Texas Higher Education Coordinating Board proposes new §13.1, concerning financial planning for public institutions of higher education (Definitions). The new rule will simplify and streamline financial planning procedures and will incorporate existing standards into the rule. Specifically the new rule will provide definitions used in Chapter 13.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of administering these new rule will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rule as proposed. There is no impact on local employment.

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

The new rule is proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rule affects the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.1. Definitions.

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

(1) Auxiliary Enterprise--Activities providing a service to students, faculty, or staff for a fee directly related to, although not necessarily equal to, the cost of the service.

(2) Available University Fund (AUF)--A fund established in Article 7 of the Constitution to receive all interest and earnings of the Permanent University Fund and used to pay the debt service on PUF-backed bonds.

(3) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(4) Current Operating Funds--Unrestricted (appropriated) funds, designated funds, restricted funds, and auxiliary enterprise funds.

(5) Functional categories--Instruction, research, public service, academic support, student service, institutional support, operation and maintenance of plant, and hospital as defined by NACUBO.

(6) General Revenue (GR)--State tax revenue

(7) Governmental Accounting Standards Board (GASB)--An entity created by the Financial Accounting Foundation to set accounting standards for governmental entities including public institutions of higher education.

(8) Higher Education Assistance Fund (HEAF)--A fund established in Article 7 of the Constitution to fund capital.

(9) Institutional Funds--Fees, gifts, grants, contracts, and patient revenue, improvements and capital equipment for institutions not included in the Permanent University Fund are not appropriated by the legislature.

(10) Local Funds--Tuition, certain fees, and other educational general revenue appropriated by the legislature.

(11) National Association of College and University Business Officers (NACUBO)--Provides guidance in business operations of higher education institutions.

(12) Permanent University Fund (PUF)--A fund established in Article 7 of the Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

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

Filed with the Office of the Secretary of State, on February 7, 2001.

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Gary Prevost
Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER B. FORMULA FUNDING

19 TAC §§13.20 - 13.24

The Texas Higher Education Coordinating Board proposes new §§13.20 - 13.24 concerning financial planning for public institutions of higher education (Formula Funding). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules will provide guidelines for updating formula funding recommendations.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.20. Purpose.

The purpose of this subchapter is to establish procedures for making formula funding recommendations to the Governor and the Legislature and to inform the public and institutions of those procedures.

§13.21. Authority.

Texas Education Code, §61.059(b) directs the Texas Higher Education Coordinating Board to review and revise formulas for use of the Governor and the Legislative Budget Board in making appropriations recommendations.

§13.22. Community and Technical College Formulas.

(a) Formula Advisory Committee.

(1) Not later than September 1 of each odd-numbered year, the Commissioner shall appoint an advisory committee to review the funding formulas used by the Governor and the Legislature for making appropriations to community and technical colleges.

(2) The formula advisory committee appointed by the Commissioner shall consist of senior administrators at Texas public community or technical colleges, members of the faculty, and members of the general public.

(3) The committee shall elect its own chair and vice chair.

(4) Meetings of the committee shall be open to the public. The committee shall publish minutes of all meetings, and the minutes shall be public documents.

(5) The committee shall provide an opportunity for institutions, the general public and other interested persons to provide testimony.

(6) The committee shall make its recommendations to the Commissioner no later than the February 1 of the year following its appointment.

(b) All-Funds Expenditure Study.

(1) The Board shall conduct a study of expenditures at community colleges, Texas State Technical College, and Texas State University System two-year institutions each year.

(2) The study shall encompass all expenditures made by these institutions for instruction and administration from all sources of funds including appropriated general revenue, tuition and fees, contract instruction, other educational and general revenue, and local tax revenue, but not including restricted gifts and grants.

(3) Each college shall report total instructional expenditures and contact hours for each instructional discipline included on a list provided by the Coordinating Board and total expenditures for administration, including institutional support, student services, library, instructional administration, organized activities, and staff benefits not paid by the state excluding physical plant employees.

(4) From this information, the Board shall calculate median costs for each instructional discipline.

(c) Community and Technical College Formula Recommendation.

(1) At the quarterly meeting of the Coordinating Board in April of even-number years, the Commissioner shall recommend a funding formula for the next biennium for community and technical colleges. The Commissioner shall also report the recommendations of the formula advisory committee.

(2) In making recommendations, the Commissioner shall consider the results of the all funds expenditure study, the financial needs of affected institutions, funding provided for equivalent courses in general academic institutions and for peer institutions in other states, and other factors as appropriate.

(3) The Commissioner shall recommend a general revenue appropriation for instruction and administration for community colleges and the Texas State Technical College System and two-year colleges in the Texas State University System. The Legislative Budget Board staff converts the general revenue formula for Texas State Technical College System and two-year colleges in the Texas State University System into an all funds appropriation based on their estimated educational and general income.

(4) After adoption, the Commissioner shall transmit the Board's recommendations to the Governor and the Legislative Budget Board no later than May 30 of each even-numbered year.

§13.23. General Academic Institution Formulas.

(a) Formula Advisory Committee.

(1) Not later than September 1 of each odd-numbered year, the Commissioner shall appoint an advisory committee to review the funding formulas used by the Governor and the Legislature for making appropriations to general academic institutions.

(2) The formula advisory committee appointed by the Commissioner shall consist of senior administrators at Texas general

academic institutions, members of the faculty, and members of the general public.

(3) The committee shall elect its own chair and vice chair.

(4) Meetings of the committee shall be open to the public. The committee shall publish minutes of all meetings, and the minutes shall be public documents.

(5) The committee shall provide an opportunity for institutions, the general public and other interested persons to provide testimony.

(6) The formula advisory committee may appoint two study committees, one for the instructional and operations formula and another for the infrastructure formula. The study committees may include members from the formula advisory committees and other institutional representatives as appropriate. The infrastructure study committee will include at least one representative from the Texas State Technical College System or the two-year colleges in the Texas State University System.

(7) The formula study committees shall make their recommendations to the formula advisory committee no later than the January 15 of the year following its appointment.

(8) The formula advisory committee shall make its recommendations to the Commissioner no later than the February 1 of the year following its appointment.

(b) General Academic Institution Formula Recommendation.

(1) At the quarterly meeting of the Coordinating Board in April of even-number years, the Commissioner shall recommend a funding formula for the next biennium for general academic institutions. The Commissioner shall also report the recommendations of the formula advisory committee.

(2) In making recommendations, the Commissioner shall consider the financial needs of affected institutions, funding levels at peer institutions in other states, and other factors as appropriate.

(3) The Commissioner shall recommend an all funds appropriation.

(4) After adoption, the Commissioner shall transmit the Board's recommendations to the Governor and the Legislative Budget Board no later than May 30 of each even-numbered year.

§13.24. Health-Related Institution Formulas.

(a) Formula Advisory Committee.

(1) Not later than September 1 of each odd-numbered year, the Commissioner shall appoint an advisory committee to review the funding formulas used by the Governor and the Legislature for making appropriations to health-related institutions.

(2) The formula advisory committee appointed by the Commissioner shall consist of one representative of each public health-related institution.

(3) The committee shall elect its own chair and vice chair.

(4) Meetings of the committee shall be open to the public. The committee shall publish minutes of all meetings, and the minutes shall be public documents.

(5) The committee shall provide an opportunity for institutions, the general public and other interested persons to provide testimony.

(6) The formula advisory committee may appoint two study committees, one for the instructional and operations formula and another for the infrastructure formula. The study committees may include members from the formula advisory committees and other institutional representatives as appropriate.

(7) The formula study committees shall make their recommendations to the formula advisory committee no later than the January 15 of the year following its appointment.

(8) The formula advisory committee shall make its recommendations to the Commissioner no later than the February 1 of the year following its appointment.

(b) Health-Related Institution Formula Recommendation.

(1) At the quarterly meeting of the Coordinating Board in April of even-number years, the Commissioner shall recommend a funding formula for the next biennium for health-related institutions. The Commissioner shall also report the recommendations of the formula advisory committee.

(2) In making recommendations, the Commissioner shall consider the financial needs of affected institutions, funding provided for equivalent courses in general academic institutions, funding levels at peer institutions in other states, and other factors as appropriate.

(3) The Commissioner shall recommend an all funds appropriation.

(4) After adoption, the Commissioner shall transmit the Board's recommendations to the Governor and the Legislative Budget Board no later than May 30 of each even-numbered years.

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 February 7, 2001.

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Gary Prevost
Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER B. PROCEDURES FOR CERTIFICATION OF ADEQUACY OF FUNDING

19 TAC §§13.21 - 13.23

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

The Texas Higher Education Coordinating Board proposes the repeal of §§13.21 - 13.23 concerning financial planning for public institutions of higher education (Procedures for Certification of Adequacy of Funding). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be

no fiscal implications to state or local government as a result of enforcing or administering the repeal of the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of rules will be the continued financial accountability of public higher education institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the proposed repeal.

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

The repeal of the rules is proposed under the Texas Education Code, §§61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Procedures for Certification of Adequacy of Funding).

The repeal of the rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.21. Statement on Funding.
§13.22. Statement on Effect to Existing Programs.
§13.23. Format for Certification Statement.
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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Texas Higher Education Coordinating Board
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SUBCHAPTER C. BUDGETS

19 TAC §§13.40 - 13.47

The Texas Higher Education Coordinating Board proposes new §§13.40 - 13.47 concerning financial planning for public institutions of higher education (Budgets). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules will provide guidelines for uniform budget preparation.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.40. Purpose.

Provide guidelines for uniform budget preparation, timeline for submission, and distribution of approved budgets.

§13.41. Authority.

The Texas Education Code, §61.065 authorizes the board to evaluate the informational requirements of the state for purposes of simplifying reports.

§13.42. Budget Approval.

(a) The governing board of each institution shall approve an itemized current operating budget on or before September 1 of each year.

(b) The governing boards of The University of Texas System and the Texas A&M University System shall approve Permanent University Fund (PUF) and Available University (AUF) budgets on or before September 1 of each year.

(c) The governing board of each institution eligible to receive HEAF appropriations shall approve a HEAF budget on or before September 1 of each year.

§13.43. Distribution of Budgets.

Copies of the current operating funds, PUF/AUF, and HEAF budget shall be furnished to the Board for distribution to the Governor's Budget and Planning Office, Legislative Budget Board, and Legislative Reference Library. Copies shall be maintained in the institution's library.

§13.44. Salaries and Emoluments.

The community colleges' budgets shall include salaries and emoluments for faculty and staff listed by position.

§13.45. Format of Current Operating Funds Budgets.

The operating budgets shall:

(1) include general revenue, local funds, and estimated institutional funds;

(2) include detail by department for current and prior year;

(3) include a summary by functional categories for current and prior year;

(4) include a summary of the instructional budget by college or school for the current and preceding year; and

(5) include a summary by amount and method of finance for each listed informational item in the general appropriation act.

§13.46. Format for PUF/AUF Budget.

The PUF/AUF budget shall:

(1) include all projects approved for funding with PUF bonds by component institution and

(2) include all debt service payments on PUF-backed bonds by component institution.

§13.47. Format for HEAF Budget.

The HEAF budget shall:

(1) include all projects approved for funding with HEAF bonds by component institution,

(2) include all debt service payments on HEAF-backed bonds by component institution, and

(3) include all capital equipment and library books to be purchased during the fiscal year with HEAF funds.

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

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Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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SUBCHAPTER C. APPROVAL OF TUITION REVENUE BONDS AND PLEDGE

19 TAC §§13.41 - 13.47

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

The Texas Higher Education Coordinating Board proposes the repeal of §§13.41 - 13.47 concerning financial planning for public institutions of higher education (Approval of Tuition Revenue Bonds and Pledge). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal of the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of rules will be the continued financial accountability of public higher education institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the proposed repeal.

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

The repeal of the rules is proposed under the Texas Education Code, §§61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Approval of Tuition Revenue Bonds and Pledge).

The repeal of the rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.41. Purpose.

§13.42. Incorporation by Reference.

§13.43. Definitions.

§13.44. Application for Approval of Revenue Bonds.

§13.45. Required Filing of Official Notice of Sale and Prospectus.

§13.46. Required Transcript of Proceedings.

§13.47. Required Financial Reporting.

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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Texas Higher Education Coordinating Board
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SUBCHAPTER D. FINANCIAL REPORTING

19 TAC §§13.60 - 13.62

The Texas Higher Education Coordinating Board proposes new §§13.60 - 13.62 concerning financial planning for public institutions of higher education (Financial Reporting). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules will provide guidelines for financial reporting.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher

Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.60. Purpose.

The purpose of this subchapter is to ensure uniformity and a true and full accounting of all financial transactions for all institutions of higher education.

§13.61. Authority.

The Texas Education Code, §61.065 authorizes the Texas Higher Education Coordinating Board and the Comptroller of Public Accounts to prescribe uniform financial reporting guidelines.

§13.62. Community Colleges.

(a) The Coordinating Board staff shall annually review and update the financial reporting manual with advice from community college business officers and the college's independent auditors.

(b) The financial reporting manual shall be in compliance with the Governmental Accounting Standards Board's pronouncements.

(c) The community colleges shall submit their audited annual financial reports to the Coordinating Board by January 1st of each year.

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. PROCEDURES AND CRITERIA FOR FUNDING OF FAMILY PRACTICE RESIDENCY PROGRAMS

19 TAC §§13.61 - 13.67

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

The Texas Higher Education Coordinating Board proposes the repeal of §§13.61 - 13.67 concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding of Family Practice Residency Programs). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal of the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of rules will be the continued financial accountability of public higher education institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the proposed repeal.

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

The repeal of the rules is proposed under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding of Family Practice Residency Programs).

The repeal of the rules affect the Texas Education Code, Section 51.005, 51.0051, and 61.065.

§13.61. Types of Grants.

§13.62. Requirements for a Family Practice Residency Operational Grant.

§13.63. Requirements for a Support Grant.

§13.64. Requirements for a Rural Rotations Reimbursement Grant.

§13.65. Requirements for a Public Health Rotation Reimbursement Grant.

§13.66. Review of Family Practice Residency Operational Grant Applications and Support Grant Applications.

§13.67. Amount of Family Practice Operational Grants and Support Grants.

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. TUITION REBATES FOR CERTAIN UNDERGRADUATES

19 TAC §§13.80 - 13.87

The Texas Higher Education Coordinating Board proposes new §§13.80 - 13.87 concerning financial planning for public institutions of higher education (Tuition Rebates for Certain Undergraduates). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules includes minor modifications to existing rules regarding tuition rebates to make them consistent with current policies.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.80. Purpose.

The purpose of this program is to provide tuition rebates that will provide a financial incentive for students to prepare for university studies while completing their high school work, avail themselves of academic counseling, make early career decisions, and complete their baccalaureate studies with as few courses outside the degree plan as possible. Minimizing the number of courses taken by students results in financial savings to students, parents, and the state.

§13.81. Authority.

The program is authorized by Texas Education Code, §54.0065.

§13.82. Eligible Students.

To be eligible for rebates under this program, students must meet all of the following conditions:

(1) they must have enrolled for the first time in an institution of higher education in the fall 1997 semester or later,

(2) they must be requesting a rebate for work related to a first baccalaureate degree received from a Texas public university,

(3) they must have been a resident of Texas, must have attempted all coursework at a Texas public institution of higher education, and have been entitled to pay resident tuition at all times while pursuing the degree, and

(4) they must have attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree under the catalog under which they were graduated. Hours attempted include transfer credits, course credit earned exclusively by examination, courses that are dropped after the official census date, for-credit developmental courses, optional internship and cooperative education courses, and repeated courses. Courses dropped for reasons that are determined by the institution to be totally beyond the control of the student shall not be counted. For students concurrently earning a baccalaureate degree and a Texas teaching certificate, required teacher education courses shall not be counted to the extent that they are over and above the free electives allowed in the baccalaureate degree program.

§13.83. Affected Institutions.

(a) All Texas public baccalaureate-granting general academic universities are required to offer rebates to eligible students.

(b) All Texas public institutions of higher education are required to notify students of the existence of the tuition rebate program and provide course enrollment opportunities (see §13.85 of this title, relating to Responsibilities of Institutions).

§13.84. Amount of Tuition Rebates.

(a) The amount of tuition to be rebated to a student under this program is $1,000, unless the total amount of undergraduate tuition paid by the student to the institution awarding the degree was less than $1,000, in which event the amount of tuition to be rebated is an amount equal to the amount of undergraduate tuition paid by the student to the institution.

(b) A student who paid the institution awarding the degree an amount of undergraduate tuition less than $1,000 may qualify for an increase in the amount of the rebate, not to exceed a total rebate of $1,000, for any amount of undergraduate tuition the student paid to other Texas public institutions of higher education by providing the institution awarding the degree with proof of the total amount of that tuition paid to other institutions.

(c) Tuition rebates shall be reduced by the amount of any outstanding student loan, including an emergency loan, owed to or guaranteed by this state, including the Texas Guaranteed Student Loan Corporation. If a student has more than one outstanding student loan, the institution shall apply the amount of the rebate to the loans as directed by the student. If the student fails to provide timely instructions on the application of the amount, the institution shall apply the amount of the rebate to retire the loans with the highest interest rates first.

§13.85. Responsibilities of Institutions.

Affected institutions have the following responsibilities associated with this program:

(1) All Texas public institutions of higher education, including community and technical colleges, shall include information regarding this program in the institution's catalog.

(2) If requested by potentially eligible students, public institutions of higher education are required to provide these students opportunities to enroll during each fall and spring semester in the equivalent of at least 12 semester credit hours that apply toward their degrees. Institutions are not required to provide students with the opportunity to enroll in specific courses or specific sections. Community and Technical Colleges will comply to the extent that courses for the current semester are being offered that apply to the student's university degree program. The requirement may be met by allowing substitutions for required courses or by allowing concurrent enrollment in courses from another institution, so long as the courses are taught on the students' home campus and the student incurs no financial penalty.

(3) Texas public universities are required to provide students with appropriate forms and instructions for requesting tuition reimbursement at the time that students apply for baccalaureate degrees.

(4) Institutions are required to provide tuition rebates to students who apply for them within 60 days after graduation or provide the student with a statement explaining the reason the student is ineligible for the rebate.

(5) Institutions are required to provide a dispute resolution process to resolve disputes related to local administration of the program.

(6) Disputes related to lower division credit transfer should be resolved in accordance with Coordinating Board rules, Chapter 5, §5.393 of this title (relating to Transfer of Lower Division Course Credit).

(7) Institutions may adopt policies and procedures for administering the program. For example, institutions may require students to declare their intent to qualify for a tuition rebate early in their careers or register prior to the beginning of the semester.

§13.86. Responsibilities of Students.

(a) Students desiring to qualify for tuition rebates are responsible for complying with all university rules and regulations related to administration of the program.

(b) Students desiring to qualify for tuition rebates are solely responsible for enrolling only in courses that will qualify them for the rebates.

(c) A student who has transferred from another institution of higher education is responsible for providing to the institution awarding the degree official transcripts from all institutions attended by the student.

(d) Students must apply for rebates prior to receiving their baccalaureate degrees on forms provided by the institution and must keep the institution apprized of their addresses for at least 60 days after their graduation date.

§13.87. Source of Funding.

Tuition rebates shall be paid from institutional local funds. However, the enabling legislation provides that the Legislature shall account in the General Appropriations Act for the rebates in a way that provides a corresponding increase in the general revenue funds appropriated to the institution.

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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Gary Prevost
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Texas Higher Education Coordinating Board
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SUBCHAPTER E. PROCEDURES AND CRITERIA FOR FUNDING GRADUATE MEDICAL EDUCATION PROGRAMS

19 TAC §§13.81 - 13.85

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

The Texas Higher Education Coordinating Board proposes the repeal of §§13.81 - 13.85 concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding Graduate Medical Education Programs). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal of the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of rules will be the continued financial accountability of public higher education institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the proposed repeal.

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

The repeal of the rules is proposed under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding Graduate Medical Education Programs).

The repeal of the rules affect the Texas Education Code, Section 51.005, 51.0051, and 61.065.

§13.81. Purpose.

§13.82. Grants or Formula Distributions.

§13.83. Eligibility.

§13.84. Award of Funds.

§13.85. Advisory Committee.

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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Gary Prevost
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Texas Higher Education Coordinating Board
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SUBCHAPTER F. TUITION REBATES FOR CERTAIN UNDERGRADUATES

19 TAC §§13.91 - 13.98

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

The Texas Higher Education Coordinating Board proposes the repeal of §§13.91 - 13.98 concerning financial planning for public institutions of higher education (Tuition Rebates for Certain Undergraduates). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal of the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of rules will be the continued financial accountability of public higher education institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the proposed repeal.

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

The repeal of the rules is proposed under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Tuition Rebates for Certain Undergraduates).

The repeal of the rules affect the Texas Education Code, Section 51.005, 51.0051, and 61.065.

§13.91. Purpose.

§13.92. Authority.

§13.93. Eligible Students.

§13.94. Affected Institutions.

§13.95. Amount of Tuition Rebates.

§13.96. Responsibilities of Institutions.

§13.97. Responsibilities of Students.

§13.98. Source of Funding.

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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Texas Higher Education Coordinating Board
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SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGED FOR EXCESS CREDIT HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.100 - 13.106

The Texas Higher Education Coordinating Board proposes new §§13.100 - 13.106 concerning financial planning for public institutions of higher education (Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.100. Purpose.

This subchapter provides financial incentives for institutions to facilitate the progress of undergraduate students through their academic programs and incentives for students to complete their degree programs expeditiously. Rules contained in this subchapter clarify the enabling legislation, define responsibilities of institutions and the Coordinating Board in implementing the statute, and ensure that students are adequately informed.

§13.101. Authority.

These rules relate to the Texas Education Code, §§54.068 and 61.0595. §54.068 specifies the tuition that may be charged to students with excess hours. §61.0595 specifies the fundability of undergraduate credit hours.

§13.102. Definitions.

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

(1) Remedial and developmental courses -- courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college.

(2) Technical courses -- workforce education courses offered for semester or quarter credit hours and associated with applied associate degree or workforce certificate programs.

(3) Workforce education courses -- courses offered by two-year institutions for the primary purpose of preparing students to enter the workforce rather than academic transfer. Includes both technical courses and continuing education courses.

(4) Hours -- quarter credit hours or semester credit hours.

§13.103. Affected Students.

(a) The limitation on funding of excess undergraduate credit hours applies only to hours generated by students who initially enroll as undergraduates in an institution of higher education in the 1999 fall semester or in a subsequent term. If a student has been enrolled as an undergraduate student in any public or private institution of higher education during any term prior to the 1999 fall semester, the student's credit hours are exempt.

(b) Hours generated by non-resident students paying tuition at the rate provided for Texas residents are subject to the same limitations as hours generated by resident students.

§13.104. Limitation on Formula Funding.

Funding of excess undergraduate credit hours is limited as follows:

(1) Universities and health-related institutions may not submit for formula funding hours attempted by an undergraduate student who has previously attempted 45 or more semester credit hours or its quarter hour equivalent beyond the minimum number of hours required for completion of the degree program in which the student is enrolled.

(2) An undergraduate student at a four-year institution who is not enrolled in a degree program is considered to be enrolled in a degree program requiring a minimum of 120 semester credit hours.

(3) Students who enroll on a temporary basis in a university or health-related institution and are also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education are considered to be enrolled in a degree program requiring a minimum of 120 semester credit hours.

(4) For the purposes of the undergraduate limit, an undergraduate student who has entered into a master's or professional degree program without first completing an undergraduate degree is considered to no longer be an undergraduate student after having completed the equivalent of a bachelor's degree or all of the course work normally taken during the first four years of undergraduate course work in the student's degree program.

(5) For the purposes of the undergraduate limit, students are treated for funding purposes as having whatever major they had on the official census day of the term in question. If a student changes majors during a term, that act does not retroactively change their eligibility under the limit.

(6) The following types of credit hours are exempt and do not count toward the limit:

(A) hours earned by the student before receiving a baccalaureate degree that has been previously awarded to the student;

(B) hours earned through examination or similar method without registering for a course;

(C) hours from remedial and developmental courses, technical courses, workforce education courses, or other courses that would not generate academic credit that could be applied to a degree at the institution;

(D) hours earned by the student at a private institution or an out-of-state institution; and

(E) any hours not eligible for formula funding.

§13.105. Tuition Charged to Affected Students.

An institution of higher education may charge a higher tuition rate, not to exceed the rate charged to nonresident undergraduate students, to an undergraduate student whose hours can no longer be submitted for formula funding because of the funding limit defined in §13.104 of this title (relating to Limitation on Formula Funding).

§13.106. Responsibilities of Institutions.

(a) The Coordinating Board will maintain a database indicating the number of hours an eligible undergraduate student has accumulated toward the limit. Institutions are required to report to the Coordinating Board all information required to comply with the Texas Education Code, §§54.060 and 61.0595, to check every term on the progress of eligible students toward the limit, and to cooperate with the Coordinating Board in the administration of the limit.

(b) Each community and technical college, Lamar state college, university, and health-related institution shall publish in its catalog information about the limit on undergraduate credit hours. Until this material is included in catalogs, each institution shall inform undergraduate students initially enrolling at the institution in writing of the limit.

(c) Community and technical colleges and the Lamar state colleges shall inform each affected undergraduate student of the individual's progress toward the limit when the student has accumulated 70 or more semester credit hours toward the limit.

(d) Universities and health-related institutions shall inform each affected undergraduate student of the individual's progress toward the limit and of the institution's tuition policy for students who exceed the limit as soon as the student has accumulated 120 or more semester credit hours toward the limit.

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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Texas Higher Education Coordinating Board
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SUBCHAPTER G. FORMULA FUNDING AND TUITION CHARGED FOR EXCESS CREDIT HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.110 - 13.116

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

The Texas Higher Education Coordinating Board proposes the repeal of §§13.110 - 13.116 concerning financial planning for public institutions of higher education (Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal of the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of rules will be the continued financial accountability of public higher education institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the proposed repeal.

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

The repeal of the rules is proposed under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students).

The repeal of the rules affect the Texas Education Code, Section 51.005, 51.0051, and 61.065.

§13.110. Purpose.

§13.111. Authority.

§13.112. Definitions.

§13.113. Affected Students.

§13.114. Limitation on Formula Funding.

§13.115. Tuition Charged to Affected Students.

§13.116. Responsibilities of Institutions.

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. PROCEDURES FOR CERTIFICATION OF ADEQUACY OF FUNDING

19 TAC §§13.120 - 13.125

The Texas Higher Education Coordinating Board proposes new §§13.120 - 13.125 concerning financial planning for public institutions of higher education (Procedures for Certification of Adequacy of Funding). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules includes minor modifications to existing rules regarding certification of adequacy of financing to make them consistent with current policies.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.120. Purpose.
This subchapter describes the procedure by which institutions are to certify to the Coordinating Board that they have adequate funding for proposed new degree and certificate programs, departments, and schools.

§13.121. Authority.
These rules relate to the Texas Education Code, §61.055, which requires that a written certification of adequate financing be made before the Board approves any new department, school, or degree or certificate program.

§13.122. Statement on Funding.
Each request submitted to the Coordinating Board for a new department, school, degree or certificate program or administrative change

shall be accompanied by a statement regarding the adequacy of funding from the chief executive officer of the requesting institution.

§13.123. Identification of Sources of Funds.
Sources of funds shall be identified on forms provided by the Division of Universities and Health-Related Institutions as:

(1) Specific legislative appropriations, where such appropriations can be clearly identified as being appropriated to start a new program for which funds from other sources are not available;

(2) Funds allocated by the Coordinating Board;

(3) Funds appropriated by the Legislature for an existing academic program but which are now declared by the institution to be available for the new degree program. The program area or areas from which such funds will be derived must be identified;

(4) Monies transferred from the Available University Fund. This would apply only for The University of Texas at Austin, Prairie View A&M University, and Texas A&M University;

(5) Anticipated formula funding generated by enrollments in the program; and/or

(6) Funds from other sources (e.g., gifts, grants, etc.). The specific source of such funds shall be identified, the reasons for their availability shall be stated, and the length of time such funds will be available shall be indicated.

§13.124. Statement of Effect on Existing Programs.
The request for a new department, school, degree or certificate program, or administrative change shall also include a statement by the chief executive officer of the requesting institution certifying that the requested program or change will not reduce the effectiveness or quality of existing programs, departments or schools.

§13.125. Format and Transmission of Certification Statements.

(a) The letter of certification shall be addressed to the Assistant Commissioner for Universities and Health-Related Institutions, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

(b) The letter of certification shall contain the following statements:

(1) I hereby certify that adequate funding is available for the (new department) (school) (degree program) (certificate program) (administrative change) proposed in the attached request.

(2) I further certify that the establishment of the requested (new department) (school) (degree program) (certificate program) (administrative change) will not reduce the effectiveness or quality of existing programs, departments, or schools at this institution.

(c) The letter of certification shall be signed by the chief executive officer of the institution.

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. PROCEDURES AND CRITERIA FOR FUNDING OF FAMILY PRACTICE RESIDENCY PROGRAMS

19 TAC §§13.140 - 13.146

The Texas Higher Education Coordinating Board proposes new §§13.140 - 13.146 concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding of Family Practice Residency Programs). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.140. Types of Grants.

Medical schools, licensed hospitals, or nonprofit corporations may apply for a Family Practice Residency Operational Grant, a Support Grant, a Rural Rotations Reimbursement, and a Public Health Rotation Reimbursement Grant.

(1) A Family Practice Residency Operational Grant is defined as a grant to support an ongoing family practice residency program and expansions of ongoing family practice residency programs.

(2) A Support Grant is defined as a grant to support an ongoing program that encourages recruitment of medical students to the specialty of family medicine or the development of faculty for Texas family practice residency programs.

(3) A Rural Rotations Reimbursement Grant is defined as a grant to reimburse Texas family practice residency programs for the costs of providing residents with optional one-month rotations in a rural setting in Texas.

(4) A Public Health Rotation Reimbursement Grant is defined as a grant to reimburse Texas family practice residency programs

for the costs of providing residents with an optional one-month rotation in a public health setting in Texas.

§13.141. Requirements for a Family Practice Residency Operational Grant.

To be considered for a Family Practice Residency Operational Grant, a medical school, licensed hospital, or nonprofit corporation requesting an Operational Grant must at a minimum:

(1) Show that the program is accredited by the Accreditation Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) as a family practice residency program;

(2) Meet the Coordinating Board criteria and financial reporting guidelines for a Family Practice Residency Operational Grant;

(3) Give evidence that the program has been operational for three or more academic years;

(4) Give evidence of continuing local support for the program;

(5) Document expenditures and revenue for the program to substantiate funding needs;

(6) Submit annual progress reports on the training program to the Coordinating Board that demonstrate the program's efforts to recruit residents likely to practice in underserved areas of the state and the program's encouragement of residents to enter practice in underserved areas of the state.

§13.142. Requirements for a Support Grant.

To be considered for a Support Grant, a medical school, licensed hospital, or nonprofit corporation must:

(1) Conform to Coordinating Board guidelines for Family Practice Residency Support Grant Programs;

(2) Give evidence that the program to be funded has been operational for two or more academic years;

(3) Give evidence of continued need for funding;

(4) Document expenditures and revenue to substantiate funding needs; and

(5) Submit annual progress reports to the Coordinating Board.

§13.143. Requirements for a Rural Rotations Reimbursement Grant.

To be reimbursed for a resident's one-month rotation through a rural setting in Texas, a Texas family practice residency program must:

(1) Submit documentation giving evidence that the program sponsored a resident in a rural rotation that at the time of the rotation conformed to Coordinating Board guidelines concerning family practice residency rural rotations;

(2) Document expenditures for rural rotations to substantiate the request for reimbursement in accordance with Coordinating board guidelines; and

(3) Submit progress reports and financial reports on Rural Rotations Grants to the Coordinating Board on an annual basis, to be reviewed by the Family Practice Residency Advisory Committee.

§13.144. Requirements for a Public Health Rotation Reimbursement Grant.

To be reimbursed for a resident's one-month rotation through a public health setting in Texas, a Texas family practice residency program must:

(1) Submit documentation giving evidence that the program sponsored a resident in a public health setting that, at the time of the rotation, conformed to Coordinating Board guidelines concerning family practice residency public health rotations; and

(2) Document expenditures for public health rotations to substantiate the request for reimbursement in accordance with Coordinating Board guidelines; and

(3) Submit progress reports and financial reports on Public Health Rotation Grants to the Coordinating Board on an annual basis, to be reviewed by the Family Practice Residency Advisory Committee.

§13.145. Review of Family Practice Residency Operational Grant Applications and Support Grant Applications.

Programs applying for Family Practice Operational Grants and Support Grants shall be reviewed by the Family Practice Residency Advisory Committee for their viability and their benefit to the state. Programs must be determined to serve the needs of the State of Texas in improving the distribution of health care delivery. The Committee's review shall include the following:

(1) The ability of the program to meet the requirements set out in this Subchapter and all program guidelines;

(2) Existing and anticipated costs and funding for currently funded programs and new programs requesting funding;

(3) The program's performance in:

(A) better distributing family physicians throughout the state; and

(B) helping medically underserved areas of Texas; and

(C) encouraging residents to practice in underserved areas of the state.

§13.146. Amount of Family Practice Operational Grants and Support Grants.

The amount of funds to be allocated for any Family Practice Residency Operational Grant or Support Grant shall be determined by the Coordinating Board, after receiving the recommendation of the Family Practice Residency Advisory Committee. Grants shall be used for operating expenditures as defined by generally acceptable accounting procedures and Coordinating Board guidelines for the 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.

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SUBCHAPTER I. PROCEDURES AND CRITERIA FOR FUNDING GRADUATE MEDICAL EDUCATION PROGRAMS

19 TAC §§13.160 - 13.164

The Texas Higher Education Coordinating Board proposes new §§13.160 - 13.164 concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding Graduate Medical Education Programs). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the continued financial accountability of public higher education institutions. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

The new rules affect the Texas Education Code, §§51.005, 51.0051, and 61.065.

§13.160. Purpose.

The board shall administer a program to support graduate medical education programs, consistent with the needs of the state for graduate medical education and the training of resident physicians. Funds allocated under this provision are to be provided for the training of resident physicians in accredited residency training programs in appropriate fields and specialties, including primary care. The provisions in this subsection are implemented to provide state funds to graduate medical education programs which incur the cost of resident instruction.

§13.161. Grants or Formula Distributions.

The board may make grants or formula distributions to:

(1) support appropriate graduate medical education programs and activities for which adequate funds are not otherwise available; or

(2) foster new or expanded graduate medical education programs or activities that the board determines will address the state's needs for graduate medical education.

§13.162. Eligibility.

To receive a Graduate Medical Education grant or formula distribution, an institution or other entity must incur the costs of faculty supervision and education or the stipend costs of resident physicians in accredited clinical residency training programs in this state. The board will consider the costs incurred by medical schools or other entities to support faculty responsible for the education or supervision of resident physicians. Entities eligible to receive funds under this section include the state's eight medical schools, licensed teaching hospitals, or non-profit corporations operating a nationally accredited allopathic or osteopathic residency program. Entities seeking funding under this provision must at a minimum annually:

(1) Provide evidence that the residency program is accredited by the Accreditation Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA);

(2) Meet the criteria and financial reporting guidelines for a Graduate Medical Education grant or formula distribution as determined by the Advisory Committee; and

(3) Provide evidence that the residency program intends to provide continuing operational financial support.

§13.163. Award of Funds.

From funds appropriated for the Graduate Medical Education program, the comptroller of public accounts shall be requested to issue warrants to each institution or other entity determined by the board as eligible to receive a grant or formula distribution from the program in the amount certified by the board. An amount granted to an institution or other entity under this program may be used only to cover expenses related to the education of residents of the particular program or activity for which the award is made in accordance with any conditions imposed by the board and may not otherwise be expended for the general support of the institution or entity.

§13.164. Advisory Committee.

The board shall appoint an advisory committee to advise the board regarding the development and administration of the program, including considering requests for program grants and establishing formulas for distribution of money under the program. Membership of the Advisory Committee is prescribed in the enabling legislation. The Advisory Committee shall:

(1) Review applications for funding of graduate medical education programs and make recommendations for approval or disapproval of those applications;

(2) Make recommendations relating to the standards and criteria used for consideration and approval of grants or for the development of formulas for distribution of funding;

(3) Recommend to the board an allocation of funds among medical schools, licensed hospitals or non-profit corporations that may receive funds under this section; and

(4) Perform other duties as assigned by the board.

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

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CHAPTER 17. CAMPUS PLANNING
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§17.1 - 17.7

The Texas Higher Education Coordinating Board proposes new §§17.1 - 17.7 concerning Campus Planning (General Provisions). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The principal change in the proposed new rules is to restructure the existing rules to increase readability. A change is proposed to clarify rules regarding re-approval of projects eligible for Commissioner approval. New rules are proposed to establish standards for construction projects, processes for updating space projection models used by the Board, eminent domain, and reporting requirements. These new rules document existing practices.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering the new rules will be more efficient Board meetings and an improved understanding of Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code, §61.0572 and §61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The new rules affect the Texas Education Code, §61.0579 and §61.058

§17.1. Authority, Scope, and Purpose.

(a) Authority. Authority for this chapter is provided in the Texas Education Code, Chapter 61, Subchapter C, Powers and Duties of the Texas Higher Education Coordinating Board. These rules establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments, as prescribed in §§61.0572 and 61.058.

(b) Scope. Unless otherwise noted, this chapter applies to all Texas public institutions of higher education as defined in Texas Education Code §61.058, except community colleges.

(c) Purpose. This chapter provides guidance to the public and to public institutions of higher education related to procedures of the Texas Higher Education Coordinating Board for: approval or disapproval of construction projects, property acquisitions, or lease arrangements regardless of proposed use; assuring maximum use of facilities; and developing standards and policies for management of physical plants designed to streamline operations and improve accountability.

§17.2. Definitions.

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Auxiliary enterprise buildings or facilities -- Income generating structures such as dormitories, cafeterias, student union buildings, stadiums, and alumni centers used solely for those purposes.

(2) Board or Coordinating Board -- The Texas Higher Education Coordinating Board members and the agency.

(3) Campus Planning Committee -- The members of the Board appointed to oversee facility-related issues.

(4) Commissioner -- The chief executive officer of the Texas Higher Education Coordinating Board.

(5) Critical deferred maintenance -- The physical conditions of a building or facility that places its occupants at risk of harm or the facility at risk of not fulfilling its functions.

(6) Deferred maintenance -- An existing or imminent building maintenance-related deficiency from prior years or the current year that needs to be corrected, or scheduled preventive maintenance tasks that were not preformed because of perceived lower priority status than those funded within the budget.

(7) Educational and general (E&G) buildings and facilities -- Buildings and facilities associated with teaching, research, or the preservation of knowledge, including the proportional share used for those activities in any building of facility used jointly with auxiliary enterprise, or space that is permanently unassigned.

(8) Facilities inventory -- A collection of building and room records that reflects the type of space and how it is being used. The records contain codes that are uniformly defined by the Coordinating Board and the United States Department of Education and reported by the institutions on an on-going basis to reflect a current facilities inventory.

(9) Gross square feet (GSF) -- The sum of all square feet of floor areas within the outside faces of a building's exterior walls.

(10) Major repair and rehabilitation (R&R) -- Construction upgrades to an existing building, facility, or infrastructure that currently exist on campus. R&R does not add space to a building or facility's overall gross square footage.

(11) Net assignable square feet (NASF) -- The amount of space that can be used for programs within interior walls of a room. Major room use categories are: classrooms, laboratories, offices, study areas, general use areas, support rooms, health care, residential, and unclassified space (stairways, hallways, corridors). NASF includes auxiliary space and E&G space.

(12) New construction -- A new building or facility, the addition to an existing building or facility, or new infrastructure that does not currently exist on campus. New construction would add square footage to an institution's physical plant.

(13) Tuition revenue bond projects -- A project for which an institution has legislative authority to pledge tuition income to finance a construction or land acquisition project.

§17.3. Governing Board Approval Required.

The Coordinating Board shall not consider for review any construction project, real property acquisition, or leased space that shall be added to an institution's facilities inventory if it has not been approved by the appropriate board of regents.

§17.4. Delegation of Authority.

(a) The following types of projects are exempt from Coordinating Board approval:

(1) New construction projects costing less than $1 million;

(2) Major R&R projects costing less than $2 million;

(3) Projects at The University of Texas at Austin, Texas A&M University, and Prairie View A&M University financed more than 50% with Permanent University Fund bond proceeds or Available University Fund funds;

(4) Construction, repair, or rehabilitation of privately owned buildings and facilities on land leased from an institution if the construction, repair, or rehabilitation is financed entirely from funds not under the control of the institution, and further that:

(5) Gifts, grants, or lease-purchase arrangements intended for clinical or research facilities.

(b) The Board authorizes the Commissioner to review and approve the following types of projects on certification by the proposing institution's governing board that Board-approved criteria are met:

(1) Previously approved projects if:

(A) the total cost of a project exceeds cost estimates by more than 10%, or

(B) gross square footage is changed by more than 10%, or

(C) contracts on the project have not been let within eighteen months from its final approval date, or

(D) an award in eminent domain if the award amount exceeds cost estimates by more than 10%.

(E) any change in the funding source of an approved project.

(2) Auxiliary enterprise projects being acquired, constructed, or renovated without the use of state general revenue funds and with a total projected cost of less than $10 million;

(3) Major R&R of existing E&G buildings or facilities that will not add E&G space with a total projected cost of less than $5 million; and

(4) Gifts, purchase or acquisition of real property having a value of less than $300,000; and

(5) Construction of new E&G space having a value of less than $1 million; and

(6) Projects funded more than 50% with tuition revenue bond proceeds. For these projects the criteria includes:

(A) Board standards regarding space need are met.

(B) Board standards regarding construction cost and efficiency are met.

(C) Board standards regarding deferred maintenance are met, or the project will reduce campus-deferred maintenance by an amount equal to no less than 50% of the project cost.

(D) If the project does not meet Board standards, the Board shall notify the governor, lieutenant governor, the speaker of the House of Representatives, and the Legislative Budget Board.

(7) If the project financing involves private gift and grant funds, these funds are either in-hand or the governing board has committed an alternative source of funds, should the primary source of funds not be forthcoming, or has agreed to forego the project.

(8) If the project will cause an increase in student fees, such increases have been executed in accordance with the applicable laws concerning approval by the student body.

(9) If the project involves construction of a dormitory, bookstore, food service facility, or other facility for which privatization may be a viable alternative, the governing board has considered the feasibility of privatization of both construction and operation of the facility.

(10) The project shall comply with the minimum flood plain management standards established by the Texas Natural Resources Conservation Commission and the Federal Emergency Management Administration (FEMA).

(11) If the project includes the acquisition of real property, appropriate consideration has been given to the effect of the acquisition on residential neighborhoods.

(12) If the project includes the acquisition of real property, the acquisition shall be included in the institution's long-range campus master plan.

(13) The project is included in the institution's most recently submitted Campus Master Plan (MP1 report) or is an opportunity or emergency that could not have been foreseen.

(c) The Coordinating Board authorizes the Campus Planning Committee to approve the following types of projects:

(1) Gifts, purchase or acquisition of real property having a value of $300,000 to $5 million;

(2) Construction of new E&G space having a value of $1 million to $5 million;

(3) Major R&R of existing E&G buildings or facilities that will not add E&G space with a project cost of $5 million or more; and

(4) Auxiliary enterprise projects costing between $10 million and $20 million.

(d) In making their decisions, the Commissioner and the Campus Planning Committee shall be guided by their judgment as to whether or not the full Board would approve the project, were it being brought to the Board.

(e) The Commissioner may refer projects to the Campus Planning Committee or the Board. The Campus Planning Committee may refer projects to the Board.

(f) Decisions of the Campus Planning Committee are final. Decisions of the Commissioner may be appealed to the Board.

(g) The following types of projects shall be approved by the Board:

(1) Gifts, purchase or acquisition of real property having a value over $5 million;

(2) Construction of new E&G space having a value over $5 million;

(3) Auxiliary enterprise projects costing more than $20 million.

(4) Any project referred to the Board by the Campus Planning Committee or the Commissioner.

§17.5. Application Procedures.

(a) Institutions desiring approval of construction projects or property acquisitions shall apply on forms specified by the Board.

(b) Project submission schedule:

(1) Projects to be considered by the Commissioner may be submitted at any time.

(2) Projects to be considered by the Campus Planning Committee or the Board shall be submitted at least 60 days prior to the regularly scheduled Board meeting at which consideration is desired.

§17.6. Coordinating Board Standards.

The following basic standards shall apply to all projects considered by the Board, Campus Planning Committee, or the Commissioner.

(1) Space Need -- The project shall not create a campus space surplus, as determined by the Coordinating Board's space projection models (§17.42 of this title relating to Space Projection Models).

(2) Cost -- The construction building cost per gross square foot is lower than the maximum estimated cost per gross square foot found in R. S. Means Facilities Construction Costs and lower than the CPI-adjusted construction cost per gross square foot of 75% of similar campus buildings approved by the Coordinating Board and constructed in the past five years. The proposed purchase price of real property acquisitions should not exceed the highest appraised amount.

(3) Efficiency -- The ratio of NASF to GSF in a building or facility is 0.60 or greater.

(4) Deferred Maintenance -- The ratio of campus-deferred maintenance costs to replacement cost is 0.05 or less.

(5) Critical Deferred Maintenance -- There shall be a plan in place to address any critical deferred maintenance reported on the master plan.

§17.7. Intercollegiate Athletic Funded Projects.

The following shall apply to Board consideration of projects that support intercollegiate athletics at Texas public universities. It does not apply to projects exempt from Board approval (§§17.1 and 17.4 of this title relating to General Provisions).

(1) Where a facility is used for both intercollegiate athletics and educational and general purposes, the cost of the facility should be appropriately prorated.

(2) This policy limits the use of student fees for financing construction projects that support intercollegiate athletics to no more than 50% of the total project cost at Texas institutions that participate in the Bowl Championship Series and to 75% of the total project cost at other universities.

(3) For institutions participating in the NCAA Football Bowl Championship Series, Board approval of projects supporting intercollegiate athletics shall normally be conditional upon a finding that no more than 50% of the financing is derived, directly or indirectly from students.

(4) For institutions not participating in the NCAA Football Bowl Championship Series, Board approval of projects supporting intercollegiate athletics shall normally be conditional upon a finding that no more than 75 % of the financing is derived, directly or indirectly, from students.

(5) The Board may waive any of the above conditions, should it determine that it is in the best interest of the affected institution and the State to do so.

(6) In making its findings, the Board may consider the total allocation of revenue supporting intercollegiate athletics.

(7) Definitions. The following words and terms shall have the following meaning, unless the context clearly indicates otherwise.

(A) Intercollegiate athletic facilities -- Any facility for the purpose of supporting intercollegiate athletics, including stadiums, arenas, multi-purpose centers, playing fields, locker rooms, coaches' office, etc.

(B) Financing directly derived from students -- Funds resulting from the collection of fees or other charges to students, such as designated tuition, student activities fees, housing revenue, bookstore or student union revenue, etc. Bond proceeds for which one or more of these sources provides debt service shall also be considered financing directly derived from students.

(C) Financing indirectly derived from students -- Funds generated from funds accumulated from students, primarily interest on funds accumulated directly from students.

(D) Non-student sources -- Funds generated from athletic department operations, gifts and grants, facility usage fees, related revenue, and appropriated funds.

(E) NCAA Football Bowl Championship Series -- A program of the NCAA under which certain NCAA Division I-A football universities share proceeds of college bowl games.

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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Gary Prevost
Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER A. CRITERIA FOR APPROVAL OF NEW CONSTRUCTION AND MAJOR REPAIR AND REHABILITATION

19 TAC §§17.21 - 17.27, 17.31, 17.33

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

The Texas Higher Education Coordinating Board proposes the repeal of §§17.21-17.27, 17.31, 17.33, concerning Campus Planning (Criteria for Approval of New Construction and Major Repair and Rehabilitation). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The rules are being repealed to restructure the existing rules to increase readability.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of the rules will be more efficient Board meetings and an improved understanding of

Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the proposed repeal. There is no impact on local employment.

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

The repeals are proposed under Texas Education Code, Section 61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code, Sections 61.0572 and 61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The repeal of the rules affect the Texas Education Code, Sections 61.0579 and 61.058.

§17.21. Object.
§17.22. Scope of Coordinating Board Review.
§17.23. Campus Master Plans.
§17.24. New Construction.
§17.25. Major Repair and Rehabilitation.
§17.26. Limitations (Public Junior Colleges).
§17.27. Legislative Limitations.
§17.31. Contracting for Advice on Costs and Construction.
§17.33. Provisions for Review of Projects Previously Approved.

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 B. NEW CONSTRUCTION AND REPAIR AND REHABILITATION PROJECTS

19 TAC §17.10, §17.11

The Texas Higher Education Coordinating Board proposes new §17.10 and §17.11 concerning Campus Planning (New Construction and Repair and Rehabilitation Projects). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The principal change in the proposed new rules is to restructure the existing rules to increase readability. A change is proposed to clarify rules regarding re-approval of projects eligible for Commissioner approval. New rules are proposed to establish standards for construction projects, processes for updating space projection models used by the Board, eminent domain, and reporting requirements. These new rules document existing practices.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering the new rules will be more efficient Board meetings and an improved understanding of Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code, §61.0572 and §61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The new rules affect the Texas Education Code, §61.0579 and §61.058

§17.10. Evaluation Considerations.

(a) Subject to the provisions of §§17.1 and 17.4 of this title (relating to General Provisions), the Board shall approve or disapprove all new construction and repair and rehabilitation of all buildings and facilities at institutions of higher education financed from any source.

(b) The Board's consideration and determination shall be limited to the purpose for which the new or remodeling buildings are to be used to assure conformity with approved space utilization standards and the institution's approved programs and role and mission if the cost of the project is not more than $2,000,000.

(c) The Board shall consider the purpose for which the new or remodeled buildings are to be used and cost factors and the financial implications of the project to the state if the total cost is in excess of $2,000,000.

(d) The Board shall consider the extent to which each of the standards in §17.6 of this title (relating to Coordinating Board Standards) is met.

(e) The Board shall ascertain that standards and specifications for new construction, repair and rehabilitation of all buildings and facilities are in accordance with Article 9102, Revised Statutes.

§17.11. Time Limit on Approval.

Approvals for construction projects are valid for 18 months after project approval. If a contract to complete the work is not fully executed within 18 months, the project must be resubmitted.

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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Texas Higher Education Coordinating Board
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SUBCHAPTER B. APPLICATION FOR APPROVAL OF NEW CONSTRUCTION AND MAJOR REPAIR AND REHABILITATION

19 TAC §§17.41 - 17.46

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

The Texas Higher Education Coordinating Board proposes the repeal of §§17.41-17.46 concerning Campus Planning (Application for Approval of New Construction and Major Repair and Rehabilitation). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The rules are being repealed to restructure the existing rules to increase readability.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of the rules will be more efficient Board meetings and an improved understanding of Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the proposed repeal. There is no impact on local employment.

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

The repeals are proposed under Texas Education Code, Section 61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code, Sections 61.0572 and 61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The repeal of the rules affect the Texas Education Code, Sections 61.0579 and 61.058.

§17.41. Object.

§17.42. Application for Project Approval.

§17.43. Compliance with Statutory Building Requirements for Elimination of Architectural Barriers to Persons with Disabilities.

§17.44. Information Required.

§17.45. Energy Conservation Projects.

§17.46. Special Approval Procedure.

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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Texas Higher Education Coordinating Board
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SUBCHAPTER C. REAL PROPERTY ACQUISITION PROJECTS

19 TAC §§17.20 - 17.24

The Texas Higher Education Coordinating Board proposes new §§17.20 - 17.24 concerning Campus Planning (Real Property Acquisition Projects). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The principal change in the proposed new rules is to restructure the existing rules to increase readability. A change is proposed to clarify rules regarding re-approval of projects eligible for Commissioner approval. New rules are proposed to establish standards for construction projects, processes for updating space projection models used by the Board, eminent domain, and reporting requirements. These new rules document existing practices.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering the new rules will be more efficient Board meetings and an improved understanding of Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code, §§61.0572 and 61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The new rules affect the Texas Education Code, §§61.0579 and 61.058

§17.20. Additional Application Materials Required.

(a) Real Property Costing $50,000 or Less. For any real property acquisition costing $50,000 or less, the institution shall describe briefly how it is certain that fair value will be paid for the property. The institution may submit appraisals for this purpose.

(b) Real Property Costing $50,000 or More. For any acquisition of real property whose cost exceeds $50,000, the institution shall comply with the following procedure:

(1) On real property proposed to be acquired, the institution shall submit to the Board two appraisal reports issued by appraisers, at least one of which meets one of the following requirements:

(A) Is a member of the American Institute of Real Estate Appraisers (designated M.A.I., or R.M.);

(B) Is a senior member of the Society of Real Estate Appraisers (S.R.E.A. and S.R.A.);

(C) Is a senior member of the American Society of Appraisers with the professional designation in real estate; or

(D) Is a senior member or appraiser-counselor of the National Association of Independent Fee Appraisers (designated I.F.A.S. or I.F.A.C.).

(2) The most recent appraisal of the local property tax appraisal district may be used for one of these reports.

(3) If desired by the institution, appraisal figures shall be held in confidence and not released publicly. The requiring of appraisals in no way requires the institution to release the figures to property owners during the acquisition process, nor does the requirement of appraisals deny the institution the right to settle a purchase at a price below the appraisals.

§17.21. Emergency Requests.

For requests of an emergency nature, Coordinating Board consideration of requests for real property acquisitions may be delegated to the Commissioner or the Campus Planning Committee. The Commissioner or the Campus Planning Committee may act upon such requests between scheduled meetings of the Board or choose to refer it to the Board at its next regularly scheduled meeting.

§17.22. Time Limit on Approval.

Approvals to purchase real property are valid for two years from the date of approval. Property acquisitions not completed in that time must be resubmitted.

§17.23. Property Acquisitions not Approved.

Under Texas Education Code, §61.0572, the Coordinating Board is directed to endorse or delay until the next succeeding session of the legislature has the opportunity to approve or disapprove, the proposed purchase of any real property by an institution of higher education, except a public junior college.

§17.24. Eminent Domain.

Coordinating Board approval of acquisitions in which eminent domain may be necessary shall be obtained prior to the commencement of eminent domain proceedings. The institution shall provide to the Coordinating Board evidence of efforts made to reach an agreement with the property's owner and an estimate of the projected legal costs associated with the eminent domain proceeding.

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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Texas Higher Education Coordinating Board
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SUBCHAPTER C. REQUESTING COORDINATING BOARD ENDORSEMENT OF REAL PROPERTY ACQUISITIONS

19 TAC §§17.61 - 17.68

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

The Texas Higher Education Coordinating Board proposes the repeal of §§17.61-17.68 concerning Campus Planning (Requesting Coordinating Board Endorsement of Real Property Acquisitions). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The rules are being repealed to restructure the existing rules to increase readability.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of the rules will be more efficient Board meetings and an improved understanding of Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the proposed repeal. There is no impact on local employment.

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

The repeals are proposed under Texas Education Code, Section 61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code, Sections 61.0572 and 61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The repeal of the rules affect the Texas Education Code, Sections 61.0579 and 61.058.

§17.61. Purpose.
§17.62. Real Property Costing $50,000 or Less.
§17.63. Real Property Costing $50,000 or More.
§17.64. Application Form.
§17.65. Procedure for Endorsement of Real Property Acquisition.
§17.66. Real Property Acquired by Gifts or Lease-Purchase.
§17.67. Time Limitation for Endorsement of Land Acquisition.

§17.68. Leased or Rented Real Property.

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. LEASED SPACE

19 TAC §17.30, §17.31

The Texas Higher Education Coordinating Board proposes new §§17.30 and 17.31 concerning Campus Planning (Leased Space). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The principal change in the proposed new rules is to restructure the existing rules to increase readability. A change is proposed to clarify rules regarding re-approval of projects eligible for Commissioner approval. New rules are proposed to establish standards for construction projects, processes for updating space projection models used by the Board, eminent domain, and reporting requirements. These new rules document existing practices.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering the new rules will be more efficient Board meetings and an improved understanding of Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code, §§61.0572 and 61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The new rules affect the Texas Education Code, §§61.0579 and 61.058

§17.30. Limitations.

The Board shall review and approve as an addition to an institution's E&G buildings and facilities inventory any improved real property acquired by gifts or lease-purchase if:

(1) the institution requests to place the improved real property on its E&G buildings and facilities inventory; and

(2) if the value of the improved real property is more than $300,000 at the time the institution requests the property to be added to the E&G buildings and facilities inventory.

§17.31. Evaluation Considerations.

The Board shall ascertain that provisions of Chapter 17, Subchapters A through C are followed in regards to lease space acquired by an institution.

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. AUDITS OF EDUCATIONAL AND GENERAL FACILITIES

19 TAC §17.81

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

The Texas Higher Education Coordinating Board proposes the repeal of §17.81 concerning Campus Planning (Audits of Educational and General Facilities). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The rules are being repealed to restructure the existing rules to increase readability.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal of the rules will be more efficient Board meetings and an improved understanding of Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the proposed repeal. There is no impact on local employment.

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

The repeal is proposed under Texas Education Code, Section 61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code,

Sections 61.0572 and 61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The repeal of the rule affects the Texas Education Code, Sections 61.0579 and 61.058.

§17.81. Periodic Audits of Educational and General Facilities.

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. INSTITUTIONAL REPORTING

19 TAC §§17.40 - 17.42

The Texas Higher Education Coordinating Board proposes new §§17.40 - 17.42 concerning Campus Planning (Institutional Reporting). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The principal change in the proposed new rules is to restructure the existing rules to increase readability. A change is proposed to clarify rules regarding re-approval of projects eligible for Commissioner approval. New rules are proposed to establish standards for construction projects, processes for updating space projection models used by the Board, eminent domain, and reporting requirements. These new rules document existing practices.

Roger W. Elliott, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new rules as proposed.

Dr. Elliott has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of administering the new rules will be more efficient Board meetings and an improved understanding of Board operations related to Campus Planning activities. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the new rules as proposed. There is no impact on local employment.

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

The new rules are proposed under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, and Texas Education Code, §§ 61.0572 and 61.058, which provides the Board the authority to establish and enforce standards to assure efficient use of construction funds and the orderly development of physical plants.

The new rules affect the Texas Education Code, §§61.0579 and 61.058

§17.40. Required Reports.

All public lower-division institutions and technical colleges, general academic institutions, health-related institutions, and Texas A&M University System service agencies are required to submit current data to the Coordinating Board for the following reports:

(1) Campus Master Plans.

(A) The Coordinating Board shall consider projects that are included in campus master plan reports. A project that is not included in the master plan may be considered if the Board determines that the institution, even with careful planning, could not reasonably have foreseen the project need.

(B) Campus master plans shall include:

(i) an assessment of an institution's facilities deferred maintenance needs;

(ii) a plan to address the deferred maintenance needs;

(iii) the amount the institution plans to designate each fiscal year for the cost of repairs, rehabilitation, and deferred maintenance projects;

(iv) the funding source for any planned construction or real property acquisition proposal that is not exempt from Board approval;

(v) a description of the proposals which the institution plans to finance with the Higher Education Assistance Fund or Permanent University Fund (Article VII, §§17 or 18, of the Texas Constitution); and,

(vi) any proposed new construction, repair and rehabilitation, real property acquisition, or other construction project that may be submitted within the next five years to the Coordinating Board.

(C) On October 15 of each year institutions must submit an update to its campus master plan on file at the Coordinating Board.

(2) Reports as required by the Coordinating Board's Educational Data Center.

(3) Facilities inventory of building and rooms occupied or in the control of an institution in a format specified by the Board. The inventory shall be updated on an on-going basis and is subject to periodic audits.

§17.41. Space Utilization.

The Board shall collect data and promulgate reports designed to inform the public and other state agencies, of the intensity of use of E&G facilities, at the public universities, technical colleges and lower-division institutions. The Board's standards for space utilization are:

(1) Classroom utilization. The Board's standard for average weekly hours of use of E&G classrooms are 38 hours.

(2) Class lab utilization. The Board's standard for average weekly hours of use of E&G class laboratories are 25 hours.

§17.42. Space Projection Models.

The Board, in consultation with institutions of higher education shall develop space planning models to estimate the NASF of E&G space

need at public lower-division institutions and technical colleges, general academic institutions, health-related institutions, and Texas A&M University System service agencies.

(1) Use. The Board shall use the models developed under this section to determine the need for space on campuses and as a component of funding formulas for institutions other than community colleges.

(2) Periodic Review. Each biennium, the Commissioner may convene an advisory committee of institutional representatives to review the model and recommend changes.

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

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.2, §73.4

The Texas Board of Chiropractic Examiners proposes amendments to §73.2 and §73.4, relating to renewal of license and inactive status. The purpose of these amendments is to clarify that the Chiropractic Act, Occupations Code, §201.311(a), and board rules, §73.2 and §73.4, require a licensee, each year at the time of license renewal, to apply for inactive status for the next license year. Inactive status is generally requested at the time of license renewal. Every licensee must renew his or her license each year, whether the licensee is on active or inactive status. To remain on inactive status, an inactive licensee must re-apply each year at renewal. Failure to re-apply for inactive status subjects an inactive licensee to the same late fee penalties and consequences to which late renewal by an active licensee is subject. While the board believes that the Act and its rules are clear, it has receives at least one inquiry by an attorney who argues that an inactive licensee does not have to re-apply each year. This rulemaking attempts to end any doubt about the requirements for inactive status.

Joyce Kershner, Director of Licensure, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the rules as amended. The proposed amendments do not implement new requirements; they simply clarify existing rules.

Ms. Kershner also has determined that for each year of the first five years, the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the rules, as amended, will be that licensees are provided better notice of the board's procedures and requirements relating to inactive status. There will be no added effect on micro or small businesses versus that on larger businesses. Each licensee is subject to the same requirements, regardless of the size of their practice. There is no anticipated economic cost to persons who are required to comply with the amended rules inasmuch as the amendments do not add new conditions or requirements on licensees.

Comments may be submitted, no later than 30 days from the date of this publication, to Joyce Kershner, Director of Licensure, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendments are proposed under the Occupations Code, §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.311, which the board interprets as requiring it to adopt rules providing for inactive status.

The following are the statutes, articles, or codes affected by the amendments: §73.2, §73.4 - Occupations Code, §201.152, §201.311.

§73.2. Renewal of License.

(a) Annual renewal. Each year, on or before the first day of a licensee's birth month, a licensee shall renew his or her license. A licensee may also [~~or~~] apply for inactive status in accordance with §73.4 of this title (relating to Inactive Status). In order to renew a license, a licensee must submit to the board the license renewal form provided by the board, the renewal fee for an active license as provided in §75.7 of this title (relating to Fees), any late fees, if applicable as provided in subsection (d) of this section, and verification of continuing education attendance as required by §73.3 of this title (relating to Continuing Education). An annual renewal certificate shall not be issued until all information and fees required by this section are provided to the board. The license renewal fee and any late fees shall be paid by cashier's check or money order made payable to the Texas Board of Chiropractic Examiners.

(b) *Locum Tenens* Information. A licensee who substitutes for another licensee (locum tenens) and temporarily practices at the facility of the absent licensee shall provide the board with a list of each facility that he or she has served as a *locum tenens* during the previous 12 months. The list shall include the name, address, and facility registration of each facility. A *locum tenens* licensee shall have proof of licensure, such as a copy of the license or the board-issued wallet size license, with them while practicing and shall show it upon request.

(c) Licensees in default of student loan or repayment agreement.

(1) The board shall not renew a license of a licensee who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation or a repayment agreement with the corporation except as provided in paragraphs (2) and (3) of this subsection.

(2) For a licensee in default of a loan, the board shall renew the license if:

(A) the renewal is the first renewal following notice to the board that the licensee is in default; or

(B) the licensee presents to the board a certificate issued by the corporation certifying that:

(i) the licensee has entered into a repayment agreement on the defaulted loan; or

(ii) the licensee is not in default on a loan guaranteed by the corporation.

(3) For a licensee who is in default of a repayment agreement, the board shall renew the license if the licensee presents to the board a certificate issued by the corporation certifying that:

(A) The licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(4) This subsection does not prohibit the board from issuing an initial license to a person who is in default of a loan or repayment agreement but is otherwise qualified for licensure. However, the board shall not renew the license of such a licensee, if at the time of renewal, the licensee is in default of a loan or repayment agreement except as provided in paragraphs (2)(B) or (3) of this subsection.

(5) The board shall notify a licensee of the nonrenewal of a license under this subsection and of the opportunity for a hearing under paragraph (7) of this subsection prior to or at the time the annual renewal application is sent.

(6) A license which is not renewed under this subsection is considered expired. The licensee cannot practice chiropractic until such time that he or she complies with this subsection. Subsection (d) of this section applies to licenses expired under this subsection.

(7) Upon written request for a hearing by a licensee, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §75.9(d) of this title (relating to Complaint Procedures). A licensee shall file a request for a hearing with the board within 30 days from the date of receipt of the notice required by paragraph (5) of this subsection.

(d) Expired License.

(1) If an active or inactive [~~a~~] license is not renewed on or before the first day of the licensee's birth month of each year, it becomes expired.

(2) If a person's license has expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee, as provided in §75.7 of this title (relating to Fees), and a late fee of $62.

(3) If a person's license has expired for longer than 90 days, but less than one year, the person may renew the license by paying to the board the required renewal fee, as provided in §75.7 of this title and a late fee of $125.

(4) If a person's license has expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

(5) At the board's discretion, a person whose license has expired for one year or longer may renew without complying with paragraph (4) of this subsection if the person moved to another state and is currently licensed and has been in practice in the other state for two years preceding application for renewal. The person must also pay the board the required renewal fee, as provided in §75.7 of this title and a late fee of $125.

(6) The annual renewal application will be deemed to be the written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the board.

(e) Practicing with an expired license. Practicing chiropractic with an expired license constitutes practicing chiropractic without a license. A licensee whose license expires shall not practice chiropractic until the license is renewed or a new license is obtained as provided by subsection (d) of this section.

§73.4. Inactive Status.

(a) Each year, on or before a licensee's renewal date, a [~~A~~] licensee who is not currently practicing chiropractic in Texas may renew his or her license as provided by §73.2 of this title (relating to Renewal of License) and request , on a form prescribed by the board, that it [~~his or her license~~] be placed on inactive status [~~by applying on a form prescribed by the board~~]. In order to continue on inactive status and to maintain a valid license, an active licensee must renew his or her license and make a new request for inactive status each year.

(b) A licensee on inactive status is not required to pay a fee if the application for inactive status is submitted on or before the annual expiration date of the license. If the application is late, the licensee shall be subject to [~~the applicable late fee as provided by~~] §73.2(d) of this title (relating to Expired License [~~Renewal of License~~]). A licensee on inactive status is not required to complete continuing education as provided in §73.3 of this title (relating to Continuing Education).

(c) To place a license on inactive status at a time other than the time of license renewal, a licensee shall:

(1) return the current renewal certificate to the board office; and

(2) submit a signed, notarized statement stating that the licensee shall not practice chiropractic in Texas while the license is inactive, and the date the license is to be placed on inactive status.

(d) To reactivate a license which has been on inactive status for five years or less, a licensee shall, prior to beginning practice in this state:

(1) apply for active status on a form prescribed by the board;

(2) submit written verification of attendance at and completion of continuing education courses as required by §73.3 of this title for the number of hours that would otherwise have been required for renewal of a license. Approved continuing education earned within the calendar year prior to the licensee applying for reactivation may be applied toward the continuing education requirement; and

(3) pay the Active License Renewal Fee.

(e) A license which has been on inactive status for a period of more than five years may be reactivated only upon successfully passing Part IV of the National Board of Examination and the board's Jurisprudence Examination prior to reactivation.

(f) Prohibition against Practicing Chiropractic in Texas. A licensee while on inactive status shall not practice chiropractic in this state. The practice of chiropractic by a licensee while on inactive status constitutes the practice of chiropractic without a license.

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

Filed with the Office of the Secretary of State, on February 7, 2001.

TRD-200100813

Gary K. Cain, Ed. D.
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 305-6709

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PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.1

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes the amendment of §651.1, concerning Fees. This section is being amended to make the facility fees easier to understand; raises the fee for inactive status; adds a new fee for re-examination; and adds a fee for the restoration of a license.

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

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be increased administrative efficiency and appropriate fees. There will be no effect on small businesses. There are fee changes from $25 to $100 of anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed changes may be submitted to Jennifer Jones, Administrative Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701; (512) 305-6900, e-mail: jennifer.jones@mail.capnet.state.tx.us

The amendment is proposed under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 3, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Occupational Code is affected by this amended section.

§651.1. Occupational Therapy Board Fees.

(a) Regular License

(1) Occupational Therapist--$110

(2) Occupational Therapy Assistant--$85

(3) Application to retake the certification exam, OT--$25

(4) Application to retake the certification exam, OTA--$25

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

(d) Active to Inactive Status

(1) Occupational Therapist--a fee to equal one-half the renewal fee [~~$25~~]

(2) Occupational Therapy Assistant a fee to equal one-half the renewal fee [~~$25~~]

(e) Inactive Status to Active Status

(1) Occupational Therapist $200

(2) Occupational Therapy Assistant $150 [~~$125~~]

(f) Renewal

(1) Active

(A) [~~(1)~~] Occupational Therapist--$200

(B) [~~(2)~~] Occupational Therapy Assistant $150

(2) Inactive

(A) Occupational Therapist--a fee equal to one-half the renewal fee

(B) Occupational Therapy Assistant--a fee equal to one-half the renewal fee

(g) Late Fees Renewal (all licensees)

(1) Late 90 days or less--the renewal [~~Regular~~] fee plus late fee which is equal to one-half of the certification examination fee. [~~;~~]

(2) Late more than 90 days but less than one year--the renewal [~~Regular~~] fee plus late fee which is equal to the certification examination fee.

(h) License Restoration Fee for all licensees--a fee equal to the certification examination fee

(i) [~~(h)~~] Registration Fees--Facilities.

(1) Registration of First Facility--$300

(2) Registration of Each Additional[~~--~~]Facility--$100

(j) [~~(i)~~] Renewal Fees--Facilities (on-time).

(1) Renewal of Registration of First Facility--$300

(2) Renewal of Registration of Each Additional Site--$100

(k) [~~(j)~~] Late Fees--All Facilities [~~Restoration Fees--First Facility.~~]

(1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee. [~~$150~~]

(2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee. [~~$300~~]

[~~(3) Late one year or more--$600~~]

[~~(k) Restoration Fees--Each Additional Site.~~]

[~~(1) Late 90 days or less--$50~~]

[~~(2) Late more than 90 days but less than one year--$100~~]

[~~(3) Late one year or more--$200~~]

(l) Facility Restoration (all facilities)--Late one year or more-renewal fee(s) plus a restoration fee is double the renewal fee.

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 February 5, 2001.

TRD-200100734
John P. Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Proposed date of adoption: September 1, 2001
For further information, please call: (512) 305-6962

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 403. OTHER AGENCIES AND THE PUBLIC

SUBCHAPTER B. CHARGES FOR COMMUNITY-BASED SERVICES

25 TAC §§403.41 - 403.53

(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 §§403.41 - 403.53 of Chapter 403, Subchapter B, concerning charges for community-based services. New §§412.101 - 412.114 of Chapter 412, Subchapter C, concerning charges for community services, which would replace the repealed sections, 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. The proposal would also fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Gerry McKimmey, deputy commissioner for community programs, 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 costs or revenues of the state or local governments.

Sam Shore, director, Behavioral Health Services, 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 not anticipated that the proposed repeals will affect a local economy.

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

Written comments on the proposed repeals 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, and §534.067, which requires TDMHMR to establish a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

The proposed sections would affect the Texas Health and Safety Code, §534.067.

§403.41. Purpose.
§403.42. Application.
§403.43. Definitions.
§403.44. Principles.
§403.45. Financial Assessment.
§403.46. Determination of Ability to Pay.
§403.47. Rates.
§403.48. Billing Procedures.
§403.49. Monthly Ability-to-Pay Fee Schedule.
§403.50. Training.
§403.51. Information for Persons.
§403.52. References.
§403.53. 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 February 12, 2001.

TRD-200100866
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 206-5216

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CHAPTER 412. LOCAL AUTHORITY RESPONSIBILITIES

SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

25 TAC §§412.101 - 412.114

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§412.101 - 412.114 of new Chapter 412, Subchapter C, concerning charges for community services. The repeals of §§403.41 - 403.53 of Chapter 403, Subchapter B, concerning charges for community-based services, which the new sections would replace, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed new sections describe TDMHMR's uniform fee collection policy for all local authorities that is equitable, provides

for collections, and maximizes contributions to local revenue as required by the Texas Health and Safety Code, §534.067.

The proposed sections would fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Gerry McKimmey, deputy commissioner for community programs, has determined that for each year of the first five years the proposed sections are in effect, enforcing or administering the sections does not have foreseeable implications relating to costs or revenues of the state or local governments.

Sam Shore, director, Behavioral Health Services, has determined that, for each year of the first five years the proposed sections are in effect, the public benefit expected is the implementation of a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed sections because the sections do not place additional requirements related to costs on such persons than those in the sections proposed for repeal.

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

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

Written comments on the proposed sections 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, and §534.067, which requires TDMHMR to establish a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

The proposed sections would affect the Texas Health and Safety Code, §534.067.

§412.101. Purpose.

(a) The purpose of this subchapter is to comply with the Texas Health and Safety Code, §534.067, and the Health Care Financing Administration's interpretation of the Social Security Act, Section 1902(a)(17)(B) (which prohibits Medicaid payments for a free service), by establishing a uniform fee collection policy for local authorities for community services contracted for through the performance contract that are funded by TDMHMR and required local match and provided to members of the priority population that:

(1) is equitable;

(2) provides for collections; and

(3) maximizes contributions to local revenue.

(b) The provisions of this subchapter are not intended to preempt payment for community services by other funding sources (e.g., Texas Commission on Alcohol and Drug Abuse, Texas Department of Criminal Justice, third-party coverage).

§412.102. Application.

(a) This subchapter applies to all local authorities for community services contracted for through the performance contract that are funded by TDMHMR and required local match and provided to members of the priority population.

(b) This subchapter does not apply to:

(1) programs and services that are prohibited by statute or regulation from charging fees to persons served (e.g., Early Childhood Intervention Program);

(2) the TDMHMR In-Home and Family Support Program;

(3) community-based residential services and inpatient services; and

(4) specialized services mandated by the Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90, for preadmission screening and annual resident reviews (PASARR) provided to non-Medicaid eligible persons.

§412.103. Definitions.

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

(1) Ability to pay - A person has third-party coverage that will pay for needed services, the person's maximum monthly fee is greater than zero, or the person has identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).

(2) Community services or services - Mental health and mental retardation services required to be available in each local service area pursuant to the Texas Health and Safety Code, §534.053(a), for which TDMHMR contracts through the performance contract. A list of community services is available:

(A) on the Internet at www.mhmr.state.tx.us and by searching "performance contract"; or

(B) by contacting the local authority's administrative offices.

(3) Family members -

(A) Unmarried person under the age of 18 - The person, the person's parents, and the dependents of the parents, if residing in the same household;

(B) Unmarried person age 18 or older - The person and his/her dependents;

(C) Married person of any age - The person, his/her spouse, and their dependents.

(4) Gross income - Revenue from all sources before taxes and other payroll deductions.

(5) Inability to pay - A person's maximum monthly fee is zero and:

(A) the person does not have third-party coverage;

(B) the person has third-party coverage, but the person has exceeded the maximum benefit of the covered service(s) or the third-party coverage will not pay because the services needed by the person are not covered services; or

(C) the person has not identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).

(6) Income-based public insurance - Government funded third-party coverage that bases eligibility and/or co-payments and deductibles on a person's (or parents') income (i.e., Medicaid and CHIP).

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

(8) Local match - Funds or in-kind support from a local authority as required by the Texas Health and Safety Code, §534.066.

(9) Performance contract - The contract between TDMHMR and a local authority in which TDMHMR agrees to pay the local authority a specified sum and in which the local authority agrees to provide local match, for, at a minimum, ensuring and/or monitoring the provision of specified mental health and mental retardation services in a local service area.

(10) Person - A person in the priority population who is seeking or receiving services through a local authority.

(11) Priority population - Those groups of persons with mental illness or mental retardation identified in TDMHMR's current strategic plan as being most in need of mental health and/or mental retardation services.

(12) Rate - A fixed price for a service that represents the service's monetary value.

(13) Third-party coverage - A public or private payor of community services that is not the person (e.g., Medicaid, Medicare, private insurance, CHIP, CHAMPUS).

§412.104. Principles.

TDMHMR supports the following principles:

(1) Persons are charged for services based on their ability to pay.

(2) Procedures for determining ability to pay are fair, equitable, and consistently implemented.

(3) Paying for services in accordance with his/her ability to pay acknowledges the dignity of the person.

(4) Paying for services in accordance with his/her ability to pay reinforces the role of the person as a customer, having the right and responsibility to influence the provision of those services.

(5) Earned revenues are optimized.

§412.105. Accountability.

(a) Prohibition from denying services. Local authorities are prohibited from denying services:

(1) to a person because of the person's inability to pay for the services;

(2) to a person in a crisis or emergency because a financial assessment has not been completed, financial responsibility has not been determined, or the person has a past-due account; or

(3) pending resolution of an issue relating solely to payment for services, including failure of the person (or parent) to comply with any requirement in subsections (b)-(e) of this section.

(b) Requirement to apply for Medicaid benefits. Parents whose children may be eligible for Medicaid and persons who may be eligible for Medicaid must apply for Medicaid or provide documentation that they have been denied Medicaid or that their Medicaid application is pending.

(c) Requirement to enroll in CHIP. Parents of children who may be eligible for the Childrens Health Insurance Program (CHIP) must enroll in CHIP or provide documentation that they have been denied CHIP benefits or that their CHIP enrollment is pending.

(d) Financial documentation. If requested by the local authority, persons (or parents) must provide the following financial documentation:

(1) annual or monthly gross income/earnings, if any;

(2) extraordinary expenses (i.e. major medical or health related expenses; major casualty losses; child care expenses for the previous year or projections for the next year);

(3) number of family members; and

(4) proof of any third-party coverage.

(e) Permission to bill third-party coverage. Persons with third-party coverage must execute an assignment of benefits (i.e., give the local authority permission to bill the third-party coverage).

(f) Failure to comply. A person's (or parent's) failure to comply with any requirement in subsections (b)-(e) of this section will result in the person (or parent) being charged the standard rate(s) for services, established in accordance with §412.107(a) of this title (relating to Rates), unless the person's interdisciplinary or multidisciplinary team makes a clinical determination that failure to comply is related to the person's mental illness or mental retardation or enforcement of the requirement would result in a reduction in functioning of the person or the person's refusal or rejection of the needed services. This determination requires clinical documentation and must be reassessed by the team at least every three months.

§412.106. Determination of Ability to Pay.

(a) Financial assessment. A financial assessment must be completed and documented for each person within the first 30 days of services and updated at least annually, or whenever significant financial changes occur, as long as the person continues to receive services. The financial assessment is accomplished using the financial documentation listed in §412.105(d) of this title (relating to Accountability), which represents the finances of the:

(1) person who is age 18 or older and the person's spouse; or

(2) parents of the person who is under 18 years of age.

(b) Maximum monthly fee. A person's maximum monthly fee is based on the financial assessment and calculated using the Monthly Ability-To-Pay Fee Schedule, referenced as Exhibit A in §412.112 of this title (relating to Exhibit). The calculation is based on the number of family members, annual gross income reduced by extraordinary expenses paid during the past 12 months or projected for the next 12 months. No other sliding scale is used.

(1) A maximum monthly fee that is greater than zero is established for persons who are determined as having an ability to pay. If two or more members of the same family are receiving services, then the maximum monthly fee is for the family.

(2) A maximum monthly fee of zero is established for persons who are determined as having an inability to pay.

(c) Third-party coverage.

(1) A person with third-party coverage that will pay for needed services is determined as having an ability to pay for those services.

(2) If the person's third-party coverage will not pay for needed services because the local authority provider is not an approved provider, then the local authority will refer the person to his/her third-

party coverage to identify a provider for which the third-party coverage will pay.

(3) An exception to the provision described in paragraph (2) of this subsection is if the local authority is identified as being responsible for providing court-ordered outpatient services to the person.

(d) Social Security work incentive provisions. A person has an ability to pay if the person identified payment for a needed service or services in his/her approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*). Persons are not required to identify payment for any service for which they may be eligible as part of their approved plan for utilizing the Social Security work incentive provisions.

(e) Notification. Written notification is provided to the person (or parents) that includes:

(1) the determination of whether the person (or parent) has an ability or an inability to pay;

(2) a copy of the financial assessment form that is signed by the person (or parent) and a copy of the Monthly Ability-to-Pay Fee Schedule, with the applicable areas indicated (i.e., annual gross income, number of household members, etc.);

(3) the amount of the maximum monthly fee;

(4) a statement that the person (or parent) may discuss with the interdisciplinary or multidisciplinary team any concerns the person (or parent) may have regarding the information contained in the written notification; and

(5) a statement that the person (or parent) may voluntarily pay more than the maximum monthly fee.

§412.107. Standard Rates.

(a) Each local authority must establish, at least annually, a reasonable standard rate for each community service.

(b) The rate for a service provided to a Medicaid recipient that is reimbursed by Medicaid is the current approved Medicaid rate for the service. The rate for the same service provided to a person who is not a Medicaid recipient may not be less than the current approved Medicaid rate, but may be more if the current approved Medicaid rate does not cover the actual cost of the service.

§412.108. Billing Procedures.

(a) Monthly services charge. All services provided during a month, and the standard rates for those services, are listed as the person's monthly services charge. Each service listed is identified as being covered by third-party coverage or as not being covered by third-party coverage. If a person has exceeded the maximum benefit of a particular covered service, then that service is identified as not being covered by third-party coverage.

(b) Billing third-party coverage. The third-party coverage is billed the monthly services charge for covered services.

(1) Third-party coverage that is not income-based public insurance.

(A) If the local authority has a contract with the person's third-party coverage, then payment made by the third-party coverage for a covered service plus any applicable co-payment made by the person is full payment for that service.

(B) If the local authority does not have a contract with the person's third-party coverage and if a balance remains after payment from the third-party coverage or if the third-party coverage will not pay for a covered service because the deductible hasn't been met, then the balance or deductible is applied toward the person's maximum monthly fee.

(2) Income-based public insurance. Payment made by income-based public insurance for a covered service plus payment made by the person for any applicable co-payment and/or deductible is full payment for that service, (i.e.,:

(A) for Medicaid recipients, Medicaid reimbursement is full payment; and

(B) for CHIP recipients, CHIP reimbursement plus the recipient's co-payment and/or deductible payment is full payment).

(c) Billing the person (or parents).

(1) No third-party coverage. If the monthly services charge amount:

(A) exceeds the person's maximum monthly fee, then the amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee; or

(B) is less than the person's maximum monthly fee, then the person (or parent) is billed the amount.

(2) Third-party coverage that is not income-based public insurance.

(A) If the local authority has a contract with the person's third-party coverage and:

(i) the amount of all co-payments described in subsection (b)(1)(A) of this section exceeds the person's maximum monthly fee, then the amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee. The person (or parent) is not billed for services not covered by third-party coverage, if any; or

(ii) the amount of all co-payments described in subsection (b)(1)(A) of this section does not exceed the person's maximum monthly fee, then the monthly services charge amount for services not covered by third-party coverage is added to equal the total amount. If the total amount:

(I) exceeds the person's maximum monthly fee, then the total amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee; or

(II) is less than the person's maximum monthly fee, then the person (or parent) is billed the total amount.

(B) If the local authority does not have a contract with the person's third-party coverage, then the balance or deductible applied toward the person's maximum monthly fee as described in subsection (b)(1)(B) of this section is added to the monthly services charge amount for services not covered by third-party coverage to equal the total amount. If the total amount:

(i) exceeds the person's maximum monthly fee, then the total amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee; or

(ii) is less than the person's maximum monthly fee, then the person (or parent) is billed the total amount.

(3) Income-based public insurance.

(A) If the amount of all co-payments and deductibles described in subsection (b)(2) of this section exceeds the person's maximum monthly fee, then the person (or parent) is billed the amount. The person (or parent) is not billed for services not covered by third-party coverage, if any.

(B) If the amount of co-payments and deductibles described in subsection (b)(2) of this section does not exceed the person's maximum monthly fee, then the monthly services charge amount for services not covered by third-party coverage is added to equal the total amount. If the total amount:

(i) exceeds the person's maximum monthly fee, then the total amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee; or

(ii) is less than the person's maximum monthly fee, then the person (or parent) is billed the total amount.

(4) Social Security work incentive provisions. A person may be charged for specific services listed on the monthly services charge if the person identified payment for such services in his/her approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).

(d) Statements.

(1) Persons (and parents) who have been determined as having the ability to pay are sent monthly or quarterly statements that include:

(A) an itemized list, at least by date and by type, of all services received;

(B) the standard rate for each service;

(C) the total charge for the period;

(D) the amount paid (or to be paid) by third-party coverage, if any;

(E) the amount that is being reduced, if any; and

(F) the amount to be paid.

(2) Unless requested, statements are not sent to persons with an ability to pay if they maintain a zero balance (i.e., the person does not currently owe any money).

(3) Unless requested, statements are not be sent to persons who have been determined as having an inability to pay.

§412.109. Payment and Exemptions.

(a) Payment.

(1) Persons (and parents) are expected to promptly pay all charges owed.

(2) If a person (or parent) claims, and provides documentation, that financial hardship prevents prompt payment of all charges owed, then the local authority may arrange for the person (or parent) to pay a lesser amount each month. Although the person (or parent) will pay a lesser amount each month because a portion of the charges will be deferred, the person (or parent) is still responsible for paying all charges owed.

(b) Receipts. Receipts must be provided for all cash payments.

(c) Waiver of charges. If a person's interdisciplinary or multidisciplinary team makes a clinical determination that being charged for services and receiving statements will result in a reduction in the functioning level of the person or the person's refusal or rejection of the needed services, then charges will cease and statements will no longer be sent. This determination requires clinical documentation and must be reassessed by the team at least every three months.

(d) Termination of services for cause. A person's services may be terminated in accordance with this subsection.

(1) Irresponsible actions by a person that result in resources being wasted (e.g., missing multiple appointments without canceling, consistently losing medications) shall be referred to the person's interdisciplinary or multidisciplinary team. The team is responsible for making reasonable efforts to assist the person in stopping or reducing the irresponsible actions. (For example, if the team determines that the actions are related to the person's mental illness or mental retardation, then the team may modify the person's treatment. If the team determines that the actions are related to external circumstances, such as unreliable transportation, then the team may assist the person (or parent) in accessing reliable transportation.) If the team makes a clinical determination that the actions are not related to the person's mental illness or mental retardation and the team has been unsuccessful in assisting the person in stopping or reducing the actions, then the team may decide to terminate the person's services. The team may not terminate the person's services if termination is clinically contraindicated or if the local authority is identified as being responsible for providing court-ordered outpatient services to the person.

(2) Past-due accounts of persons (or parents) who are not making payments are referred to the persons' interdisciplinary or multidisciplinary teams. The team is responsible for addressing the issue of non-payment with the person (or parent) and making reasonable efforts that will result in the person (or parent) making payments. (For example, if the team determines that non-payment is related to the person's mental illness or mental retardation, then the team may modify the person's treatment to address the non-payment. If the team determines that non-payment is related to financial hardship, then the team may assist the person (or parent) in making arrangements to pay a lesser amount each month in accordance with subsection (a) of this section.) If the team makes a clinical determination that non-payment is not related to the person's mental illness or mental retardation and, despite the team's efforts, the person (or parent) does not pay, then the team may decide to terminate the person's services. The team may not terminate the person's services if termination is clinically contraindicated or if the local authority is identified as being responsible for providing court-ordered outpatient services to the person.

(3) If the team decides to terminate the person's services, then:

(A) the team must provide clinical documentation that justifies its decision, including the basis for determining that termination is not clinically contraindicated; and

(B) the person (or parent) shall be notified in writing of the decision and provided an opportunity to appeal the decision in accordance with §401.464 of this title (relating to Notification and Appeals Process). The notification shall prescribe the time frames and process for requesting an appeal and include a copy of this subchapter. If the person (or parent) requests an appeal within the prescribed time frame, then the person's services may not be terminated while the appeal is pending.

(4) If a person (or parent) is dissatisfied with the decision of the appeal as described in paragraph (3)(B) of this subsection, then the person (or parent) may request a review by the Office of Consumer Services and Rights Protection - Ombudsman at TDMHMR Central Office.

(A) The person (or parent) must request a review within 10 working days of receipt of notification of the appeal decision.

(B) The person (or parent) may choose to have the staff conducting the review:

(i) conduct the review by telephone conference with the person (or parent) and a representative from the local authority and

make a decision based upon verbal testimony made during the telephone conference and any documents provided by the person (or parent) and the local authority; or

(ii) conduct the review by making a decision based solely upon documents provided by the person (or parent) and the local authority without the presence of any of the parties involved.

(C) The review:

(i) will be conducted no sooner than 10 working days and no later than 30 working days of receipt of the request for a review unless an extension is granted by the director of the Office of Consumer Services and Rights Protection - Ombudsman;

(ii) will include a review of the pertinent information concerning termination of the person's services and may include consultation with TDMHMR clinical staff and staff who oversee implementation of this subchapter;

(iii) will result in a final decision which will either uphold, reverse, or modify the original decision to terminate the person's services; and

(iv) is the final step of the appeal process for termination of services for cause.

(D) Within five working days after the review, the staff who conducted the review will send written notification of the final decision to the person (or parent) and the local authority.

(e) Prohibition of financial penalties. Financial penalties may not be imposed on a person (or parent).

(f) Debt collection. Local authorities must make reasonable efforts to collect debts before an account is referred to a debt collection agency. Local authorities must document their efforts at debt collection.

(1) Local authorities must incorporate into a written agreement or contract for debt collection provisions that state that both parties shall:

(A) maintain the confidentiality of the information and not disclose the identity of the person or any other identifying information; and

(B) not harass, threaten, or intimidate persons and their families.

(2) Local authorities will enforce the provisions contained in paragraph (1) of this subsection.

§412.110. Training.

All local authority staff who are involved in implementing or explaining the content of this subchapter must annually demonstrate competency in accordance with a prescribed training program developed by TDMHMR, in consultation with local authorities and consumer representatives.

§412.111. Information for Persons.

Persons and families must be provided TDMHMR-approved information on TDMHMR's policy of charges for community services contained in this subchapter prior to entry into services except in a crisis or emergency.

§412.112. Exhibit.

Exhibit A - The Monthly Ability-To-Pay Fee Schedule, is referenced in this subchapter. Copies of Exhibit A are available by contacting TDMHMR, Policy Development, P.O. Box 12668, Austin, TX 78711-2668.

§412.113. References.

Reference is made to the following statutes:

(1) Texas Health and Safety Code, §534.067;

(2) Social Security Act, Section 1902(a)(17)(B); and

(3) Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90.

§412.114. Distribution.

This subchapter is distributed to:

(1) all members of the Texas Board of Mental Health and Mental Retardation;

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

(3) executive directors of all local authorities; 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 February 12, 2001.

TRD-200100865
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 206-5216

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PART 8. INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION

CHAPTER 621. EARLY CHILDHOOD INTERVENTION

SUBCHAPTER B. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

25 TAC §621.24

The Interagency Council on Early Childhood Intervention (ECI) proposes an amendment to §621.24, concerning Program Administration for Comprehensive Services.

The purpose of the amendment is to add new subparagraphs (D) and (E) under subsection (b)(3). The statements in subparagraph (D) fold into rule ECI's deadline and requirement for standard use of the ECI logo and slogan. This information has been distributed to ECI providers in policy and is not a new requirement. The language in subparagraph (E) communicates that only ECI providers or at ECI's direction can the logo and slogan be used.

Donna Samuelson, Deputy Executive Director, ECI, has determined that for the first five-year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Samuelson also has determined that for each year of the first five years the proposed section is in effect, the public benefit

anticipated as a result of enforcing the section will be the use of one logo and slogan used statewide so that it is easier for the public to find ECI services. There are no anticipated economic costs to persons who are required to comply with the rule as proposed. There will be no effect on small businesses.

Comments on the proposed amendment may be submitted to Denise Brady, Texas Interagency Council on Early Childhood Intervention, 4900 North Lamar, Austin, Texas 78751-2399, within 30 days of publication in the *Texas Register*.

The amendment is proposed under Chapter 73 of the Human Resources Code, which provides the agency with the authority to administer public programs for developmentally delayed children.

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

§621.24. Program Administration for Comprehensive Services.

(a) Program eligibility for comprehensive services.

(1) Funds for comprehensive services are available to public or private service organizations that may be current or potential providers of services for children with developmental delays.

(2) Eligibility for continued funding shall be contingent upon the program's accomplishments, progress toward stated goals, compliance with state standards, implementation of program review findings, and availability of funds. The program provider shall submit an annual application for continuation funding.

(b) Program requirements.

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

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

(i) child find programs located within the education service centers;

(ii) local and regional health departments with Maternal and Child Health Programs under Title V of the Social Security Act;

(iii) Medicaid's Early Periodic Screening, Diagnosis, and Treatment Program (EPSDT);

(iv) head start programs;

(v) hospitals;

(vi) day care programs;

(vii) school districts;

(viii) social service agencies;

(ix) primary health care providers;

(x) Early Childhood Intervention (ECI) programs;

(xi) child care management services (CCMS);

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

(xiii) programs under Supplemental Security Income under Title XVI of the Social Security Act;

(B) information regarding availability of other local services including other ECI programs;

(C) accepting referrals for intervention services and evaluating each child for eligibility within 45 days of the referral.

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

(3) Public awareness. Each program must develop and implement a public awareness plan which includes:

(A) information on child find, early identification, referral, and access to services of the Texas Early Childhood Intervention Program, locally and across the state;

(B) a variety of continuous methods for reaching the general public; and

(C) involvement and communication with public and private agencies; parent, professional, and advocacy groups; and other organizations or associations.

(D) By September 1, 2001 programs must implement the use of the ECI logo and slogan and meet requirements listed in the ECI Graphic Standards Manual for all materials used for marketing, public awareness, child find, promotion, public education, and program correspondence. Programs must use "ECI" as part of their program name.

(E) The ECI logo and slogan are for use by providers under contract with ECI or by entities not under contract when directed by the Interagency Council on Early Childhood Intervention. All use must be in accordance with the ECI Graphic Standards Manual.

(4) Interagency coordination. Each program must develop and implement an interagency coordination plan which includes as a minimum procedures:

(A) preventing duplication of assessments and services;

(B) coordinating referrals to and from ECI programs;

(C) participating in local and regional planning and coordination groups affecting services to young children; and

(D) coordinating activities to make the most effective use of staff development and comprehensive service provision.

(5) Staff composition and qualifications.

(A) Programs must employ staff who meet the appropriate professional requirements and hold current professional credentials for their profession. Appropriate professional requirements are the entry level professional standards which:

(i) are based on the state's highest requirements applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) establish suitable qualifications for personnel providing early intervention services to eligible children and their families, who are served by state, local, and private agencies.

(B) ECI professional staff must abide by the licensure or certification requirements and the established rules of supervision and conduct for their professions.

(C) For the occupational categories for which state authority has not established professional standards (such as service coordinator and early intervention specialist), programs must employ staff who are qualified in terms of education and experience for their assigned scopes of responsibilities and provide the required degree of supervision.

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

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

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

(II) Fully qualified--Persons meeting the conditions and requirements for Professional Recognition as Fully Qualified EIS Professionals.

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

(iii) Supervision. The Entry Level EIS Professionals must receive a minimum of one hour per week of direct supervision from a fully qualified professional until they have successfully completed the requirements to be Fully Qualified EIS Professionals. The supervising professionals may be from any of the disciplines related to early intervention and must meet the highest state standards for their profession.

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

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

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

(II) within nine months of their hiring date, submit a progress report of the demonstration of early intervention knowledge and skills completed by their ECI program director and supervisor;

(III) within two years of their hiring date, complete the required demonstrations of early intervention knowledge and skills and submit documentation to the state office; and

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

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

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

(viii) Registry. The Texas Interagency Council on Early Childhood Intervention shall issue certificates of recognition to and maintain a registry of individuals who successfully complete the requirements to be Fully Qualified EIS Professionals.

(ix) Grievance process. Each local agency shall have a procedure for local resolution of personnel grievances. A party who has a disagreement with the local decision regarding his qualifications or status as an EIS Professional shall have an opportunity for dispute resolution at the local level. Agencies may use existing personnel grievance procedures to resolve disagreements and will inform their staff of their existence.

(x) Complaints. Any individual or organization may file a complaint with the Council alleging that a requirement of the applicable federal and/or state regulations has been violated as provided in §621.43 of this title (relating to Confidentiality).

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

(F) Local programs must establish a procedure to ensure that employees have not been convicted of any felony or a misdemeanor related to child abuse or sexual abuse or any other offense against a person or family.

(6) Inservice education. Each program shall annually assess and address the training needs of the early childhood intervention staff. Documentation of the development and implementation of each

staff members individualized professional development plan (IPDP) shall be maintained by the program.

(7) ECI child service standards.

(A) Determination of staff-child ratios must take into account the degree of each child's developmental level of functioning, the setting in which the child will be served, and the nature of the comprehensive services to be provided.

(B) Programs which provide child care as defined by the Texas Department of Human Services (TDHS) must meet licensing standards of TDHS.

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

(A) Medication policies. If staff is involved in the administration of medication, written policies must be maintained regarding such administration.

(B) Infectious disease prevention and management.

(i) All programs must adhere to the procedures of the universal precautions for the Texas Early Childhood Intervention Program, as issued by the council.

(ii) All programs must comply with the Texas Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1.

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

(C) Policies regarding serving children who are HIV positive. The following requirements must be enforced in serving children who are HIV positive.

(i) Children with HIV infection must not be discriminated against on the basis of HIV infection. Reasonable accommodations will be made to serve them on the basis of individual need.

(ii) Any information a parent may provide on the HIV status of a child or family member will be deemed confidential and released only to individuals designated by the parent.

(iii) For identified children with HIV infection, with parental consent, the staff must communicate with the physician responsible for medical care and must involve the physician in programmatic decisions about treatment. Communication with the physician must occur prior to assessment and on an ongoing basis as needed.

(iv) Programs cannot require HIV testing of children.

(9) Safety regulations regarding emergencies for all buildings where ECI programs are housed. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(10) Accessibility and safety. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(A) All ECI services must be available in buildings that are physically accessible to persons with disabilities.

(B) Buildings where the ECI program is housed (including offices) must be inspected annually by a local or state fire authority. A safety and sanitation inspection must be completed annually by an entity outside of the ECI program using an approved ECI checklist. If the fire or safety and sanitation inspection indicates that hazards exist, these hazards must be corrected.

(C) Buildings must be clean, free of hazards, free of insect and rodent infestation, in good repair, with adequate light, ventilation, and temperature control.

(D) An external emergency release mechanism must be provided for opening interior doors that can be locked from the inside. Locks may not be used to restrain a child within a room.

(E) Buildings must be able to be safely evacuated in the event of an emergency.

(11) Transportation safety. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(A) The transportation system operated by the ECI program must meet local and state licensing, inspection, insurance, and capacity requirements.

(B) Children must be transported in an appropriately installed, federally approved child passenger restraint seat, appropriate to the child's age and size.

(C) Drivers of vehicles must have valid and appropriate drivers' licenses. Drivers must have current defensive driving certification.

(D) Drivers and drivers' aides must have training in first aid, emergency care of seizures, and be certified in cardiopulmonary resuscitation for children and infants.

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

(13) Staff health regulations. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(14) Staff development for health and safety issues. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(A) All staff who work directly with children must receive training in first aid and emergency care of seizures and be certified in cardiopulmonary resuscitation for children and infants.

(B) All staff who work directly with children must receive training in the implementation of universal precautions for Texas ECI programs and in the recognition of common childhood illnesses.

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 February 9, 2001.

TRD-200100857
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 424-6750

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.11

The Texas General Land Office proposes an amendment to §15.11, certification of local government dune protection and beach access plans. The amendment is proposed to certify as consistent with state law the dune protection and beach access plan of the Village of Surfside Beach, adopted as Ordinance No. 2000-18 (Plan). The amendment also makes minor grammatical changes by deleting several obsolete and unnecessary conjunctions.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 through 15.11), a local government with jurisdiction over public beaches fronting the Gulf of Mexico must submit a plan to the Texas General Land Office. The General Land Office is required to review such plans and certify by rule those plans, which are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

The Village of Surfside Beach (Village) received a conditional certification of its plan (adopted December 3, 1993) with the requirement that it modify its plan to comply with state law. On December 12, 2000, the city council of the Village adopted as Ordinance No. 2000-18, the Dune Protection and Beach Access Plan of the Village of Surfside Beach. The Village modified its plan in response to comments from the General Land Office and in accordance with state law.

Ms. Ashley K. Wadick, Deputy Commissioner for the Resource Management Program Area, has determined that for the first five-year period that the amendment is in effect there will be no fiscal implications for state government. There will be fiscal implications for the local government of the Village due to the change in the beach user fee scheme in the plan. The new plan eliminates the $3.00 day-use vehicle permit and maintains only an annual permit with a cost of $8.00 each. It is estimated that the Village will experience an increase in revenue from beach user fees of approximately $13,000.00 for each year of the first five-year period that the amendment is in effect.

Ms. Wadick has also determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the amended section will be that the approved plan provides for preservation and enhancement of public beach use and increases the availability of resources dedicated to beach- related services and facilities. In addition, the portions of the revised plan pertaining to dune protection permits and beachfront construction certificates are better organized and easier for the members of the public who own beachfront property to understand.

There are no additional economic costs of compliance for small or large businesses. Individuals required to comply with the section as amended will experience an increased cost of $5.00 per vehicle due to the change in the beach user fee. Individuals who previously obtained a single day vehicle permit are now required to purchase an annual vehicle permit.

The Land Office has determined that the proposed rule change will have no local employment impact that requires an impact statement pursuant to the Government Code, §2001.022.

The proposed amendment to certify the Village's Plan is subject to the Texas Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the Coastal Management Plan, and must be consistent with the applicable CMP goals and policies under §501.14(k), relating to Construction in the Beach/Dune System. The Land Office has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The proposed action is consistent with Land Office beach/dune regulations that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed action is consistent with the applicable CMP goals and policies.

The Land Office has prepared a takings impact assessment for the proposed amendment pursuant to Texas Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines and has determined that adoption of this amendment will not result in a taking of private property. To receive a copy of the takings impact assessment, please send a written request to Ms. Melinda Tracy, *Texas Register* Liaison, Texas General Land Office, P. O. Box 12783, Austin, TX 78711-2873, facsimile number (512) 463-6311.

Comments on the proposal may be submitted to Ms. Melinda Tracy, *Texas Register* Liaison, Texas General Land Office, P. O. Box 12783, Austin, TX 78711-2873, facsimile number (512) 463-6311. Comments must be received no later than, 5.00pm, 30 days after the date of publication.

The amendment is proposed under the Texas Natural Resources Code, §§61.011, 61.015(b), and 61.022(c) which provide the Land Office with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas; and Texas Natural Resources Code, §63.121 which provides the Land Office with authority to adopt rules for the identification and protection of critical dune areas.

Texas Natural Resources Code, §§61.011, 61.015(b), 61.022(c), and 63.121 are affected by the proposed amendment.

§15.11. Certification of Local Government Dune Protection and Beach Access Plans.

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are certified as consistent with state law:

(1) Brazoria County (adopted August 9, 1993, amended September 27, 1993);

(2) Chambers County (adopted August 9, 1993);

(3) City of Port Aransas (adopted February 15, 1995);

(4) City of Port Arthur (adopted April 12, 1993);

(5) Jefferson County (adopted August 16, 1993, amended March 7, 1994);

(6) Matagorda County (adopted February 13, 1995). The General Land Office certifies that the Beach User Fees section of the Matagorda County plan adopted by the Matagorda County Commission Court on March 15, 1999, is consistent with state law.

(7) Town of Quintana (adopted August 11, 1993); [~~and~~]

(8) Village of Jamaica Beach (adopted August 16, 1993, amended December 6, 1993);

(9) Town of South Padre Island (adopted October 5, 1994);

(10) City of Corpus Christi (adopted August 10, 1993); [~~and~~]

(11) Cameron County:

(A) Plan (adopted September 20, 1994). The 440-foot building line established in the Cameron County plan, Section III.I, shall not be operative unless it is landward of the line of vegetation. The line of vegetation shall be established as required in the Open Beaches Act, Texas Natural Resources Code, §61.017.

(B) Padre Shore Ltd. Final Master Plan Amendment (adopted November 5, 1996).

(12) Nueces County Village of Surfside Beach (adopted December 12, 2000).

(A) Plan (adopted March 25, 1992, amended October 23, 1996).

(B) La Concha master plan. The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County commissioners court on March 20, 1996, is consistent with state law.

(C) Palms at Waters Edge master plan: The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County commissioners court on December 27, 1996, is consistent with state law.

(D) Mustang Island Episcopal Conference Center master plan. The General Land Office certifies that the dune protection section of the Mustang Island Episcopal Conference Center master plan adopted by the Nueces County Commissioners Court on January 31, 2000, is consistent with state law.

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General Land Office which are conditionally certified as consistent with state law.

(1) City of Galveston (adopted August 12, 1993, amended February 9, 1995, and amended June 19, 1997.).

(A) This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).

(B) This certification includes a variance from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title, (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards). The City of Galveston's plan:

(i) provides that paving or altering the ground below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune;

(ii) provides that paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joists, or pervious materials approved by the City Department of Planning and Transportation, in that area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation;

(iii) assesses a "Fibercrete Maintenance Fee" of $200.00 to be used to pay for the clean-up of fibercrete from the public beaches, should the need arise; and

(iv) allows the use of reinforced concrete in that area landward of 200 feet from the line of vegetation.

(2) Galveston County (adopted August 16, 1993). This certification is valid for 180 days, during which time Galveston County will modify its plan consistent with the General Land Office comments submitted to Galveston County (October 18, 1993).

~~[(3) Village of Surfside Beach. This certification is valid for 180 days, during which time the Village of Surfside Beach will modify its plan consistent with the General Land Office comments submitted to the Village of Surfside Beach (December 3, 1993).]~~

(c) Implementation of conditionally certified plans. Local governments are required to implement conditionally certified plans consistent with the Texas Natural Resources Code, Chapters 61 and 63, and the General Land Office rules for management of the beach/dune system, §§15.1-15.10 of this title (relating to Management of the Beach/Dune System).

(d) Removal of conditions of certification.

(1) Local governments shall submit their modified plans on or before the expiration of the 180-day time period. The General Land Office shall provide to the pertinent local government a determination as to the sufficiency of the modification(s) within 60 days of receipt of the plan. The General Land Office will remove all conditions of the plan's certification by amending this subsection. Such amendments will list the name of the pertinent local government in subsection (a) of this section, and delete the same from subsection (b) of this section. If the General Land Office determines that modifications of plans are insufficient, the General Land Office shall provide specific exceptions to the modifications. If those portions of the plan to which the General Land Office has noted exceptions can be addressed through further comment, plan revision and review, conditional certification will be reissued pursuant to a General Land Office amendment to this subsection, subject to further plan modification.

(2) In the event that a local government chooses not to modify its plan as requested in the General Land Office comments, the local government shall provide in writing the scientific or legal justification as to why such modifications are not feasible. The justification shall be submitted to the General Land Office on or before the due date of the revised plan. The justification will be reviewed by the General Land Office, and a determination as to the sufficiency of the justification will be provided to the local government within 60 days of receipt by the General Land Office. Local government plans shall continue in effect under conditional certification until the sufficiency of the justification is resolved or this section is amended.

(e) Withdrawal of conditional certification. Conditional certification of a local government plan shall be withdrawn by the General Land Office after the 180-day time period if the pertinent local government does not submit to the General Land Office either a formally adopted plan which has been modified consistent with General Land Office comments or the written scientific or legal justification as to why such modification is not feasible. In any event, withdrawal of conditional certification shall only occur after the General Land Office adopts an amendment to this subsection withdrawing conditional certification, with accompanying specific reasons, and the General Land Office has given the pertinent local government written notice of the withdrawal of the conditional certification.

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 February 12, 2001.

TRD-200100877
Larry Soward
Chief Clerk
General Land Office
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 305-9129

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes the repeal of §§65.29-65.32, amendments to §§65.3, 65.10, 65.11, 65.24, 65.26, 65.27, 65.42, 65.44, 65.62, 65.64, 65.72, 65.78, and new 65.7 and 65.29-65.33, concerning the Statewide Hunting and Fishing Proclamation. The repeals are necessary to reconstitute current §65.42(b)(11) as new §65.29, which would cause current §§65.29-65.32 to be redesignated without change as new §§65.30-65.33. The amendment to 65.3, concerning Definitions, adds a new definition for 'final processing.' The current statutory definition of the term applies only to deer, antelope, and turkey, but not to other species of game animals and game birds, and the amendment is necessary for the department to ensure that provisions governing daily bag and possession limits can be enforced. New §65.7, concerning Harvest Log for Deer, creates requirements for hunters to record certain information on the hunting license, which will be necessary if the department adopts a new and simplified license format for the next license year. The amendment to §65.10, concerning Possession of Wildlife Resources, liberalizes the proof-of-sex requirement for turkey, clarifies the requirements for pheasant, and nonsubstantively restructures the section's contents for clarity's sake. The amendment to §65.11, concerning Lawful Means, clarifies an ambiguity in paragraph (2) that gives the impression that lawful archery equipment may not be used during a muzzleloader-only open season, when, in fact, the only restriction is that lawful archery equipment can't be used to hunt deer during the muzzleloader season. The amendment is necessary to eliminate possible confusion for hunters. The amendment to §65.24, concerning Permits, adds new paragraph (2) to create an offense for cases in which a landowner or authorized agent allows a harvest quota for MLD properties to be exceeded. The amendment is necessary because there have been situations in which hunters have been allowed to take deer on MLD properties after the annual quota has already been reached. The amendment to §65.26, concerning Managed Lands Deer Permits, would require landowners or authorized agents to maintain a receipt log to verify that MLD permits have been given to hunters. The amendment is necessary to provide conclusive evidence in that MLD permits were or were not issued. The amendment to §65.27, concerning Antlerless and Spike-Buck Deer Control Permits, would allow such permits to be used during any open season for deer. The amendment is necessary to allow landowners and land managers greater flexibility in controlling deer overpopulation. The amendment to §65.42, concerning Deer consists of several actions. The amendment would expand the statewide youth-only season to include the four weekends prior to the first Saturday in November and the three weekends following the second Sunday in January. This is necessary to execute commission policy to provide greater opportunity to youth and to encourage mentoring. The department notes that the final rule may encompass all seven weekends as proposed, or a lesser number. The amendment would also allow other governmental entities to require permits for the harvest of antlerless deer on certain federal and state lands in 11 East Texas counties, which is necessary to ensure a controlled harvest. Further, the amendment would adds three counties to the LAMPS program, which is necessary to provide landowners and land managers with an additional option when other permit programs are unfeasible or inappropriate. Also included in the amendment would be the partitioning of the bloc of current 'one--buck' counties. The current regulations allow a hunter to take one buck from those counties in the aggregate. The department proposes to create two 'one-buck' zones and allow hunters to harvest a buck in each. Additionally, the amendment would increase the bag limit for antlerless deer and institute a 14-day antlerless and spike-buck season in 14 counties on the northern Edwards Plateau (which would also necessitate the elimination of the muzzleloader-only season in those counties), increase the bag limit for buck deer in 12 South Texas counties, and add one week to the front end of the season in 28 South Texas counties, which advances the commission policy of maximizing hunter opportunity whenever such actions are biologically justifiable and do not result in depletion or waste. Lastly, the amendment adjusts a roadway boundary in Victoria County in order to reduce hunter confusion. The amendment to §65.44, concerning Javelina, creates an open season in Archer County. The amendment is necessary to advance commission policy to maximize hunter opportunity. The amendment to §65.62, concerning Quail, alters the opening day to make it occur one week earlier than the opening day for white-tailed deer. The amendment is necessary to stagger the opening days for deer and quail to enable persons to participate in both. The amendment to §65.64, concerning Turkey, would open a spring season for Eastern wild turkey in five additional counties, add seven additional weekends to the youth-only season, and open the fall season in 28 South Texas counties on the first Saturday in November rather than the second Saturday in November. The amendment is necessary to implement commission policy to maximize hunter opportunity, to foster youth participation and mentoring activities in the hunting sports, and to establish turkey season to run concurrently with the proposed white-tailed deer season in 28 South Texas counties. The amendment to §65.72, concerning Fish, would alter a number of regulations. The proposal would alter largemouth bass regulations on Lake O.H. Ivie to modify minimum-length restrictions to allow two largemouth bass of greater than 18 inches to be retained per day, which is necessary to improve fishing quality by reducing the number of bass in the 14-18 inch range. The amendment also would modify regulations for largemouth bass on Lake Sweetwater to implement a slot-limit, which is necessary to reduce mortalities of fish within the slot limit in order to improve fishing quality. Additionally, the amendment would modify regulations for largemouth bass on Pinkston Reservoir to implement a new slot limit, to allow the retention of only one largemouth bass of greater than 21 inches per day, and to prohibit the use of trotlines, juglines, and throwlines on Lakes

Coffee Mill and Davy Crockett, which is necessary to increase fishing quality and to create gear requirements consistent with federal regulations, as the affected impoundments are part of the Caddo National Grasslands. Further, the amendment would alter smallmouth bass regulations on seven lakes to replace the 18-inch minimum length limit/3-fish daily bag limit with a 14-inch minimum length limit/5-fish daily bag limit, which is necessary to simplify regulations. Finally, the amendment would increase the bag and possession limits for Spanish mackerel, which is necessary in order to be consistent with regulations in federal waters. The amendment to §65.78, concerning Crabs and Ghost Shrimp, would specify that crab trap float markers be white, which is necessary to clearly delineate crab traps from other devices.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed amendments are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the proposed amendments.

Mr. Macdonald also has determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no additional economic costs to small businesses, microbusinesses or persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not significantly impact local economies.

The department has determined that there will not be a taking of private property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald (Wildlife (512) 389-4775), Ken Kurzawski (Inland Fisheries 389-4591), Paul Hammerschmidt (Coastal Fisheries 389-4650), David Sinclair (Wildlife Enforcement 389-4854), or Larry Young (Fisheries Enforcement 389-4628), Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

The proposal will satisfy the provisions of Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.7, 65.10, 65.11, 65.24, 65.26, 65.27, 65.29 - 65.33

The amendments and new sections are proposed under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provide the Commission with authority to establish wildlife resource regulations for this state.

The proposed amendments and new sections affect Parks and Wildlife Code, Chapter 61.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Agent--A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term "landowner" also includes the landowner's agent.

(2) Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(3) Antlerless deer--A deer having no hardened antler protruding through the skin.

(4) Artificial lure--Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

(5) Bait--Something used to lure any wildlife resource.

(6) Baited area--Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(7) Bearded hen--A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(8) Buck deer--A deer having a hardened antler protruding through the skin.

(9) Cast net--A net which can be hand-thrown over an area.

(10) Coastal waters boundary--All public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004, thence northward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway

73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; Lakeview City Park Lake, West Guth Park Pond, and Waldron Park Pond in Nueces County; Galveston County Reservoir and Galveston State Park ponds #1-7 in Galveston County; Lake Burke-Crenshaw and Lake Nassau in Harris County; Fort Brown Resaca, Resaca de la Guerra, Resaca de la Palma, Resaca de los Cuates, Resaca de los Fresnos, Resaca Rancho Viejo, and Town Resaca in Cameron County; and Little Chocolate Bayou Park Ponds #1 and #2 in Calhoun County are not considered coastal waters for purposes of this subchapter.

(11) Community fishing lake--All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

(12) Crab line--A baited line with no hook attached.

(13) Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(14) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(15) Dip net--A mesh bag suspended from a frame attached to a handle.

(16) Fish--

(A) Game fish--Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish--All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

(17) Final processing--the cleaning of a dead wildlife resource for cooking or storage purposes.

(18) [~~(17)~~] Fishing--Taking or attempting to take aquatic animal life by any means.

(19) [~~(18)~~] Fish length--That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

(20) [~~(19)~~] Fish species names--The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of The United States and Canada."

(21) [~~(20)~~] Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(22) [~~(21)~~] Gaff--Any hand-held pole with a hook attached directly to the pole.

(23) [~~(22)~~] Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address of the person using the device, and, except for saltwater trotlines, the date the device was set out.

(24) [~~(23)~~] Gig--Any hand-held shaft with single or multiple points.

(25) [~~(24)~~] Jug line--A fishing line with five or less hooks tied to a free-floating device.

(26) [~~(25)~~] Lawful archery equipment--Longbow, recurved bow, and compound bow.

(27) [~~(26)~~] License year--The period of time for which an annual hunting or fishing license is valid.

(28) [~~(27)~~] Muzzleloader--Any firearm that is loaded only through the muzzle.

(29) [~~(28)~~] Natural bait--A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

(30) [~~(29)~~] Permanent residence--One's principal or ordinary home or dwelling place. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(31) [~~(30)~~] Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(32) [~~(31)~~] Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(33) [~~(32)~~] Purse seine (net)--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(34) [~~(33)~~] Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(35) [~~(34)~~] Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (Callichirus islagrande, formerly Callianassa islagrande) from their burrows.

(36) [~~(35)~~] Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(37) [~~(36)~~] Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(38) [~~(37)~~] Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

(39) [~~(38)~~] Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(40) [~~(39)~~] Spike-buck deer--A buck deer with no antler having a fork or branching point.

(41) [~~(40)~~] Throwline--A fishing line with five or less hooks and with one end attached to a permanent fixture. Components

of a throwline may also include swivels, snaps, rubber and rigid support structures.

(42) [~~(41)~~] Trap--A rigid device of various designs and dimensions used to entrap aquatic life.

(43) [~~(42)~~] Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(44) [~~(43)~~] Trotline--A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

(45) [~~(44)~~] Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(46) [~~(45)~~] Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(47) [~~(46)~~] Wildlife resources--All game animals, game birds, and aquatic animal life.

(48) [~~(47)~~] Wounded deer--A deer leaving a blood trail.

§65.7. Harvest Log for Deer.

(a) Immediately after killing a white-tailed deer, the person who killed the white-tailed deer shall complete the harvest log on the back of the hunting license, in ink, for each white-tailed deer killed.

(b) Completion of the harvest log is not required for deer taken under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits) and/or provisions of §65.29 of this title (relating to Bonus Tags).

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed.

(b) Proof of sex must remain with certain wildlife resources until the wildlife resource reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed. Proof of sex is[~~,~~] as follows:

(1) turkey (in a county where the bag composition is restricted to gobblers and bearded hens):

(A) male turkey:

(i) one leg, including the spur, attached to the bird; or

(ii) the bird, accompanied by a patch of breast feathers with beard attached.

(B) female turkey taken during the fall season: the bird, accompanied by a patch of breast feathers with beard attached. [~~turkey taken in other than an either-sex county or taken during any spring turkey season: the beard must remain attached to the bird.~~]

(2) deer:

(A) buck: the unskinned head, with antlers still attached;

(B) antlerless: the unskinned head;

(3) antelope: the unskinned head; and

(4) pheasant: one foot with spur attached or the entire plumage attached to the bird.

(c) In lieu of proof of sex, the person who killed the wildlife resource may obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

(1) the name of person who killed the wildlife resource;

(2) the date the wildlife resource was killed;

(3) one of the following, as applicable:

(A) whether the deer was antlered or antlerless;

(B) the sex of the antelope;

(C) the sex of the turkey and whether a beard was attached; or

(D) the sex of the pheasant.

(d) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource.

(1) For deer, turkey, or antelope, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed.

(2) For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed.

(3) The wildlife resource document must contain the following information:

(A) [~~(1)~~] the name, signature, address, and hunting or fishing license number, as required, of the person who killed or caught the wildlife resource;

(B) [~~(2)~~] the name of the person receiving the wildlife resource;

(C) [~~(3)~~] a description of the wildlife resource (number and type of species or parts);

(D) [~~(4)~~] the date the wildlife resource was killed or caught; and

(E) [~~(5)~~] the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(e) It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possess a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

§65.11. Lawful Means.

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) Firearms.

(A) It is lawful to hunt game animals and game birds with any legal firearm, including muzzleloading weapons, except as specifically restricted in this section.

(B) Special muzzleloader-only deer seasons are restricted to muzzleloading firearms only.

(C) It is unlawful to use rimfire ammunition to hunt deer, antelope, or desert bighorn sheep.

(D) It is unlawful to hunt game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(2) Archery.

(A) A person may hunt by means of lawful archery equipment during any open season; however, no person shall hunt deer by lawful archery equipment or crossbow during [~~except~~] a special muzzleloader-only [~~antlerless~~] deer season.

(B) Arrows that are treated with poisons or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(C) While hunting turkey and all game animals other than squirrels by means of longbow, compound bow, or recurved bow:

(i) the bow must have a minimum peak draw weight of 40 pounds at the time of hunting; and

(ii) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. A mechanical broadhead must begin to open upon impact and when open must be a minimum of 7/8-inch in width.

(D) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during an archery-only season.

(E) Special archery-only seasons are restricted to lawful archery equipment only, except as provided in paragraph (3) of this section.

(3) Crossbow. Crossbows are lawful during any general open season. A person having an upper-limb disability may use a crossbow to hunt deer and turkey during an archery-only season, provided the person has in their immediate possession a physician's statement certifying the extent of the disability. When hunting turkey and all game animals other than squirrels by means of crossbow:

(A) the crossbow must have a minimum of 125 pounds of pull;

(B) the crossbow must have a mechanical safety;

(C) the crossbow stock must be not less than 25 inches in length; and

(D) the bolt must conform with paragraphs (2)(B) and (2)(C)(ii) of this section.

(4) Falconry. It is lawful to hunt any game bird or game animal by means of falconry under the provisions of Subchapter K of this chapter (relating to Raptor Proclamation).

(5) Special Provision. Except as provided in this paragraph, no motorized conveyance of any type shall be used to locate, herd, harass, or hunt desert bighorn sheep. Any person who qualifies for handicapped parking privileges under Transportation Code, Chapter 681 may possess a loaded firearm in or on a motor vehicle while hunting desert bighorn sheep and may hunt desert bighorn sheep from a motor vehicle, provided the motor vehicle is not in motion and the engine is not running.

§65.24. Permits.

(a) Permits shall be issued only to the landowner.

[~~(b) No person may hunt white-tailed deer, mule deer, desert bighorn sheep, or antelope when permits are required unless that person has received from the landowner and has in possession a valid permit issued by the department.~~]

(b) [~~(c)~~] When permits are required to hunt or possesswhite-tailed deer, mule deer, desert bighorn sheep, or antelope [~~the wildlife resources listed in subsection (b) of this section~~], it is unlawful [~~to~~]:

(1) for any person:

(A) hunt the affected wildlife resource unless that person has received from the landowner and has in possession a valid permit issued by the department;

(B) use a permit more than once;

(C) [~~(2)~~] use a permit on a tract of land other than the tract for which the permit was issued;

(D) [~~(3)~~] falsify or fail to fully complete any information required by a permit application; or

(E) [~~(4)~~] possess the wildlife resource without attaching a valid, properly executed permit, which shall remain attached until the wildlife resource reaches its final destination; or

(2) for a landowner or landowner's agent to exceed the harvest quota specified by a wildlife management plan under the provisions of §65.26 of this title (relating to Managed Lands Deer Permits), or to authorize any person to hunt without providing the person with the appropriate permit .

(c) [~~(d)~~] No state-issued permit is required to hunt antlerless white-tailed deer on a National Wildlife Refuge.

§65.26. Managed Lands Deer (MLD) Permits.

(a) MLD permits may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan.

(b) An applicant may request the issuance of any type of MLD listed in this section.

(1) Level 1. Level 1 MLD permits authorize only the take of antlerless white-tailed or antlerless mule deer. A Level 1 MLD permit is valid during any open season in the county for which it is issued, and the bag limit for antlerless deer in that county applies.

(2) Level 2.

(A) Level 2 MLD permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 2 MLD:

(i) antlerless permit is valid from the Saturday closest to September 30 through the last Sunday in January and during any open season on the property for which it is issued;

(ii) buck permit is valid from the opening day of the general open season in the county for which it is issued through the last Sunday in January and during any open season on the property for which it is issued.

(B) On all tracts of land for which Level 2 MLD permits have been issued:

(i) the bag limit shall be five deer, no more than three bucks, regardless of the county bag limit; and

(ii) the provisions of §65.42(b)(9) [~~§65.42(b)(8)~~] of this title (relating to Archery-Only Open Season), §65.42(b)(10) [~~§65.42(b)(9)~~] of this title (relating to Muzzleloader-Only Open Season), and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters I and Q, do not apply.

(C) By acceptance of Level 2 MLD permits a landowner agrees to accomplish at least two habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long

as Level 2 permits are accepted thereafter. A landowner who fails to accomplish at least two habitat management recommendations of the WMP within three years is not eligible for Level 2 permits the following year, but is eligible for Level 1 MLD permits or may choose to cease accepting MLD permits.

(3) Level 3. Level 3 MLD permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 3 MLD permit is valid from the Saturday nearest September 30 through the last Sunday in January and during any open season on the property for which it is issued. On all tracts of land for which Level 3 MLD permits have been issued:

(A) the bag limit shall be five deer, no more than three bucks, regardless of the county bag limit; and

(B) the provisions of §65.42(b)(7) of this title (relating to Archery-Only Open Season), §65.42(b)(8) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters I and Q, do not apply.

(C) By acceptance of Level 3 MLD permits a landowner agrees to accomplish at least four habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 3 permits are accepted thereafter. A landowner who fails to accomplish at least four habitat management recommendations of the WMP within three years is not eligible for Level 3 permits the following year, but may be eligible for other levels of MLD permits or may choose to cease accepting MLD permits.

(c) The number of MLD permits distributed to a hunter shall be at the discretion of the landowner. The department shall issue an MLD Receipt Log to each landowner receiving MLD permits. The landowner shall complete an entry in the receipt log for each MLD permit distributed and each person receiving an MLD permit shall sign the receipt log. The landowner shall make the receipt log available to any department employee acting within the scope of official duties upon request.

(d) Except for deer taken under an Antlerless and Spike-Buck Control Permit, all deer harvested by MLD permit must immediately be tagged with the appropriate MLD permit and either an appropriate tag from the hunting license of the person who killed the deer or a valid bonus tag.

(e) If a landowner in possession of MLD permits does not wish to abide by the harvest quota or habitat management practices specified by the WMP, the landowner must return all MLD permits to the department by the Saturday closest to September 30.

(f) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible, the department may, on a case-by-case basis, waive the requirements of this section.

(g) The department reserves the right to deny further issuance of MLD permits to a landowner who exceeds the harvest quota specified by the WMP or who does not otherwise abide by the WMP. A property for which the department denies further permit issuance under this subsection is ineligible to receive MLD permits for a period of three years from the date of denial.

(h) Administratively complete applications received by the department before August 15 of each year shall be approved or denied by October 1 of the same year.

§65.27. Antlerless and Spike-Buck Deer Control Permits (control permits).

Control permits shall be issued only to control overpopulation of white-tailed deer and may be issued only to a landowner who has a current WMP issued in accordance with §65.25 of this title (relating to Wildlife Management Plan) that specifies a harvest quota of more than 20 antlerless deer. The WMP for permits issued under this section must be signed by a Wildlife Division biologist classified CS VI or higher.

(1) Control permits shall be issued only after the landowner has provided the names, addresses and hunting license numbers of all persons who will be hunting under the authority of the permits. The maximum number of designated hunters allowed on one application for control permits shall not exceed one-tenth the number of deer recommended for harvest by the WMP. Additional designated hunters may not be added after permits have been issued.

(2) Control permits shall not be issued solely as a means to manipulate the sex ratio of a deer herd.

(3) No WMP shall authorize the take of more than 300 deer per designated hunter.

(4) Control permits shall be valid from the Saturday closest to September 30 through the last day of any open white-tailed deer season in the county for which the permits were issued [~~only during general open deer seasons, special muzzleloader-only seasons, and when the harvest of deer is authorized under §65.26(e) of this title (relating to Managed Lands Deer Permits)~~].

(5) Deer harvested under the authority of control permits shall not be part of a hunter's annual bag limit.

(6) A report form provided by the department shall be submitted to the department by the landowner not later than February 14 following the use of the permits. The report must specify the sex and date of kill for each deer harvested under a control permit.

§65.29. Bonus Tag.

(a) A person in possession of a valid bonus deer tag may take one buck or antlerless white-tailed deer during an open white-tailed deer season in any county, irrespective of the county bag limit, provided that person also possesses one of the following:

(1) an appropriate, valid MLD permit (buck or antlerless);

(2) a valid LAMPS permit (antlerless only); or

(3) an appropriate, valid Special Permit (buck or antlerless) issued by the department for a public hunt, in which case the bonus tag is valid only on the wildlife management area or state park specified by the permit and only during the date and time specified on the permit.

(b) No person may:

(1) purchase more than five bonus tags per license year;

(2) use a bonus tag on more than one animal; or

(3) buy, sell, or otherwise exchange a bonus tag for remuneration or considerations of any kind; however, a bonus tag may be given to another person.

(c) A person who kills a deer shall immediately attach a properly executed bonus tag to the deer.

§65.30. Pronghorn Antelope Permits.

The department shall designate the number of pronghorn antelope to be harvested from a given tract of land, and shall issue permits to the landowner.

§65.31. Desert Bighorn Sheep Permits.

(a) No person may hunt desert bighorn sheep without first attending an orientation conducted by the department during the year for which the permit is issued.

(b) Any person hunting desert bighorn sheep shall notify the department between 14 and 21 days prior to the date of the hunt to arrange for the tagging required by subsection (c) of this section.

(c) Any person taking a desert bighorn sheep shall, within 72 hours of taking the sheep, ensure that the sheep is permanently tagged in one horn by a lawful representative of the department.

§65.32. Antlerless Mule Deer Permits.

(a) At the request of a landowner, the department may, based on evaluations of habitat and population, issue antlerless mule deer hunting permits for a specific tract of land.

(b) No antlerless mule deer hunting permit is required for mule deer killed during an archery-only open season in a county for which the bag limit during an archery-only season is designated as either sex.

§65.33. Mandatory Check Stations.

(a) The department may establish check stations in any county of the state for the purpose of collecting biologic information on wildlife resources taken in that county.

(b) The entire wildlife resource, with head and hide/plumage attached, except that internal and sexual organs may be removed (field-dressed), of any designated wildlife resource taken in a county in which mandatory check stations have been established must be presented:

(1) to a designated check station agent within 24 hours of take; and

(2) by the person or representative of the person who killed the wildlife resource.

(c) Check stations shall be under the direction of an agent designated by the department. Agents shall:

(1) register each wildlife resource presented at a check station;

(2) issue a special possession tag, provided by the department, for each wildlife resource presented at a check station;

(3) maintain records as prescribed in the record book supplied by the department; and

(4) allow inspection of all check station records upon request of the department during normal working hours.

(d) A person who fails or refuses to comply with this section commits an offense and is in violation 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.

Filed with the Office of the Secretary of State, on February 12, 2001.

TRD-200100886
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 389-4775

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31 TAC §§65.29 - 65.32

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

The repeals are proposed under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provide the Commission with authority to establish wildlife resource regulations for this state.

The proposed repeals affect Parks and Wildlife Code, Chapter 61.

§65.29. Pronghorn Antelope Permits.

§65.30. Desert Bighorn Sheep Permits.

§65.31. Antlerless Mule Deer Permits.

§65.32. Mandatory Check Stations.

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 February 12, 2001.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 389-4775

♦ ♦ ♦

DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §§65.42, 65.44, 65.62, 65.64

The amendments are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.42. Deer.

(a) Except as provided in §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits) or §65.29 of this title (relating to Bonus Tags) [~~subsection (b)(11) of this subsection~~], no person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck).

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Brewster, [~~Brown, Coke, Coleman, Concho,~~] Culberson, [~~Glasscock, Howard, Irion,~~] Jeff Davis, [~~Mills, Mitchell, Nolan,~~] Pecos, Presidio, [~~Reagan,~~] Reeves, [~~Runnels, Sterling,~~] Terrell, [~~Tom Green,~~] and Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(2) In Bandera, Bexar, Blanco, Brown, Burnet,Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Real, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(3) In Aransas, Atascosa, Bee, Calhoun, Cameron, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, Starr, and Willacy counties, there is a general open season.

(A) Open season: the first [~~second~~] Saturday in November through the third Sunday in January.

(B) Bag limit: five [~~four~~] deer, no more than three [~~two~~] bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five[~~four~~] antlerless or spike-buck deer in the aggregate, no more than three [~~two~~] of which may be spike bucks.

(4) In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (south of U.S. Highway 90), Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a general open season.

(A) Open season: the first [~~Second~~] Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.)

(5) No person may take or attempt to take more than one buck deer per license year from the counties (and/or portions of counties), in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits).

(A) In Archer, Baylor, Bell (west of Interstate 35), Bosque, Callahan, Clay, Comanche, Coryell, Eastland, Erath, [~~Grayson,~~] Hamilton, Hood, Jack, Lampasas, [~~McLennan,~~] Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, [~~Williamson (west of Interstate 35),~~] Wise, and Young counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

~~*[(iii)* Special regulation. In Grayson County:]~~

~~*[(I)* lawful means are restricted to lawful archery equipment and crossbows only; and]~~

~~*[(II)* antlerless deer shall be taken by MLD permit only, except on the Hagerman National Wildlife Refuge.]~~

~~[(B) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Harris, Jackson (south of U.S. Highway 59), Matagorda, Victoria (that portion of the county that is south of both U.S. Highway 59 and U.S. Business Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.]~~

~~*[(i)* Open season: first Saturday in November through the first Sunday in January.]~~

~~*[(ii)* Bag limit: three deer, no more than one buck and no more than two antlerless.]~~

~~*[(iii)* During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits.]~~

(B) [~~(C)~~] In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Haskell, Hemphill, Hutchinson, Jones, Kent, King, Knox, Lipscomb, Motley, Ochiltree, Randall, Roberts, Scurry, Stonewall, Swisher, Wheeler, Wichita, and Wilbarger counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first 16 days, antlerless deer may be taken only by MLD antlerless permits.

~~[(D) In Cooke, Denton, Hill, Johnson, and Tarrant counties, there is a general open season.]~~

~~*[(i)* Open season: first Saturday in November through the first Sunday in January.]~~

~~*[(ii)* Bag limit: three deer, no more than one buck and no more than two antlerless.]~~

~~*[(iii)* During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless~~

~~MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.]~~

~~[(E) In Anderson, Bowie, Brazos, Burleson, Camp, Cherokee, Delta, Franklin, Freestone, Gregg, Grimes, Henderson, Hopkins, Houston, Lamar, Leon, Limestone, Madison, Morris, Navarro, Red River, Robertson, Rusk, Smith, Titus, Upshur, Van Zandt, and Wood counties, there is a general open season.]~~

~~*[(i)* Open season: first Saturday in November through the first Sunday in January.]~~

~~*[(ii)* Bag limit: three deer, no more than one buck and no more than two antlerless.]~~

~~*[(iii)* Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits.]~~

(C) [~~(F)~~] In Dallam, Hartley, Moore, Oldham, Potter, and Sherman Counties, there is a general open season.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

~~[(G) In Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine and Shelby Counties, there is a general open season.]~~

~~*[(i)* Open season: first Saturday in November through the first Sunday in January.]~~

~~*[(ii)* Bag limit: three deer, no more than one buck and no more than two antlerless.]~~

~~*[(iii)* From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits. On the Bannister and Moore Plantation Wildlife Management Areas, antlerless deer may be taken by Wildlife Management Area antlerless permit only.]~~

~~[(H) In Austin, Bastrop, Bell (east of Interstate 35), Caldwell, Colorado, Comal (east of Interstate 35), Crane, DeWitt, Ector, Ellis, Falls, Fannin, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Hunt, Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Loving, Midland, Milam, Rains, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Victoria (that portion of the county that is north of both U.S. Highway 59 and U.S. Business Highway 59), Waller, Ward, Washington, Wharton (north of U.S. Highway 59), Williamson (east of Interstate 35), and Wilson counties, there is a general open season.]~~

~~*[(i)* Open season: first Saturday in November through the first Sunday in January.]~~

~~*[(ii)* Bag limit: three deer, no more than one buck and no more than two antlerless.]~~

~~*[(iii)* Antlerless deer may be taken only by MLD antlerless permits.]~~

(6) No person may take or attempt to take more than one buck deer per license year from the counties(and/or portions of counties), in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits).

(A) In Grayson, McLennan, and Williamson (west of IH 35) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Special regulation. In Grayson County:

(I) lawful means are restricted to lawful archery equipment and crossbows only; and

(II) antlerless deer shall be taken by MLD permit only, except on the Hagerman National Wildlife Refuge.

(B) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Harris, Jackson (south of U.S. Highway 59), Matagorda, Victoria (that portion of the county that is south of U.S. Highway 59, and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits.

(C) In Cooke, Denton, Hill, Johnson, and Tarrant counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.

(D) In Anderson, Bowie, Brazos, Burleson, Camp, Cherokee, Delta, Fannin, Franklin, Freestone, Gregg, Grimes, Henderson, Hopkins, Houston, Hunt, Lamar, Leon, Limestone, Madison, Morris, Navarro, Rains, Red River, Robertson, Rusk, Smith, Titus, Upshur, Van Zandt, and Wood counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits.

(E) In Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine and Shelby Counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land, except on National Forest, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits.

(F) In Austin, Bastrop, Bell (east of Interstate 35), Caldwell, Colorado, Comal (east of Interstate 35), Crane, DeWitt, Ector, Ellis, Falls, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Loving, Midland, Milam, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Victoria (that portion of the county that is north of U.S. Highway 59, Waller, Ward, Washington, Wharton (north of U.S. Highway 59), Williamson (east of Interstate 35), and Wilson counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(7) [~~(6)~~] In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving , antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land, except on National Forest, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season. [~~On Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits. On the Sam Houston, Alabama Creek, and Moore Plantation Wildlife Management Areas, antlerless deer may only be taken by Wildlife Management Area antlerless permit only~~].

(8) [~~(7)~~] In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(9) [~~(8)~~] Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(10) [~~(9)~~] Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Brewster, [~~Brown, Coke, Coleman, Concho,~~] Culberson, [~~Glasscock,~~] Howard, Irion, Jeff Davis, [~~Mills, Mitchell, Nolan,~~]Pecos, Presidio, [~~Reagan,~~] Reeves, [~~Runnels, Sterling,~~] Terrell, [~~Tom Green,~~] and Upton (that portion located both south of U.S. Highway 67 and east of state highway 349) counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks.

(B) In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, and Tyler counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(11) [~~(10)~~]Special Youth-Only Seasons. Except on properties for which Level II or Level III MLD permits have been issued, there shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer only.

(A) early open season: each Saturday and Sunday between the Saturday closest to September 30 and the first Saturday in November.

(i) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1)-(7) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in item (ii) of this subparagraph.

(ii) Provisions for the take of antlerless deer in the individual counties listed in paragraph (6)(E) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(B) late antlerless-only open season: the first three weekends (Saturday and Sunday) following the second Sunday in

January, during which only antlerless deer may be taken. In any given county, the bag limit shall be as specified for antlerless deer in that county by paragraphs (1)-(6) of this subsection.

(C) Only licensed hunters 16 years of age or younger may hunt deer by means of firearms during the seasons established by subparagraph (A) of this paragraph; all other deer hunting shall be by means of lawful archery equipment and crossbows only.

(D) Licensed hunters 16 years of age or younger may hunt deer by means of firearms during the seasons established by subparagraph (B) of this paragraph; all other deer hunting shall be by means of muzzleloader only.

(E) The stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapters I and Q, do not apply during the seasons established by this paragraph. [~~Season. There shall be a special youth-only general hunting season in all counties where there is a general open season.~~]

[~~(A) open season: the Saturday and Sunday immediately preceding the first Saturday in November.~~]

[~~(B) bag limits, provisions for the take of antlerless deer, and special requirements:~~]

~~(i)~~ ~~as specified for the first two days of the general season in the individual counties in paragraphs (1)-(6) of this subsection, except as provided in item (ii) of this subparagraph; and~~]

~~(ii)~~ ~~in the counties listed in paragraph (5)(G) of this subsection, as specified for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.~~]

[~~(C) Only licensed hunters 16 years of age or younger may hunt during the season established by this subsection.~~]

[~~(11) Bonus tag.~~]

[~~(A) A person in possession of a valid bonus deer tag may take one buck or antlerless white-tailed deer during an open white-tailed deer season in any county, irrespective of the county bag limit, provided that person also possesses one of the following:~~]

~~(i)~~ ~~an appropriate, valid MLD permit (buck or antlerless);~~]

~~(ii)~~ ~~a valid LAMPS permit (antlerless only); or~~]

~~(iii)~~ ~~an appropriate, valid Special Permit (buck or antlerless) issued by the department for a public hunt, in which case the bonus tag is valid only on the wildlife management area or state park specified by the permit and only during the date and time specified on the permit.~~]

[~~(B) No person may:~~]

~~(i)~~ ~~purchase more than five bonus tags per license year;~~]

~~(ii)~~ ~~use a bonus tag on more than one animal; or~~]

~~(iii)~~ ~~buy, sell, or otherwise exchange a bonus tag for remuneration or considerations of any kind; however, a bonus tag may be given to another person.~~]

[~~(C) A person who kills a deer shall immediately attach a properly executed bonus tag to the deer.~~]

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews (west of U.S. Highway 385), Bailey, Cochran, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.44. Javelina: Open Seasons and Annual Bag Limits.

(a) In Andrews, Archer, Baylor, Blanco, Caldwell, Calhoun, Coke, Comal, Concho, Crane, DeWitt, Ector, Foard, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Howard, Irion, Knox,

Llano, Loving, McCulloch, Martin, Mason, Midland, Mitchell, Nolan, Reagan, Refugio, Runnels, San Saba, Sterling, Taylor, Tom Green, Upton, Victoria, Ward, Wichita, Wilbarger, and Winkler counties, there is a general open season.

(1) Open season: October 1 through the last Sunday in February.

(2) Bag limit: Two javelina.

(3) Possession limit: two javelina.

(b) In Aransas, Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Menard, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Schleicher, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is an open season from September 1 through August 31.

(1) Bag limit: two javelina.

(2) Possession limit: two javelina.

(c) In all other counties, there is no open season for javelina.

§65.62. Quail: Open Seasons, Bag, and Possession Limits.

(a) In all counties there is an open season for quail beginning the Saturday immediately prior to the first Saturday in November [~~nearest November 1~~] through the last Sunday in February.

(b) Daily bag limit: 15 quail.

(c) Possession limit: 45 quail.

(d) There is no open season on Mearns' quail (commonly called fool's quail).

(e) In all counties where there is a general open season for quail, there shall be a special youth-only general hunting season the Saturday and Sunday immediately preceding the first Saturday in November. During the season established by this subsection:

(1) only licensed hunters 16 years of age or younger may hunt; and

(2) the daily bag limit and possession limits shall be as provided in subsections (b) and (c) of this section.

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Medina (only north of U.S. Highway 90), Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Aransas, Atascosa, Bee, Calhoun, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Webb, and Zavala counties, there is a fall general open season.

(i) Open season: first [~~second~~] Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(C) In Kinney (south of U.S. Highway 90) and Uvalde (south of U.S. Highway 90), and Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239) counties, there is a fall general open season.

(i) Open season: first [~~second~~] Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(D) In Brooks, Kenedy and Kleberg counties, there is a fall general open season.

(i) Open season: first [~~second~~] Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(E) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Edwards, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kent, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Pecos, Potter, Randall, Reagan, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wilbarger, and Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(F) In Willacy County, there is a fall general open season for turkeys.

(i) Open season: the first [~~second~~] Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) In Archer, Armstrong, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan,

Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring general open season.

(i) Open season: first Saturday in April for 37 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(B) In Bastrop, Caldwell, Colorado, De Witt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, there is a spring general open season.

(i) Open season: first Saturday in April for 37 consecutive days.

(ii) Bag limit: one turkey, gobblers only.

(C) In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties, there is a spring general open season.

(i) Open season: last Saturday in March for 37 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(4) Special Youth-Only Season.

(A) There shall be a special youth-only general hunting season in all counties where there is a general open season.

(i) open seasons [~~season~~]: each [~~the~~] Saturday and Sunday in October, and each weekend (Saturday and Sunday) following the second Sunday in January for three weekends [~~immediately preceding the first Saturday in November~~].

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) Only licensed hunters 16 years of age or younger may hunt during the season established by this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Grayson, Gregg, Harrison, Hopkins, Houston, Hunt, Jasper, Lamar, Marion, Montgomery (north of State Hwy. 105), Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler (north of U.S. Hwy. 190), Upshur, [~~and~~] Walker, and Wood counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: the Monday nearest April 14 for 14 consecutive days.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsections (b) or (c) of this section, the season is closed for hunting turkey.

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 February 12, 2001.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.78

The amendment is proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The proposed amendment affects Parks and Wildlife Code, Chapter 61.

§65.72. Fish.

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter;

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(C) to use game fish or any part thereof as bait;

(D) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the

mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(E) to use airboats or jet-driven devices to pursue and harass or harry fish; or

(F) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(4) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum or tarpon) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or salt water stamp holder;

(vi) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder;

(vii) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(viii) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(5) Commercial fishing seasons.

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B) The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for:

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources for the Gulf of Mexico;

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and

(iii) sharks (all species, their hybrids and subspecies) under guidelines established by the Fishery Management Plan for Highly Migratory Species).

(C) When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell finfish species listed in this paragraph landed in this state;

(ii) transfer at sea finfish species listed in this paragraph caught or possessed in the waters of this state; and

(iii) possess finfish species listed in this paragraph in excess of the current recreational bag or possession limit in or on the waters of this state.

(6) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) Statewide daily bag and length limits shall be as follows:

Figure 1: 31 TAC §65.72(b)(2)(B)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) The following is a figure:

Figure 2: 31 TAC §65.72(b)(2)(C)(i)

(ii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) In community fishing lakes and in sections of rivers lying totally within the boundaries of state parks, game and non-game fish may be taken by pole and line only.

(3) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(5) Device restrictions.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(F) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment or crossbow.

(G) Minnow trap. For use in fresh water only.

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) Perch traps may not exceed 18 cubic feet.

(iii) Perch traps must be marked with floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore, and only during the period of time beginning the third Monday in April through the first day in November each year.

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Spear. Only non-game fish may be taken with a spear.

(O) Spear gun. Only non-game fish may be taken with spear gun.

(P) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(Q) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, and Tankersley Reservoir in Titus County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-d-) baited with other than natural bait, except sail lines;

(-e-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-f-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(III) It is unlawful to fish for commercial purposes with:

(-a-) more than 20 trotlines at one time;

(-b-) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(-c-) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(-d-) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(IV) It is unlawful to fish for non-commercial purposes with:

(-a-) more than 1 trotline at any time; or

(-b-) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(R) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

§65.78. Crabs and Ghost Shrimp.

(a) Bag, possession and size limits.

(1) It is unlawful while fishing on public waters to have in possession crabs or ghost shrimp in excess of the daily bag limit as established for those waters.

(2) There are no bag, possession, or size limits on crabs or ghost shrimp except as provided in these rules.

(3) It is unlawful to:

(A) possess egg-bearing (sponge) crabs or stone crabs;

(B) possess blue crabs less than five inches in width (measured across the widest point of the body from tip of spine to tip of spine) except that not more than 5.0%, by number, of undersized crabs may be possessed for bait purposes only, if placed in a separate container at the time of taking;

(C) remove or possess the left claw from a stone crab (each retained claw must be at least 2-1/2 inches long as measured from the tip of the immovable claw to the first joint behind the claw);

(D) fail to return immediately a stone crab to the waters where caught;

(E) buy or sell a female crab that has its abdominal apron detached; or

(F) possess more than 20 ghost shrimp (Callichiris islagrande, formerly Callianassa islagrande) per person.

(b) Seasons. There are no closed seasons for the taking of crabs, except as listed within this section.

(c) Places. There are no places closed for the taking of crabs, except as listed within this section.

(d) Devices, means and methods.

(1) It is unlawful to take, attempt to take, or possess crabs caught by devices, means, or methods other than as authorized in this subchapter.

(2) Only the following means and methods may be used for taking crabs:

(A) Crab line. It is unlawful to fish a crab line for commercial purposes that is not marked with a floating white buoy not less than six inches in height, six inches in length and six inches in width bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the end fixtures.

(B) Crab trap. It is unlawful to:

(i) fish for commercial purposes under authority of a commercial crab fisherman's license with more than 200 crab traps at one time;

(ii) fish for commercial purposes under authority of a commercial finfish fisherman's license with more than 20 crab traps at one time;

(iii) fish for non-commercial purposes with more than six crab traps at one time;

(iv) fish a crab trap in the fresh waters of this state;

(v) fish a crab trap that:

(I) exceeds 18 cubic feet in volume;

(II) is not equipped with at least two escape vents (minimum 2-3/8 inches inside diameter) in each crab-retaining chamber, and located on the outside trap walls of each chamber; and

(III) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand # 530), sisal twine (comparable to Lehigh brand # 390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(vi) fish a crab trap for commercial purposes under authority of a commercial crab fisherman's license:

(I) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(II) that is not marked with a white buoy bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(III) that is marked with a buoy bearing a commercial crab fisherman's license plate number other than the commercial crab fisherman's license plate number displayed on the crab fishing boat;

(vii) fish a crab trap for commercial purposes under authority of a commercial finfish fisherman's license:

(I) that is not marked with a floating white [~~yellow~~] buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(II) that is not marked with a white [~~yellow~~] buoy bearing the letter 'F' and the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(III) that is marked with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(viii) fish a crab trap for non-commercial purposes without a floating white buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide center stripe of contrasting color, attached to the crab trap;

(ix) fish a crab trap in public salt waters without a valid gear tag. Gear tags must be attached within 6 inches of the buoy and are valid for 30 days after date set out.

(x) fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine Mile Point, past the town of Rockport to a point at the east end of Talley Island including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula or possess, use or place more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County;

(xi) remove crab traps from the water or remove crabs from crab traps during the period from 30 minutes after sunset to 30 minutes before sunrise;

(xii) place a crab trap or portion thereof closer than 100 feet from any other crab trap, except when traps are secured to a pier or dock;

(xiii) fish a crab trap in public waters that is marked with a buoy made of a plastic bottle(s) of any color or size; or

(xiv) use or place more than three crab traps in public waters of the San Bernard River north of a line marked by the boat access channel at Bernard Acres.

(C) Sand pump. It is unlawful for any person to use a sand pump:

(i) that is not manually operated; or

(ii) for commercial purposes.

(D) Other devices. Devices legally used for taking fresh or salt water fish or shrimp may be used to take crab if operated in places and at times authorized by a proclamation of the Parks and Wildlife Commission or the Parks and Wildlife Code.

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

Filed with the Office of the Secretary of State, on February 12, 2001.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 389-4775

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SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.190, 65.193, 65.197, 65.198, 65.202

The Texas Parks and Wildlife Department proposes amendments to §§65.190, 65.193, 65.197, 65.198, and 65.202, concerning Public Lands Proclamation. The amendment to §65.190, concerning Application, updates the listing of the units of public hunting lands. The amendment is necessary to clearly identify the properties on which the regulations apply. The amendment to §65.193, concerning Access Permit Required and Fees, would allow the Department to conduct hunts totally or in part by Regular Permit, makes uniform the permit requirements of supervising adults during youth-only hunts, and stipulates that the department will retain application fees submitted with an invalid application for a Special Permit. The amendment is necessary to provide a mechanism for allowing persons in possession of an Annual Public Hunting Permit to participate in designated hunts without having to be issued a Regular Permit; for persons in selected instances to purchase a Regular Permit for participation in hunts that are other wise restricted to holders of an Annual Public Hunting Permit; to enable the department to more accurately discern revenues generated by the various levels of permits; to remove confusion concerning permit requirements of non-hunting adults who are supervising minors during youth-only hunts; and to allow the department to retain application fees to defray costs of processing invalid applications for a Special Permit. The amendment to §65.197, concerning Reinstatement of Preference Points, clarifies procedures for reinstating preference points in drawings for Special Permits. The amendment is necessary to avoid the reinstatement of preference points if, due to an error in processing, a person is drawn for a hunt for which they did not apply and agrees to accept the hunt. The amendment to §65.198, concerning Entry, Registration, and Checkout, would conform the requirements of the section to accommodate the changes to §65.193. The amendment is necessary to allow the department to supervise access and activity on public lands by persons hunting under an Annual Public Hunting Permit (check-in and check-out not currently required) during a Regular Permit hunt (check-in and check-out required) that is also open to persons possessing an Annual Public Hunting Permit. The amendment to §65.202, concerning Minors Hunting on Public Lands, establishes a minimum age for participants in Special-Permit hunts. The amendment is necessary to promote public safety by restricting participation in drawn hunts to persons who have achieved the minimum age needed to acquire the physical skills and mental development required to participate in drawn hunts in a competent and responsible manner.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit

anticipated as a result of enforcing or administering the rules as proposed will be increased assurance of public safety during hunts on public lands, increased public hunting opportunity, and more accurate financial data on public hunting activities.

There will be no effects on small businesses, microbusinesses, or persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will have no impact on local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Herb Kothmann, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4770 or 1-800-792-1112 extension 4770 (e-mail: herb.kothmann@tpwd.state.tx.us) .

The proposal will satisfy the provisions of Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

The amendments are proposed under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands and authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife; and §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Chapter 42.

The amendments affect Parks and Wildlife Code, Chapter 12, Subchapter A; Chapter 62, Subchapter D, and Chapter 81, Subchapter E.

§65.190. Application.

(a) This subchapter applies to all activities subject to department regulation on lands designated by the department as public hunting lands, regardless of the presence or absence of boundary markers. Public hunting lands are acquired by lease or license, management agreements, trade, gift, and purchase. Records of such acquisition are on file at the Department's central repository.

(b) On U.S. Forest Service Lands designated as public hunting lands (Alabama Creek, Bannister, Caddo, Lake McClellan Recreation Area, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903, persons other than hunters are exempt from the provisions of this subchapter.

(c) On U.S. Army Corps of Engineer Lands designated as public hunting lands (Aquilla, Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs), persons other than hunters and equestrian users are exempt from requirements for an access permit.

(d) On state park lands designated as public hunting lands, access for fishing and non-consumptive use is governed by state park regulations.

(e) Public hunting lands include, but are not limited to, the following:

(1) Alabama Creek WMA (Unit 904);

(2) Alazan Bayou WMA (Unit 747);

(3) Aquilla WMA (Unit 748);

(4) Atkinson Island WMA;

(5) Bannister WMA (Unit 903);

(6) Big Lake Bottom WMA (Unit 733);

(7) Black Gap WMA (Unit 701);

(8) Caddo Lake State Park and WMA (Unit 730);

(9) Caddo National Grasslands WMA (Unit 901);

(10) Candy Abshier WMA;

(11) Cedar Creek Islands WMA (includes Big Island, Bird Island, and Telfair Island Units);

(12) Chaparral WMA (Unit 700);

(13) Cooper WMA (Unit 731);

(14) D.R. Wintermann WMA;

(15) Dam B WMA--includes Angelina-Neches Scientific Area (Unit 707);

(16) Designated Units of the Las Palomas WMA;

(17) Designated Units of Pubic Hunting Lands Under Short-Term Lease;

(18) Designated Units of the Playa Lakes WMA;

(19) Designated Units of the State Park System;

(20) Elephant Mountain WMA (Unit 725);

(21) Gene Howe WMA (Unit 755)--includes Pat Murphy Unit (Unit 706);

(22) Granger WMA (Unit 709);

(23) Guadalupe Delta WMA (Unit 729)--includes Mission Lake Unit (720), Guadalupe River Unit (723), Hynes Bay Unit (724), and San Antonio River Unit (760);

(24) Gus Engeling WMA (Unit 754);

(25) James Daughtrey WMA (Unit 713);

(26) J.D. Murphree WMA (Unit 783);

(27) Keechi Creek WMA (Unit 726);

(28) Kerr WMA (Unit 756);

(29) Lake McClellan Recreation Area;

(30) [~~(29)~~] Lower Neches WMA (Unit 728)--includes Old River Unit and Nelda Stark Unit;

(31) [~~(30)~~]Mad Island WMA (Unit 729);

(32) [~~(31)~~]Mason Mountain WMA;

(33) [~~(32)~~]Matador WMA (Unit 702);

(34) [~~(33)~~]Matagorda Island State Park and WMA (Unit 1134 [~~8134~~]);

(35) [~~(34)~~]M.O. Neasloney WMA;

(36) [~~(35)~~]Moore Plantation WMA (Unit 902);

(37) Nannie Stringfellow WMA;

(38) [~~(36)~~]North Toledo Bend WMA (Unit 615);

(39) [~~(37)~~]Old Sabine Bottom WMA (Unit 732);

(40) [~~(38)~~]Old Tunnel WMA;

(41) [~~(39)~~]Pat Mayse WMA (Unit 705);

(42) [~~(40)~~]Peach Point WMA (Unit 721)--includes Bryan Beach Unit (Unit 1075 [~~8075~~]);

(43) [~~(41)~~]Ray Roberts WMA (Unit 501);

(44) [~~(42)~~]Redhead Pond WMA;

(45) [~~(43)~~]Richland Creek WMA (Unit 703);

(46) [~~(44)~~]Sam Houston National Forest WMA (Unit 905);

(47) [~~(45)~~]Sierra Diablo WMA (Unit 767);

(48) [~~(46)~~]Somerville WMA (Unit 711);

(49) [~~(47)~~]Tawakoni WMA (Unit 708);

(50) [~~(48)~~]Walter Buck WMA (Unit 757);

(51) [~~(49)~~]Welder Flats WMA;

(52) [~~(50)~~]White Oak Creek WMA (Unit 727); and

(53) [~~(51)~~]Other numbered units of public hunting lands.

§65.193. Access Permit Required and Fees.

(a) It is an offense for a person without a valid access permit to enter public hunting lands, except:

(1) on areas or for activities where no permit is required;

(2) persons who are authorized by, and acting in an official capacity for the department or the landowners of public hunting lands;

(3) persons participating in educational programs, management demonstrations, or other scheduled activities sponsored or sanctioned by the department with written approval;

(4) persons owning or leasing land within the boundaries of public hunting lands, while traveling directly to or from their property;

(5) for a non-hunting or non-fishing adult who is assisting a permitted disabled person; or

[~~(6) for a non-hunting adult who is supervising a permitted minor in a youth-only hunt; or~~]

(6) [~~(7)~~] for minors under the supervision of an authorized supervising adult possessing an APH permit or a LPU permit.

(b) A Texas Conservation Passport (Gold or Silver) provides group access to designated public hunting lands at times when non-consumptive use is authorized under the Texas Conservation Passport Program. The Texas Conservation Passport is not required to hunt or fish, nor does it authorize the taking of wildlife resources or provide access to public hunting lands at times when an APH permit, LPU permit, regular permit, or special permit is required.

(c) Annual Public Hunting (APH) Permit and Limited Public Use (LPU) Permit.

(1) Except as provided in paragraphs (2)-(4) of this subsection, it is an offense for a person 17 years of age or older to enter public hunting lands or take or attempt to take wildlife resources on public hunting lands at times when an APH permit is required without possessing an APH permit or to fail to display the APH permit, upon request, to a department employee or other official authorized to enforce regulations on public hunting lands. The fee for the APH permit is $40.

(2) A person possessing a LPU permit may enter public hunting lands at times that access is allowed under the APH permit, but is not authorized to hunt or fish, except as provided in paragraph (3) of this subsection. The fee for the LPU permit is $10.

(3) Persons possessing an APH permit, a LPU permit, or Texas Conservation Passport (Gold or Silver) may use public hunting lands to access adjacent public waters, and may fish in adjacent public waters from riverbanks on public hunting lands. The APH permit is required of each person 17 years of age or older who enters the Alabama Creek, Bannister, Caddo, Moore Plantation, or Sam Houston National Forest WMAs and possesses a centerfire or muzzleloading rifle or handgun, a shotgun with shot larger than #4 lead, or lawful archery equipment or crossbow with broadhead hunting point; however, a person 17 years of age or older may enter these units with other legal devices for hunting as defined in this subchapter and take specified legal wildlife resources provided the person possesses a LPU permit.

(4) The permits required under paragraphs (1) - (3) of this subsection are not required for:

(A) persons who enter on United States Forest Service lands designated as a public hunting area (Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903 for any purpose other than hunting;

(B) persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs) designated as public hunting lands for purposes other than hunting or equestrian use;

(C) persons who enter Caddo Lake State Park and Wildlife Management Area and do not hunt or enter upon the land;

(D) persons who enter and hunt waterfowl within the Bayside Marsh Unit of Matagorda Island State Park and Wildlife Management Area;

(E) persons who enter the Bryan Beach Unit of Peach Point Wildlife Management Area and do not hunt; or

(F) persons who enter Zone C of the Guadalupe River Unit of the Guadalupe Delta Wildlife Management Area and do not hunt or fish.

(5) The permit required by paragraphs (1)-(3) of this subsection is not valid unless the signature of the holder appears on the permit.

(6) A person, by signature of the permit and by payment of a permit fee required by paragraphs (1)-(3) of this subsection waives all liability towards the landowner (licensor) and Texas Parks and Wildlife Department (licensee).

(d) Regular Permit--A regular permit is issued on a first come-first served basis at the hunt area on the day of the scheduled hunt with the department reserving the right to limit the number of regular permits to be issued.

(e) Special Permit--A special permit is issued to an applicant selected in a drawing.

(f) Permits for hunting wildlife resources on public hunting lands shall be issued by the department to applicants by means of a fair

method of distribution subject to limitations on the maximum number of permits to be issued.

(g) The department may implement a system of issuing special permits that gives preference to those applicants who have applied previously but were not selected to receive a permit.

(h) Application fees.

(1) The department may charge a non-refundable fee, which may be required to accompany and validate an individual's application in a drawing for a special hunting permit.

(2) The application fee for each person 17 years of age or older listed on an application for a special hunting permit may not exceed $25 per legal species and, unless otherwise established by the commission, shall be in the amount of:

(A) $2.00 in the general drawings; and

(B) $10 for special package hunts.

(3) The application fee for a special hunting permit is waived for a person under 17 years of age; however, the minor must apply in conjunction with an authorized supervising adult to whom an application fee is assessed, except as provided in paragraphs (4) and (5) of this subsection.

(4) The application fee for a special permit is waived for an adult who is making application to serve as a non-hunting authorized supervising adult for a minor in a youth-only drawn hunt category.

(5) Persons under 17 years of age may be disqualified from applying for special package hunts or may be assessed the application fee.

(6) The application fee for a special permit is waived for on-site applications made under standby procedures at the time of a hunt.

(7) In the event an application for a special permit is determined to be invalid, then:

(A) the application card may [~~and related application fees will~~] be returned to the applicant for correction and resubmission, provided the error is detected prior to the time that the application information is processed; or

(B) the error will result in disqualification of the applicant(s)[~~, and the application fees will be retained by the department~~].

(i) Legal animals to be taken by special or regular permit shall be stipulated on the permit.

(j) The fees for special and regular permits for hunting deer, exotic mammal, pronghorn antelope, javelina, turkey, coyote, and alligator are:

(1) standard period--$50;

(2) extended period--$100;

(3) squirrel, game birds (other than turkey), rabbits and hares--$10;

(4) special package hunts, desert bighorn sheep--no charge.

(k) Only one special or regular permit fee will be assessed in the event of concurrent hunts for multiple species, and the fee for the legal species having the most expensive permit will prevail.

(l) Any applicable special or regular permit fees will be waived for minors under the supervision of a duly permitted authorized supervising adult.

(m) Any applicable regular permit fees for hunting or fishing activities will be waived for persons possessing an APH permit.

(n) Certain hunts may be conducted totally or in part by regular permit. It is an offense to fail to comply with established permit requirements specifying whether a regular permit is required of all participants or required only of adult participants who do not possess an APH permit.

(o) [~~(n)~~] Any applicable regular permit fees for authorized activities other than hunting or fishing will be waived for persons possessing an APH permit, a LPU permit, or Texas Conservation Passport (Gold or Silver).

(p) [~~(o)~~] Except for the Texas Conservation Passport, all access permits apply only to the individual to whom the permit is issued, and neither the permit nor the rights granted thereunder are transferrable to another person.

(q) [~~(p)~~] It is an offense if a person fails to obey the conditions of a permit issued under this subchapter.

§65.197. Reinstatement of Preference Points.

Accrued preference points will be reinstated in the concerned hunt category for a selected applicant only if:

(1) payment of hunt permit fees has been made, but the scheduled hunt is unable to be conducted in its entirety or is canceled at the discretion of the department;

(2) the selected applicant was assigned a hunt category, hunt area, or hunt period other than was indicated on the application and does not participate in the hunt.

§65.198. Entry, Registration, and Checkout.

(a) It is an offense if a person:

(1) who does not possess a valid permit enters public hunting lands at a time when access is restricted only to persons possessing a valid permit;

(2) enters an area identified by boundary signs as a limited use zone, sanctuary, or restricted area and fails to obey the restrictions on public use posted at the area or as set forth in this subchapter; or

(3) on areas where on-site registration is required, fails to check in at a registration station and properly complete registration procedures before initiation of hunting, fishing, or non-consumptive use activities or fails to properly check out at the registration station before departing the area.

(b) Unless otherwise authorized in writing by the department or as provided in subsection (c) of this section, it is an offense if a person participating in a hunt conducted by special permit or totally or in part by [~~hunting under special or~~] regular permit fails to:

(1) check in at a designated check station prior to initiation of hunting activities; and

(2) check out at a designated check station or otherwise fails to allow inspection of the bag before leaving the area.

(c) The requirements of subsection (b) of this section may be waived for specific hunts as designated by order of the executive director or by direction of the hunt supervisor. Participation in regular permit hunts for which the check station requirement has been waived will be solely by APH permit.

(d) Access for non-consumptive use and fishing may be temporarily restricted while hunts are being conducted by special or regular permit or at times when ongoing research or management activities may be impacted.

§65.202. Minors Hunting on Public [~~Hunting~~] Lands.

(a) Youth participating in public hunts by special permit must be eight years of age or older at the time of the application.

(b) It is an offense for a minor to fail to be under the immediate supervision of a duly permitted and authorized supervising adult when hunting on public hunting lands. For a minor who has received hunter education certification, the requirement for immediate supervision is relaxed to the extent that the authorized supervising adult is required only to be present on the public hunting area. The authorized supervising adult is responsible for the actions and liability of the minor.

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 February 12, 2001.

TRD-200100889
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 17. PAYMENT OF FEES, TAXES, AND OTHER CHARGES TO STATE AGENCIES BY CREDIT, CHARGE, AND DEBIT CARDS

34 TAC §§17.1 - 17.3

The Comptroller of Public Accounts proposes new §§17.1, 17.2, and 17.3, concerning the acceptance of credit, charge and debit cards for the payment of fees, taxes and other charges assessed by a state agency. The purpose of these rules is to provide a uniform procedure through which the comptroller may authorize a state agency to accept credit, charge and debit cards if the comptroller determines that the best interest of the state will be promoted.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be in broadening the payment options available to taxpayers in transactions with state agencies. The new rules would have no fiscal implications to small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposal may be submitted to Robert Coalter, Assistant Director, Treasury Operations, P.O. Box 12608, Austin, Texas 78711.

This new section is proposed under Government Code, §403.023, which provides that the comptroller may adopt rules relating to the acceptance of credit, charge and debit cards for the payment of fees, taxes and other charges assessed by a state agency.

The new sections implement Government Code, §403.023.

§17.1. Intent, Purpose, and Definitions.

(a) Intent. The comptroller has been granted authority by Government Code, §403.023(a)(1), to authorize a state agency to accept credit, charge and debit cards for the payment of fees, taxes and other charges assessed by the state agency if the comptroller determines that the best interest of the state will be promoted.

(b) Purpose.

(1) The purpose of these rules is to provide a uniform procedure through which the comptroller may authorize a state agency to accept credit, charge and debit cards for the payment of fees, taxes and other charges assessed by the state agency.

(2) These rules do not apply to a particular state agency's authority to accept credit, charge and debit cards if:

(A) another law specifically authorizes, requires, prohibits, or otherwise regulates the acceptance of credit, charge and debit cards;

(B) acceptance of credit or charge cards would affect a contract that the state agency has entered into that is in effect on September 1, 1993; or

(C) acceptance of charge or debit cards would affect a contract that the state agency has entered into that is in effect on September 1, 1999.

(3) The comptroller may authorize a state agency to contract directly with vendors or with the comptroller. A state agency may not contract directly with vendors without prior approval of the comptroller.

(4) The comptroller will act as an information resource to state agencies authorized by the comptroller to accept credit, charge and debit cards.

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

(1) Chargeback - The return of a transaction when a consumer, bank, or vendor determines that a transaction is not valid resulting in the vendor's debit of the comptroller's designated account for the amount in question.

(2) Coding block - The state agency's USAS information that will be submitted with each transaction. This information should consist of a transaction code, fund number, program cost account and comptroller object or state agency object.

(3) Merchant number - The unique identification number(s) assigned by the vendor to each state agency or each state agency location, if requested by the state agency.

(4) State agency - The meaning assigned by Government Code, §403.023(e).

(5) State treasury - The meaning assigned by Government Code, §404.001(8).

(6) USAS - The state's uniform statewide accounting system.

(7) Vendor - A company or financial institution that provides a variety of merchant services including credit, charge and debit

card billing, reporting, customer service, authorization and settlement services.

§17.2. Agency Contracts with Vendors or the Comptroller.

(a) Administration by comptroller. A state agency interested in accepting credit, charge and debit cards will contact the comptroller's office. The comptroller's office will determine whether it is in the best interest of the state for the state agency to accept credit, charge and debit cards and whether the state agency should contract with the comptroller or with a selected vendor. The comptroller will contract with selected vendors to provide credit, charge and debit card services to state agencies that contract with the comptroller.

(b) State agency contracts with comptroller. A state agency will enter into an interagency contract with the comptroller to obtain access to the services provided by selected vendors pursuant to terms established by the comptroller in the interagency contract.

(c) State agency contracts with vendors. In lieu of contracting with the comptroller, a state agency, with the comptroller's approval, may directly contract with vendors, provided the following criteria are met:

(1) The state agency shall provide the comptroller's office with a draft copy of its Request for Proposal prior to issuance and a draft copy of its vendor contract prior to execution. The comptroller shall review the drafts for compliance with these rules, state law, and other comptroller processes relevant to the deposit of funds into the state treasury. The comptroller will notify the state agency whether the drafts are accepted or rejected.

(2) The state agency will provide the comptroller's office with the merchant numbers assigned and the USAS coding block information at least two weeks prior to the acceptance of the first credit, charge or debit card transaction.

(3) The state agency must provide in its contract with the vendor that the vendor will credit the comptroller's designated bank account for the total amount of credit, charge and debit card sales, less any credits issued. The comptroller will enter the deposit into USAS, crediting the appropriate coding block on the same day the vendor credits the comptroller's designated bank account.

(4) In order to insure the accuracy of information and credit, charge and debit card payments transmitted to the comptroller by state agencies, the comptroller shall determine the method by which the information and credit, charge and debit card payments will be transmitted by state agencies.

(5) The state agency's contract with the vendor must further provide that:

(A) the vendor shall debit the comptroller's designated account for chargebacks;

(B) the state agency will have sole responsibility for resolving chargebacks; and

(C) the vendor may debit the comptroller's designated account for the fees or the vendor may invoice the state agency directly for the fees.

(6) The state agency shall be responsible for reviewing the fees for validity. The comptroller will enter the fee charges into USAS.

(7) The state agency will have sole responsibility for the security of the information captured in each transaction.

(8) The state agency will ensure that the vendor:

(A) makes funds available on a timeframe that is equal to or better than what is provided in the comptroller's contract with selected vendors; and

(B) complies with state law and all comptroller policies with respect to deposits into the state treasury.

§17.3. Agency Non-Compliance.

The comptroller may suspend or terminate a state agency's authority to accept payments by credit, charge and debit card if the comptroller determines that the state agency or an officer or employee of the state agency has violated this chapter or Government Code, §403.023.

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 February 9, 2001.

TRD-200100861
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 463-3699

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 4. TEXAS COMMISSION FOR THE BLIND

CHAPTER 159. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER A. GENERAL INFORMATION

40 TAC §159.8

The Texas Commission for the Blind proposes new §159.8 relating to Commission Vehicle Use. The rule is proposed to comply with Government Code §2171.1045, which requires state agencies to adopt rules relating to the assignment and use of the agency's vehicles. The rules are consistent with the General Services Commission's State Vehicle Fleet Management Plan and specifically address the requirements 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.

Alvin Miller, Chief Financial Officer, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. There are no anticipated costs to persons who are required to comply with the rules as proposed.

Robert Packard, Deputy Director, Administrative Services, has determined that the public benefit anticipated as a result of the rules as proposed will be the adoption of provisions that conform to the Office of Fleet Vehicle Management's State Vehicle Fleet Management Plan.

Comments on the proposed rule may be submitted to Jean Crecelius, Policy and Rules Coordinator, Texas Commission for the Blind, 4800 North Lamar, Austin, Texas 78756, or by e-mail to jean.crecelius@tcb.state.tx.us, or by fax (512) 377-2682. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The new section is proposed under Human Resources Code §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, as well as Texas Government Code §2171.1045.

The proposal affects no other sections.

§159.8. Assignment of Commission Vehicles.

(a) Commission vehicles, with the exception of vehicles assigned to field employees, shall be assigned to the agency motor pool and may be available for checkout.

(b) The Commission may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the Commission determines that the assignment is critical to the needs and mission of the Commission. The determination shall be documented and maintained in writing.

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 February 6, 2001.

TRD-200100752
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 377-0611

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PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 371. INACTIVE/RETIREE STATUS

40 TAC §371.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §371.1 concerning Inactive Status. This amendment reorganizes the chapter and removes the retired status, which is not recognized in the Act.

John P. Maline, Executive Director of the Executive Council of Physical and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be a fiscal implications for state or local government as a result of enforcing or administering the rule. That change will be in the fee for going to inactive status and the renewal of inactive status.

Mr. Maline has also 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 clarification of the rules and an elimination of a status for which there is no statutory authority. There will be no effect on small businesses. There are anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 20510, Austin, Texas 78701, (512) 305-6900, augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§371.1. Inactive Status.

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the board. The board may allow an individual who is not actively engaged in the practice of occupational therapy to put a license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years, and may not represent him or herself as an Occupational Therapist or Occupational Therapy Assistant. [~~A request for a change to inactive status, in accordance with §25A of the Act, may only be made at renewal date.~~]

[~~(1) A written request to change a regular license in good standing from active to inactive status must be postmarked prior to the expiration date of the license. The request must include the appropriate fee.~~]

[~~(2) A licensee may remain on inactive status for a period of no more than six consecutive years. A licensee must submit a written petition to the board requesting an extension of inactive status for more than six years.~~]

[~~(3) A licensee requesting to re-enter active status after more than six consecutive years without the prior approval of the board may not renew his/her license. In order to obtain licensure, the individual must again pass the Examination and comply with the requirements and procedures for obtaining an extended temporary license.~~]

[~~(4) A licensee on inactive status shall be required to complete the continuing education renewal requirements of licensees on active status.~~]

[~~(5) A licensee on inactive status must complete and return a board prepared jurisprudence examination. The test will be scored by TBOTE staff. At least 70& of questions must be answered correctly in order to achieve a passing score.~~]

[~~(6) A licensee on inactive status will not have to pay a renewal fee buy will have to pay an appropriate late fee if he/she does not notify the board prior to the expiration of the license of his/her intent to remain on inactive status. A licensee will have to pay a fee to change to active status.~~]

[~~(7) A licensee may not represent himself/herself as an OTR, LOT, COTA or LOTA while on inactive status. A licensee retains the right to represent himself/herself as having an inactive license.~~]

(b) Required components to put an license on inactive status are:

(1) Signed renewal application form documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education); and

(2) The inactive fee and any late fees which may be due.

(3) A passing score on the jurisprudence exam

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:

(1) Signed renewal application form, documenting completion of the required continuing education as described in Chapter 367 of this title; and

(2) The renewal fee and any late fees which may be due.

(3) A passing score on the jurisprudence exam

(d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time. After the licensee has submitted a complete application for reinstatement, the board will send a renewal certificate for the remainder of the current renewal period to the licensee.

(1) The components required to return to active statues are:

(B) The renewal fee and any late fees which may be due;

(A) Signed renewal application form;

(C) A passing score on the jurisprudence exam; and

(2) If the licensee has not completed the required continuing education, he or she may retake the national licensure exam.

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 February 7, 2001.

TRD-200100769
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 305-3962

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40 TAC §371.2

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

The Texas Board of Occupational Therapy Examiners proposes the repeal of §371.2 concerning Retiree Status. The repeal removes the retired status as this status is not recognized in the Act.

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

Mr. Maline has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of repealing the rule will be clarification of the rules and an elimination of a status for which there is no statutory authority. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 20510, Austin, Texas 78701, (512) 305-6900, augusta.gelfand@mail.capnet.state.tx.us.

The repeal is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by the repeal of this section.

§371.2. Retiree Status.

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 February 7, 2001.

TRD-200100770
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 305-3962

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CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §372.1 concerning Provision of Services. The amendment is a reorganization of the chapter

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

Mr. Maline has also 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 clarification of the rules. There will be no effect on small businesses. There are anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 20510, Austin, Texas 78701, (512) 305-6900, augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations

Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§372.1. Provision of Services.

(a) Medical Conditions

(1) Treatment for a medical condition by an occupational therapy professional requires a referral from a licensed referral source.

(2) The referral may be an oral or signed written order. If oral, it must be followed by a signed written order.

(3) If a written referral signed by the referral source is not received by the third treatment or within two weeks from receipt of the oral referral, whichever is later, the therapist must have documented evidence of attempt(s) to contact the referral source for the written referral (e.g., registered letter, fax, certified letter, email, return receipt, etc.) The therapist must exercise professional judgement to determine cessation or continuation of treatment with a receipt of the written referral.

(b) Non-Medical Conditions

(1) Consultation, monitored services, and evaluation for need of services may be provided without a referral.

(2) Non-medical conditions do not required a referral. However, a referral must be request at any time during the evaluation or treatment process when necessary to insure the safety and welfare of the consumer.

(c) Screening/Plan of Care

(1) Only an occupational therapist may provide the signed evaluation and plan of care

(2) Only an occupational therapist may initiate, develop or modify or complete an occupational therapy plan of care. The occupational therapist and occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy personnel licensed by The Texas Board of Occupational Examiners (TBOTE) can implement the plan of care.

(5) Only the occupational therapist or occupational therapy assistant can train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist may delegate to an occupational therapy assistant the collection of data for the assessment. The occupational therapist is responsible for the accuracy of the data collect by the assistant.

(7) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for evaluation and/or occupational therapy intervention.

(8) The occupational therapist must have face-to-face, real time interaction with the patient or client during the evaluation process.

(9) It is the occupational therapist's responsibility to ensure that all documentation which becomes part of the patient's/client's permanent record is approved and co-signed by the occupational therapist. Occupational therapy notes must be initialed by the occupational therapist and signed on the bottom of each page.

(d) Discharge

(1) Only the occupational therapist has the authority to discharge patients from occupational therapy services. The discharge is based on whether the patient or client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services; or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist is responsible for the content and validity of the discharge summary and must sign the discharge summary.

~~[(a) Referral. Occupational therapists may accept referral from all qualified licensed health care professionals who within the scope of licensure are authorized to refer for healthcare services. This includes but is not limited to dentists, chiropractors, and podiatrists.]~~

~~[(1) Consultation, monitored services, screening, and evaluation for need of services may be provided without a referral.]~~

~~[(2) Occupational therapy for non-medical conditions (refer to §362.1 of this title (relating to Definitions)) does not require a referral. However, a referral must be requested at any time during the evaluation or treatment process when necessary to insure the safety and welfare of the consumer.]~~

~~[(3) The provision of direct treatment by an OTR, LOT, COTA or LOTA for medical conditions requires a referral. A referral may be an oral or written order to initiate services. If an oral referral is received, it must be followed by a written order signed by the referral source requesting the services.]~~

~~[(4) An oral referral for evaluation and/or treatment must be received and documented by a licensed health care provider.]~~

~~[(5) If a written referral is not received by the third treatment or within two weeks from receipt of the oral referral, whichever is later, the therapist must have documented evidence of attempt(s) to contact the referral source for a written referral (e.g., registered letter, fax, certified letter, e-mail, return receipt, etc.). The therapist must exercise professional judgment to determine cessation or continuation of treatment without receipt of the written referral.]~~

~~[(b) A COTA or LOTA may assist in the provision of OT services as specified in §373.1(b) of this title (relating to Supervision).]~~

~~[(c) Screening and Evaluation.]~~

~~[(1) Screening for occupational therapy services must be initiated and completed by a TBOTE licensee.]~~

~~[(2) Occupational therapy intervention may not be provided without an occupational therapy evaluation completed by an OTR or LOT.]~~

~~[(d) Occupational Therapy Plan of Care Development.]~~

~~[(1) An occupational therapy plan of care must be based on an occupational therapy evaluation.]~~

~~[(2) The occupational therapy plan of care (refer to §362.1 of this title (relating to Definitions)) must be developed by an OTR or LOT.]~~

~~[(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but occupational therapy goals or objectives must be easily identifiable in the plan of care.]~~

[(4) Only an OTR or LOT may change an occupational therapy plan of care.

(e) Occupational Therapy Plan of Care Implementation.]

[(1) Only licensed occupational therapy personnel may implement an occupational therapy plan of care.]

[(2) Only licensed occupational therapy personnel may train non-licensed individuals to carry out specific tasks that support the occupational therapy plan of care.]

[(f) Discharge.]

[(1) An OTR or LOT has authority to discharge patients from occupational therapy services.]

[(2) The OTR or LOT shall discharge a patient or client when the patient or client has achieved predetermined goals; has achieved maximum benefit from OT services; or when other circumstances warrant discontinuation of occupational therapy services]

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 February 7, 2001.

TRD-200100771
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 305-3962

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CHAPTER 373. SUPERVISION

40 TAC §§373.1 - 373.3

The Texas Board of Occupational Therapy Examiners proposes an amendment to §373.1 and adds new §373.2 Supervision of a Temporary Licensee and §373.3 Supervision of a Licensed Occupational Therapy Assistant. The amendment and new sections are a reorganization of the chapter, removing the supervision form and the COTA log requirement for Occupational Therapy Assistants. It adds wording to allow for telemedicine ability.

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

Mr. Maline 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 clarification of the rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 20510, Austin, Texas 78701, (512) 305-6900, augusta.gelfand@mail.capnet.state.tx.us.

The amendment and new sections are proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by the amendment and new sections.

§373.1. Supervision of Non-Licensed Personnel.

(a) Licensed occupational therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services, however, those assistants and helpers must be under the supervision of the occupational therapist or occupational therapy assistant.

(b) Close Personal Supervision implies direct, on-site contact whereby the supervision occupational therapy professional is able to respond immediately to the needs of the patient. This type of supervision is required for non-licensed personnel assisting in the provision of occupational therapy services.

(c) When occupational therapy licensees delegate occupational therapy tasks to non-licensed personnel, the licensee is responsible for ensuring that this person is adequately trained in the tasks delegated.

(d) The licensee providing the treatment must interact with the patient regarding the patient's condition, progress and/or achievement of goals during each treatment session.

(e) Delegation of tasks to non-licensed personnel includes but is not limited to:

(1) routine department maintenance

(2) transportation of patients/clients

(3) preparation or set up of treatment equipment and work area;

(4) assisting patients/clients with their personal needs during treatment

(5) assisting in the construction of adaptive/assistive equipment and splints

(6) clerical, secretarial, administrative activities;

(7) carrying out a predetermined segment or task in the patient's care.

(f) The non-licensed personnel may not:

(1) perform occupational therapy evaluative procedures

(2) initiate, plan, adjust, or modify occupational therapy procedures.

(3) act on behalf of the occupational therapist in any matter relating to occupational therapy which requires decision making or professional judgements.

[(a) Occupational Therapists, Registered or Licensed Occupational Therapists (OTRs or LOTs) are fully responsible for the planning and delivery of occupational therapy services.]

[(1) The supervising OTR or LOT is responsible for providing the supervision necessary to protect the health and welfare of the consumer receiving OT services from a COTA, LOTA, temporary licensee or OT Aide or Orderly.]

[(2) OTRs or LOTs must ensure that tasks appropriate for a COTA, LOTA or temporary licensee are not delegated to persons without current licenses.]

[(3) The COTA, LOTA or temporary licensee is responsible for the execution of his or her professional duties.]

[(b) Supervision of a COTA or an LOTA.]

[(1) The OTR or LOT shall delegate responsibilities to the COTA or LOTA that are within the scope of his or her training.]

[(2) A COTA or LOTA shall provide occupational therapy services only under the general supervision of a licensed OTR or LOT. (See Chapter 362 of this title (relating to Definitions).]

[(A) General supervision (See Chapter 362 of this title (relating to Definitions)) of COTAs or LOTAs must be documented on an "Occupational Therapy Supervision Log" prescribed by the board. COTAs and LOTAs employed part time or with more than one employer shall prorate the required documented supervision.]

[(i) The "Occupational Therapy Supervision Log" must be kept by the COTA or LOTA and a copy of this form must be maintained by each employer.]

[(ii) The "Occupational Therapy Supervision Log" must be submitted to TBOTE with the COTA's or LOTA's renewal application.]

[(B) The supervising OTR or LOT need not be physically present or on the premises at all times.]

[(3) Except where otherwise restricted by rule, the supervising OTR or LOT may only delegate tasks to a COTA or LOTA that the OTR or LOT and COTA or LOTA agree are within the competency level of that COTA or LOTA.]

[(A) A COTA or LOTA may initiate and perform the screening process and collect information for the OTR's or LOT's review. The OTR or LOT is responsible for determining if intervention is needed and if a physician's referral is required for evaluation and/or occupational therapy intervention.]

[(B) An OTR or LOT is responsible for the patient's evaluation/assessment. The supervising OTR or LOT may delegate to a COTA or LOTA the collection of data or information for the evaluation.]

[(i) The OTR or LOT is responsible for the accuracy of evaluative information collected by the COTA or LOTA.]

[(ii) The OTR or LOT must have face-to-face interaction with the patient or client during the evaluation process.]

[(C) Only an OTR or LOT may develop or modify an Occupational Therapy plan of care (refer to §362.1 of this title (relating to Definitions)).]

[(D) The OTR or LOT is responsible for the content and validity of the discharge summary and must sign the discharge summary.]

[(4) It is the responsibility of the OTR or LOT and the COTA or LOTA to ensure that all documentation prepared by the COTA or LOTA which becomes part of the patient's/client's permanent record is approved and co-signed by the supervising OTR or LOT. Occupational Therapy notes must be initialed by the OTR or LOT and signed at the bottom of each page.]

[(5) These rules shall not preclude the COTA or LOTA from responding to emergency situations in the patient's condition which require immediate action.]

[(c) Supervision of an OT Aide or OT Orderly.]

[(1) When an OTR, LOT, COTA and/or LOTA delegates OT tasks to an aide or orderly, the OTR, LOT, COTA and/or LOTA is responsible for the aide's actions during patient contact on the delegated tasks. The licensee is responsible for ensuring that the aide is adequately trained in the tasks delegated.]

[(2) The OTR, LOT, COTA or LOTA must interact with the patient regarding the patient's condition, progress and/or achievement of goals during each treatment session.]

[(3) An OTR, LOT, COTA and/or LOTA using OT Aide or OT Orderly personnel to assist with the provision of occupational therapy services must provide close personal supervision in order to protect the health and welfare of the consumer. (See Chapter 362 of this title (relating to Definitions)).]

[(4) Delegation of tasks to OT Aides or OT Orderlies.]

[(A) The primary function of an OT Aide or OT Orderly functioning in an occupational therapy setting is to perform designated routine tasks related to the operation of an occupational therapy service. An OTR, LOT, COTA and/or LOTA may delegate to an OT Aide or OT Orderly only specific tasks which are not evaluative or recommending in nature, and only after insuring that the OT Aide or OT Orderly has been properly trained for the performance of the tasks. Such tasks include, but are not limited to:]

[(i) routine department maintenance;]

[(ii) transportation of patients/clients;]

[(iii) preparation or setting up of treatment equipment and work area;]

[(iv) assisting patients/clients with their personal needs during treatment;]

[(v) assisting in the construction of adaptive equipment and splints;]

[(vi) clerical, secretarial, administrative activities;]

[(vii) carrying out a predetermined segment or task in the patient's care.]

[(B) The OTR, LOT, COTA and/or LOTA shall not delegate to an OT Aide or OT Orderly:]

[(i) performance of occupational therapy evaluative procedures;]

[(ii) initiation, planning, adjustment, modification, or performance of occupational therapy procedures requiring the skills or judgment of an OTR, LOT, COTA or LOTA;]

[(iii) making occupational therapy entries directly in patients' or clients' official records;]

[(iv) acting on behalf of the occupational therapist in any matter related to occupational therapy which requires decision making or professional judgment.]

[(d) Supervision of an occupational therapist or an occupational therapy assistant with a temporary license.]

[(1) A person issued a temporary occupational therapy license must practice occupational therapy under the continuing supervision of an OTR or LOT. (See Chapter 362 of this title relating to Definitions).]

[(2) A minimum of 16 hours of supervision per month for full time OTAs must be documented on an "Occupational Therapy Supervision Log" prescribed by the board. OTAs employed part time or with more than one employer shall prorate the required documented

~~supervision. If the OTA is employed less than 20 hours per week, a minimum of eight hours of supervision is required per month.]~~

~~[(A) The "Occupational Therapy Supervision Log" must be kept by the OTA and a copy of this form must be maintained by each employer.]~~

~~[(B) The "Occupational Therapy Supervision Log" must be submitted to TBOTE with the COTA's first renewal application after regular licensure.]~~

~~[(3) The temporary licensee must certify to the board the name, license number, and address of his or her supervisor on a form provided by the board during the application process.]~~

~~[(4) The temporary licensee must notify the board within 15 days of a change in the OTR or LOT supervisor.]~~

~~[(5) The temporary licensee shall not supervise an occupational therapy student, a COTA or LOTA, an occupational therapy assistant or an OT Aide or OT Orderly.]~~

~~[(6) All documentation completed by an individual holding a temporary license which becomes part of the patient's/client's permanent file must be approved and co-signed by the supervising OTR or LOT. Occupational Therapy notes must be initialed by the OTR or LOT and signed at the bottom of each page.]~~

~~[(e) Supervision of Provisional Licensees.]~~

~~[(1) OTRs and LOTs with provisional licenses are excluded from supervision requirements.]~~

~~[(2) COTAs and LOTAs with provisional licenses will require general supervision by a licensed OTR or LOT.]~~

§373.2. Supervision of a Temporary Licensee.

(a) Temporary licensee supervision includes frequent communication between the supervising occupational therapist and the temporary licensee by telephone, written report or conference, including the review of progress of patients/clients assigned.

(b) Supervision includes encounters twice a month where the occupational therapist directly observes the temporary licensee providing services to one or more patients/clients.

(c) Temporary licensees may not supervise anyone.

(d) All documentation completed by an individual holding a temporary license which becomes part of the patient's/client's permanent file, must be approved and co-signed by the supervising occupational therapist.

(e) Occupational therapy assistants must be supervised for sixteen hours a month, four of which are in face to face, real time interaction with patients.

(f) A temporary licensee works under the supervision of a regular licensed occupational therapist, whose name and license number are on file on the board's "Supervision of a Temporary Licensee" form.

(g) A temporary licensee does not become a regular licensee with those privileges until the regular license is in hand.

§373.3. Supervision of a Licensed Occupational Therapy Assistant.

(a) An occupational therapy assistant must have frequent communication between supervising occupational therapist(s) and the occupational therapy assistant by telephone, written report, email, conference etc. including review of progress of patients/clients assigned.

(b) An occupational therapy assistant must have eight hours of supervision per month with a minimum of two of those hours of face to face, real time interaction with patients/clients.

(1) Part-time licensees may pro-rate these hours, but shall document no less than four hours of supervision per month, one hour of which includes face to face, real time interaction with patients.

(2) Those with more than one job must have supervisors at each job.

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 February 7, 2001.

TRD-200100772
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 305-3962

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY

43 TAC §57.51

The Automobile Theft Prevention Authority (ATPA) proposes an amendment to §57.51(a), concerning refund determinations. The purpose of the amendment is to clarify the deadline for making a request for a determination of sufficiency and a refund of the ATPA fee imposed by Texas Civil Statutes, Article 4412(37), §10. Article 4413(37), §6A, authorizes the Authority to determine whether payments of the ATPA fee are sufficient. The Authority may issue a refund if an overpayment is found. Section 11 of Acts 1997, 75th Legislature, chapter 305, sets a deadline for requesting a determination or refund of six months after the payment is made. Under §10(b), an insurer submits payment to the State, twice a year, each payment reflecting the amount assessed, based on insurance policies issued over the first and second six months of a calendar year. Section §57.51(a) is being amended to make it clearer that an insurer must request a refund within six months of each payment in order for the Authority to consider its request. In other words, a insurer must file a request within six months after its March 1 payment, for a determination or a refund for the March payment, and within six months after August 1, for a refund or determination for the August payment. The Authority cannot consider a request for refund or determination filed after the six-month deadline for each payment.

Agustin De La Rosa, Director of the ATPA, has determined that for the first five-year period the amendment is in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the amended section.

Mr. De La Rosa also has determined that the public benefit anticipated as a result of the proposed amendment will be better notice to insurance companies as to the deadlines for making a

request for a determination of sufficiency or a refund. There will be no economic effect on micro or small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Agustin De La Rosa, Director, Automobile Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78779-0001, for a period of 30 days from the date that the proposed action is published in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, and §6A, which the Authority interprets as requiring it to adopt rules setting out the procedures for determination and refund requests.

The following are the statutes, articles, or codes affected by the amendments: §57.51(a) and Article 4413(37), §6(a) and §6A.

§57.51. Refund Determinations.

(a) An insurer that seeks a determination of the sufficiency or a refund of a semi-annual payment [~~claiming an overpayment of the annual fees due the authority under Texas Civil Statutes, Article 4413(37), §10,~~] must file a written claim for a determination or a refund not later than six months after the date the semi-annual payment was made to the state comptroller [~~fees were paid to the ATPA~~].

(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 February 8, 2001.

TRD-200100837
Agustin De La Rosa, Jr.
Director
Automobile Theft Prevention Authority
Earliest possible date of adoption: March 25, 2001
For further information, please call: (512) 374-5101

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.12

The Department of Information Resources has withdrawn from consideration proposed amendment to §201.12 which appeared in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11352).

Filed with the Office of the Secretary of State on February 8, 2001.

TRD-200100841
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: February 28, 2001
For further information, please call: (512) 475-2153

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §66.51

The Texas Education Agency has withdrawn from consideration proposed amendment to 19 TAC §66.51 which appeared in the November 24, 2000, issue of the *Texas Register* (25 TexReg 11625).

Filed with the Office of the Secretary of State on February 12, 2001

TRD-200100875
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Effective date: February 12, 2001
For further information, please call: (512) 463-9701

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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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.4

The Department of Information Resources (department) adopts 1 T.A.C.§201.4, Historically Underutilized Business Program, adopting, by reference, the Historically Underutilized Business (HUB) Program rules of the General Services Commission (commission) as such rules may be amended from time to time by the commission. The HUB rules of the commission are published at 1 T.A.C. §§111.11-111.27. The proposed rule was published for comment in the November 17, 2000 *Texas Register* at 25 TexReg 11351. No comments were received in response to the proposed rule.

The rule is adopted in accordance with Texas Government Code §2161.003, which requires state agencies to adopt the commission's HUB rules under §2161.002 and Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities. The HUB rules address policy and purpose, definitions, annual procurement utilization goals, subcontracts, agency planning responsibilities, state agency reporting requirements, certification requirements, protests, recertification, revocation, certification and compliance reviews, use of the HUB certification directory, graduation procedures, program review by the commission, the memorandum of understanding between the commission and the Texas Department of Economic Development, HUB coordinator responsibilities, and HUB forum programs for state agencies.

Texas Government Code §2161.002 is affected by the proposed rule.

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

Filed with the Office of the Secretary of State on February 8, 2001.

TRD-200100840

Renee Mauzy
General Counsel
Department of Information Resources
Effective date: February 28, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 475-2153

1 TAC §201.13

The Department of Information Resources adopts amended §201.13 concerning information resource standards. The amendment deletes from §201.13 subsection (c), relating to use of the TEX-AN network by state agencies, and deletes subsection (e), relating to date standard. The elimination of subsection (c) of §201.13 is a result of the department's review of subsections (c) and (d) of §201.13 in accordance with the notice of intention to review and consider for readoption, revision, or repeal, Title 1, Texas Administrative Code, Chapter 201, §201.13, subsections (c) and (d). The proposed amendment was published September 8, 2000, at 25 TexReg 8818 and is adopted without changes to what was proposed therein.

Subsection (c) of §201.13 is no longer necessary, because Article IX, §9-10.05, General Appropriations Act, of the 76th legislature, gives waiver request evaluation to the Telecommunications Planning Group, rather than to the department. The Telecommunications Planning Group is created by Subchapter H, Chapter 2054, Texas Government Code. The Telecommunications Planning Group has established "TEX-AN Waiver Criteria and Waiver Evaluation Information" which is accessible on the Telecommunications Planning Group site at http://www.state.tx.us/TPG.

Subsection (e) of §201.13 is deleted because the Year 2000 passed without significant impact to the state's technology infrastructure, and the date standard rule contained in subsection (e) is no longer necessary.

The amendment is adopted in accordance with Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities.

No comments were received in response to the proposed amendment to §201.13.

The amended rule is adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act.

Subchapter H of Chapter 2054, Texas Government Code is affected by the amended rule.

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

Filed with the Office of the Secretary of State on February 8, 2001.

TRD-200100844
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: February 28, 2001
Proposal publication date: September 8, 2000
For further information, please call: (512) 475-2153

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

The Health and Human Services Commission (HHSC) adopts amendments to Chapter 355, Medicaid Reimbursement Rates; Subchapter D, §§355.451-355.458, relating to Reimbursement Methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program; and Subchapter F, §§355.701-355.709, 355.722, 355.723, 355.732, 355.733, 355.741-355.743, 355.761, 355.773, 355.775, and 355.781, relating to General Reimbursement Methodology for all Medical Assistance Programs, without changes to the text of the proposed rules published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12277).

The adopted rules implement §531.021, Government Code, entitled "Administration of Medicaid Program." The adopted rules revise reimbursement methodologies for Medicaid programs operated by the Texas Department of Mental Health and Mental Retardation (TDMHMR).

The majority of the adopted amendments are non-substantive revisions to current rules that update chapter titles to more accurately reflect current operations, clarify the respective responsibilities of HHSC and TDMHMR regarding the determination and payment of reimbursement rates to Medicaid providers enrolled in TDMHMR Medicaid programs, and delete obsolete provisions of the rules that governed cost determination or reimbursement rates for particular years. The proposed amended rules also delete provisions that currently require rate proposals to be reviewed by the Board of Mental Health and Mental Retardation.

HHSC received a joint written comment filed on behalf of the Private Providers Association of Texas, The Arc of Texas, and the Texas Council of Community MHMR Centers, Inc. The commenters requested that HHSC restore language to the amended rules that requires reimbursement rate methodologies and proposed reimbursement rates Medicaid providers to be reviewed and approved by the Board of Mental Health and Mental Retardation. The commenters stated that the amended rules imply a change in the intent of HHSC to maintain close connection between Medicaid rates and policymaking for Medicaid programs.

HHSC appreciates the comment but believes the amended rules more accurately reflect current policy for the entire Medicaid program. As single state agency for the state Medicaid program, HHSC is ultimately accountable for administration of the program, including the establishment of policy for Medicaid programs. Section 531.021(b), Government Code, requires HHSC to adopt rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program. Under current HHSC rules, provider reimbursement methodologies for other Medicaid programs are developed by HHSC with the assistance and input of the agencies that operate the particular Medicaid program.

In addition, rulemaking and ratesetting are subject to separate public processes that provide interested parties several opportunities to communicate concerns about Medicaid provider reimbursement policy and rates. HHSC believes these processes enable HHSC to maintain the close connection between reimbursement rate determination and program policymaking, which also is subject to prior review and approval by HHSC. This process also confirms HHSC's primary responsibility and ultimate accountability for provider reimbursement rate setting. HHSC does not believe the adopted rules are at cross purposes with the goals expressed by the commenters. Accordingly, HHSC does not believe changes to the proposed rules are necessary at this time.

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR THE INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR) PROGRAM

1 TAC §§355.451-355.458

Statutory Authority

The amended rules are adopted under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program ; and § 531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of HHSC under Chapter 531, Government Code.

The amended rules implement §531.021(b), Government Code, concerning the adoption of rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, and §32.0281, Human Resources Code, concerning the adoption of rules regarding Medicaid reimbursement rates.

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 February 9, 2001.

TRD-200100858

Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: March 1, 2001
Proposal publication date: December 15, 2000
For further information, please call: (512) 424-6576

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SUBCHAPTER F. GENERAL REIMBURSEMENT METHODOLOGY FOR ALL MEDICAL ASSISTANCE PROGRAMS

1 TAC §§355.701-355.709, 355.722, 355.723, 355.732, 355.733, 355.741-355.743, 355.761, 355.773, 355.775, 355.781

The amended rules are adopted under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program ; and §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of HHSC under Chapter 531, Government Code.

The amended rules implement §531.021(b), Government Code, concerning the adoption of rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, and §32.0281, Human Resources Code, concerning the adoption of rules regarding Medicaid reimbursement rates.

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 February 9, 2001.

TRD-200100859
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: March 1, 2001
Proposal publication date: December 15, 2000
For further information, please call: (512) 424-6576

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.70

The Texas State Library and Archives Commission adopts §2.70 relating to vehicle fleet management without change to the proposed text as published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11810).

The section adopts and provides for the implementation of the Statewide Vehicle Fleet Management Plan, provides for the designation of an agency vehicle fleet manager, and sets out the duties of the position. The section also provides that agencies vehicles be pooled for use and places restrictions on the assignment of vehicles to individual administrative or executive employees on a regular basis.

No comments were received

The section is adopted under the Government Code, §2171.1045, that requires each state agency to adopt rules relating to the assignment and use of its vehicles that are consistent with the Statewide Vehicle Fleet Management Plan.

The section implements the requirements of the Government Code, §2171.1045.

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 February 7, 2001.

TRD-200100814
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: March 15, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 463-5459

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.412

The Public Utility Commission of Texas (commission) adopts an amendment to §26.412, relating to Lifeline Service and Link Up Service Programs with changes to the proposed text as published in the September 1, 2000 *Texas Register* (25 TexReg 8564). The amendment is necessary to facilitate automatic enrollment of individuals qualifying for Lifeline Service and Link Up Service pursuant to the Public Utility Regulatory Act (PURA) §55.012 and §55.015 requirements. This amendment was adopted under Project Number 21329.

A public hearing on the amendment was held at commission offices on October 31, 2000. Representatives from Worldcom, Verizon, Southwestern Bell Telephone (SWBT), Texas

Department of Human Services (TDHS), John Staurllakis, Texas Telephone Association (TTA), the Office of Public Utility Counsel (OPUC), AT&T Communications of Texas, L.P. (AT&T), Sprint, Texas Legal Service Center (TLSC), Texas Statewide Telephone Cooperative, Inc. (TSTCI), Consumers Union, Texas Rose, Reliant Energy, the Office of State Representative Debra Danburg, American Electric Company, Texas Department of Housing and Community Affairs (TDHCA), GNVW Consultants, and Competitive Communications Group (CCG) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendment from the following eight parties: TTA, Worldcom, TDHS, SWBT, TSTCI, Verizon, AT&T and TLSC.

Subsection (a): Scope and purpose

TLSC noted that states like New York and California have outreach programs and simplified self-certification procedures that have greatly increased the number of individuals receiving Lifeline and Link Up services. TLSC recommended that the rule require carriers to commit to an outreach program for their territories, including a budget for media of general local use - such as billboards, television, radio, and community newspapers, to be coordinated by local community action agencies and approved by the commission. This outreach should be provided in English and Spanish. TLSC recommended that the commission fund this outreach through a supplemental legislative appropriations request.

Verizon believed that TLSC's proposal for outreach is premature and inappropriate. Verizon asserted the commission's focus should be implementation and that outreach can be taken up later.

TTA believed that alternatives should be considered for the objective of increasing public awareness of the Link Up service plan. TTA's members have been working with TDHS and the commission to produce outreach materials and programs for this objective. TTA opined that automatic enrollment for Link Up is not contemplated by Senate Bill 560, 76th Legislature, Regular Session (SB 560), and is not a goal attainable by the carriers. TTA stated that the carriers are willing to work with TDHS and the commission. TTA noted that 6,000 11.5 inch by 17.5 inch color posters for placement in all of TDHS' offices will cost approximately $450 and remarked that the commission indicated at the August 10, 2000, Open Meeting that it will participate in such efforts. TTA believed that the posters could be distributed to TDHS, Low Income Energy Assistance Program (LIHEAP), and federal housing offices, as well as to TLSC and Consumer's Union offices. If additional outreach is necessary, then TTA stated that the commission should seek legislative financing for it.

Worldcom asserted that the rule exceeds the legislation and that SB 560 did not give the commission authority to require eligible telecommunications carriers (ETCs) to fund direct marketing for Lifeline and Link Up. AT&T strongly supported the comments of Worldcom with regard to how the rule exceeds the legislative intent by requiring carriers to direct market Lifeline and regarding excessive costs to carriers for outreach programs. AT&T concurred with Worldcom's view that this rule will disproportionately impact competitive local exchange carriers (CLECs) and that notice requirements are duplicative and inefficient.

The commission agrees with parties contemplating outreach for automatic enrollment and will initiate a project as a follow-up for the final approved rule and enlist the participation of the interested parties to accomplish this end. Although the commission appreciates the concerns of AT&T and Worldcom regarding carriers' costs for outreach, the commission believes this concern is premature and is better addressed in a project that examines appropriate means and distribution of costs. As noted by TTA, there may be fairly inexpensive methods to promote the use of the program. And, as noted by Worldcom and AT&T at the public hearing, costs are often distributed fairly among carriers in other commission projects.

Subsection (b): Lifeline Service and Link Up Service

AT&T opposed the addition of the expansion of benefit to those at 125% or less of the federal poverty guidelines. AT&T regarded this as burdensome and beyond the scope of the SB 560 mandate for automatic enrollment. Further, AT&T argued that any self-certification requirement is at odds with the goal of automatic enrollment envisioned in the legislation.

Verizon recommended that the language be changed to say that customers may receive Lifeline service either through automatic enrollment where available or self-certification where automatic enrollment is not available. Verizon recommended that a separate subparagraph be created to allow consumers at or below the 125% federal poverty guideline to qualify for Link Up service.

The commission notes that currently all customers receiving Lifeline discounts participate in a self-certification process. The addition of the language allowing those at 125% or less of the federal poverty requirements to obtain Lifeline complies with the federal limitations placed upon states, parallels the electric discount program currently being developed by the commission, and captures a percentage of the population that would qualify for the TDHS benefits but chooses not to participate in public programs for reasons of self-reliance or convenience. Because it is the intent of this rule to expand the application of legitimate enrollment in the Lifeline program, the commission does not agree that SB 560's mandate has been exceeded. The commission also does not agree that a separate paragraph is needed to accommodate the inclusion of the poverty guideline because self-certification is discussed separately in the balance of the rule.

Subsection (c): Lifeline Service Program.

AT&T noted that the Federal Communications Commission's (FCC) CALLS Order has increased the amount of the subscriber line charge (SLC) (*i.e.*: from $3.50 per access line to $4.35 per access line for residential customers) and recommended changing the language here to reflect that fact and the FCC's intention to annually review the SLC over the next three years.

TTA recommended revising the phrase "and discounts totaling $10.50 per monthly bill". TTA supplied a redlined version of its recommended revisions.

The commission adopted the language recommended by TTA and incorporated all of the above recommendations accordingly.

Subsection (c)(1)(B)

In subsection (c)(1)(B)(i), regarding toll-blocking requirements, TDHS recommended the following revision: "The eligible telecommunications carrier shall offer toll blocking to all qualifying consumers...."

The commission believes that the term "low-income" is necessary and includes all categories of consumers who qualify for Lifeline.

Subsection (c)(1)(C)(i)-(iii)

AT&T recommended changing the title of subsection (c)(1)(C)(ii) to "Discontinuance of Lifeline Service," noting that the use of the term Disconnection is confusing. AT&T also suggested that it be made clear that the carrier will be reimbursed for the provision of Lifeline service throughout the period that it is required to notify end users being declared ineligible by TDHS records. AT&T stated that its position was that carriers should be able to rely exclusively upon TDHS records and that 30 days is the appropriate timeframe for discontinuing the user's Lifeline service (as opposed to the 60 days in this subsection). AT&T believed that TLSC's recommendation that subsection (c)(1)(C)(ii) be revised to require self-addressed postage paid reply forms and envelopes runs counter to AT&T's contention that self-certification should be discontinued in its entirety. In addition, AT&T opined that the non-reimbursable costs are unwarranted. Further, AT&T favored an affidavit because this will protect the company against customer fraud. AT&T reiterated that TLSC's assertion that automatic enrollment includes Link Up and that all carriers are required to implement it and provide outreach exceeds the SB 560 intent and is over-broad.

TLSC disagreed with AT&T's position that the 60-day grace period for discontinuing the discount be shortened to 30 days and notes the difficulty that a client may have in proving eligibility. TLSC also pointed out that errors do occur. TLSC recommended that subsection (c)(1)(C)(ii) be amended to require the notice of disconnection sent to end-users be accompanied by the self-certification form and a self-addressed postage paid envelope. TLSC also recommended that the use of the term "affidavit" with reference to self-certification be replaced with the term "sworn statement." Affidavits require notarization, which makes the process costly and difficult for many potentially qualified recipients. Further, TLSC provided a "Customer Self-Certification of Income Eligibility Form" and noted this will eliminate the requirement for carriers to develop such a form and be subject to the commission's review.

TDHS noted it only had knowledge of the individuals eligible for food stamps, Medicaid and Supplemental Security Income (SSI), and not of recipients of federal housing assistance and the LIHEAP programs. TDHS recommended this revision: "Upon notice by the Texas Department of Human Services (TDHS) that an end user no longer qualifies for food stamps, Medicaid or Supplemental Security Income, the eligible...."

TTA and Worldcom also recommended subsection (c)(1)(C)(ii)-(iii) be revised. These revisions would change "Disconnection" to "Discontinuance" and change the timeframe for annual affidavits for customers. TTA provided a redlined version of its changes.

Finally, Verizon noted that subsection (c)(1)(C)(ii) is unnecessary because service is not interrupted when the customer no longer qualifies for Lifeline. Verizon reminded parties that only the Lifeline discount is halted. Therefore, the modifications recommended by parties are not necessary in Verizon's opinion.

The commission has incorporated AT&T's suggested title for subsection (c)(1)(C)(ii). The commission does not agree with AT&T's argument regarding shortening the timeframe from 60 days to 30 days because TLSC's argument regarding the complexity of addressing this matter via governmental and local exchange carrier (LEC) bureaucratic structures is compelling. However, the commission does not concur with TLSC's conclusion that a self-addressed stamped envelope must be provided by the carrier, believing that it is not an undue burden for the subscriber to mail or deliver their response to this inquiry. The commission has also incorporated the language change recommended by TDHS and recognizes the limitations of the automatic enrollment database at this time. As discussed at the public hearing, there is every expectation that the automatic enrollment process will evolve and expand its database and administration over the next two years. The commission believes that TLSC has mis-interpreted the LECs' and the commission's intent regarding the customer's self-affirmation and notes that nothing in this rule should be interpreted to require notarization of the document submitted.

In subsection (c)(1)(C)(iii), TDHS recommended that the language be changed to indicate that individuals who can self-certify include those receiving federal housing assistance and LIHEAP benefits as well as those who are low-income. TDHS believed that referring to the consumer as low-income might cause confusion because the qualifications for participation are low-income and be in one of the TDHS programs (food stamps, Medicaid or SSI) or in one of the other two benefit programs. Therefore, references to "low-income" appear to indicate that the consumer is different from those individuals who qualify for the service based upon receipt of one of the specific benefit programs. TDHS recommended the following change: "Individuals not receiving benefits through TDHS programs, but who have met Lifeline and Link Up qualifications in subsection (b)...." And, for the same reason, TDHS recommended that all references to "low-income" be deleted.

AT&T supported TDHS' recommendation to remove the term "low-income" but notes that TDHS' recommendation regarding separate lists from LIHEAP and federal housing offices is not addressed in the rule. AT&T recommended that TDHS should engage in a cooperative venture with these other agencies for the formation of the list. AT&T also reiterated its position that self- certification be removed from the rule. AT&T believes that if self-certification is allowed it should be the responsibility of TDHS to process this; otherwise, the carrier's customers will have to absorb the administrative costs. Further, AT&T recommended a one-time notice to all those customers currently self-certified for Lifeline. AT&T also objected to having to mail the end user an affidavit and a notice twice before discontinuing the discount.

Worldcom recommended that self-certified customers receive one notice per year advising they have 60 days to return the accompanying affidavit for continued service.

The commission has incorporated the use of the term "discontinuance" as recommended by parties. The commission was persuaded by AT&T's argument regarding the second notice to customers and believes the 60-day response period allows adequate time for the customer to address verification. Companies discussed the likelihood that they might employ a telephone follow-up for customers who had not responded because it is more cost-effective. Regardless, a customer disconnected from the discount in error has not had their service terminated and may easily regain the discount by contacting their company. The commission believes that the use of the term "low-income" does not cause confusion and encompasses all categories of qualification for the Lifeline program. The commission recognizes that other agencies do not currently share information with TDHS for incorporation into the database being developed but, the commission anticipates that the involvement of these agencies may be gained in the future, perhaps during the outreach project.

Subsection (c)(1)(D)

TLSC recommended carriers be required in their notice to applicants to advise that a service deposit is not necessary if the applicant elects toll blocking.

The commission concurs and will address this issue in Project Number 23608, *Implementation and Outreach for Lifeline and Link Up Service Automatic Enrollment*.

Subsection (c)(2)(C)(i)-(iv)

Based on AT&T's comments regarding the federal SLC, AT&T recommended that in subsection (c)(2)(C)(i)-(iv), the dollar amounts should be eliminated.

The commission has made appropriate changes to address AT&T's concern.

Subsection (d): Link-Up Service Program

Subsection (d)(1)(B)

AT&T believed language should be added to allow the carrier to assess late fees if a customer fails to meet their payment obligations under deferred payment plans and the carrier should be allowed to disconnect service entirely if payments are not made in a timely fashion.

The commission declines to incorporate AT&T's recommendation and notes that this section was adopted from the federal statute.

Subsection (e): Obligations of the consumer and the eligible telecommunications carrier

Subsection (e)(1)

AT&T again noted its objection to self-certification.

TDHS recommended the following: "Consumers who meet the requirements for qualification listed in subsection (b) of this section but do not receive benefits under the food stamp, Medicaid or Supplemental Security Income (SSI) programs may provide their local eligible telecommunications carrier with an affidavit of self-certification for Lifeline and/or Link Up Service benefits. Consumers receiving food stamps, Medicaid or SSI benefits and who have telephone service...."

Verizon sought clarification that self-certification is available for consumers who qualify under any program in subsection (b) but for whom automatic enrollment is not available, and that Link Up service requires the consumer to initiate a request with their carrier of choice.

Worldcom recommended changing the language in subsection (e)(1) to require that consumers notify TDHS if they do not want to receive Lifeline service. However, TDHS responded that it does not have the capability to do anything with that information at this time because it does not know who is or is not enrolled in the program.

The commission believes that the changes it has made address many of the concerns above. Although the commission recognizes the objections of some parties to self-certification, it notes that *all* current recipients of Lifeline are self-certified. In addition, some states, such as California, use self-certification alone for receipt of the Lifeline discount, and, in this instance, self-certification is included to allow qualifying customers outside of the database to legitimately receive the benefit of the Lifeline discount. Further, at the public hearing, consumer groups emphasized the importance of self-certification. Therefore, because no harm is incurred by its inclusion and it may be advantageous to the enrollment of a significant population of qualified customers, the commission has retained self-certification in this rule. However, the commission disagrees with the clarifications suggested by Verizon because the commission does not believe that language clarifications are needed. The commission also disagrees with Verizon that potential Link Up customers should be required to initiate a request for service in order to receive services.

Subsection (e)(2)(A)(i)-(iii)

In subsection (e)(2)(A)(i), Verizon recommended that language be changed from requiring an eligible telecommunications carrier (ETC) to provide service within its territory to "offering" the service for qualified individuals in its territory. In subsection (e)(2)(A)(i)(II), Verizon stated that it did not believe that Link Up service is part of automatic enrollment as envisioned by SB 560 and recommends customers be required to self-certify for Link Up and that this section not be adopted.

TLSC agreed with other parties that subsection (e)(2)(A)(i) appears to create a duplicative process and prefers a single direct mail notice be sent by a third party on a semiannual basis and be paid for by the industry. TLSC stated that the draft rule does not ensure that a TDHS client actually gets the brochure and material. TLSC believed that this is a minimal requirement to get people who deserve the program the services they need. TLSC wanted the preamble to commit the commission and parties to a follow-up project to track, analyze and make further recommendation regarding enrollment. TLSC believed that a third party, like LIDA, or a third- party administrator could conduct such outreach and do computer matches in the future.

AT&T recommended language be changed to require only the carrier serving the qualifying end user to notify them of the discount. AT&T noted that the directory and annual notice provided by all ETCs already provides advertisement of the availability of Lifeline service. Again, AT&T recommended a 30-day timeframe. AT&T suggested the following language to subsection (e)(2)(A)(ii): "Upon receipt of the monthly update provided by TDHS under subsection (e)(2) of this section, the eligible telecommunications carrier shall begin reduced billing for those qualifying low-income consumers subscribing to services within thirty days of receipt of the monthly update and fulfillment by the consumer of all criteria necessary to initiate service with the carrier, whichever is later."

In subsection (e)(2)(A)(ii), TDHS recommended the following: "Upon receipt of the monthly update provided by TDHS under subsection (f)(2) of this section, the eligible telecommunication carrier shall begin reduced billing for those qualifying consumers." TDHS also noted that the reference to the monthly update provided by TDHS should be in subsection (f)(2), not (e)(2).

TTA recommended changes to address concerns related to duplicative notice by companies and to the Link Up program.

Worldcom recommended deletion of subsection (e)(2)(A)(i)(II) because mail-outs for all non-matches are not necessary. Worldcom believed that the consequences resulting from direct marketing requirements found in subsection (e) will delay implementation of the rule. Worldcom agreed with TLSC that the expense will be passed on to all consumers. Worldcom stated that the more we stray from direct automatic enrollment (meaning processes developed between TDHS and the industry to effectuate the transfer of information regarding eligible customers in the direct provisioning of benefits) and incorporate direct marketing or direct mail- out requirements, more time will be required to get this project moving, which means less benefit to all Texas

consumers. Worldcom opined that costs and delay would be the unintended public interest consequences if the rule were adopted as currently written, with multiple carriers sending letters to non-matches.

AT&T recommended subsection (e)(2)(A)(iii) be deleted in its entirety because of its objections to self-certification.

In subsection (e)(2)(A)(iii), TDHS recommended: "The eligible telecommunications carrier shall provide an affidavit of self-certification to all customers who may meet the criteria of subsection (b) of this section but do not receive benefits from TDHS...."

The commission has deleted subsection (e)(2)(A)(i)(II) because it is persuaded by the parties' arguments that this will reduce duplication for LECs and confusion for end users. As addressed more fully above, the commission disagrees with AT&T's position on self-certification. Also, the commission declined TDHS' language suggestions because, as stated previously, the commission believes that "low-income" should be included in the rule language.

Subsection (e)(2)(B)

AT&T objected to subsection (e)(2)(B) for the same reasons as subsection (e)(2)(A), that notice will be duplicative. Also, AT&T saw no basis for this subsection related to Link Up service because it is not addressed specifically in SB 560. AT&T recommended it be deleted in its entirety.

TDHS recommended: "The eligible telecommunications carrier shall provide Link Up Service to all qualifying consumers...."

TTA and TLSC recommended changes to address concerns related to duplicative notice by companies and to the Link Up program.

Verizon recommended that "provide" be replaced with "offer" and that the qualification "within the ETC's service territory" be added.

Worldcom objected to subsection (e)(2)(B) and stated its position that Link Up is a separate program from Lifeline and this subsection requires ETCs to effectively solicit new customers who will be Lifeline-eligible.

The commission believes promotion of service connection for customers who do not have existing service is part of the intent behind automatic enrollment and, although installation of service will not be "automatic," provisions for Link Up Service are necessary in the rule. The commission has made revisions pursuant to the recommendations of parties that it believes address the above concerns.

Subsection (f): Memorandum of Understanding

TDHS wanted to make clear that the format will be the same for every carrier.

Subsection (f)(2)(A)

TDHS believed the wording of this section should be changed to reflect the negotiated wording of the memorandum of understanding (MOU) or should be changed to generally refer to the MOU executed between the commission and TDHS. Barring that, TDHS recommended the following revision in subsection (f)(2)(A), "TDHS will identify all active recipients of food stamp, Medicaid and SSI benefits who are therefore eligible for Lifeline and Link Up Service." TDHS stated that the client information it will provide is its minimum requirement, but TDHS may agree with the telephone companies to add additional client information, if necessary.

TLSC recommended that the commission work with TDHS to devise a specific process to insure that TDHS clients receive the outreach materials through TDHS' field offices and that this is included in the MOU.

The commission has incorporated the recommendations of TDHS. The commission does not believe the language recommended by TLSC is necessary at this time. During the public hearing, TDHS and the LECs indicated their willingness to accommodate outreach through TDHS' field offices and this matter will be addressed further in the follow-up project. The MOU only addresses the activities required by TDHS of the commission and by the commission of TDHS to accomplish a cooperative effort to implement automatic enrollment practices.

Subsection (f)(2)(B)

Worldcom believed subsection (f)(2)(B) should be modified to state that TDHS would provide its file via file transfer protocol (FTP).

TTA and AT&T proposed, as an alternative to an FTP format, that an Internet site be set up.

The commission agrees with the comments made at the public hearing that Worldcom's recommendation is too limiting. TDHS indicated at the public hearing that an Internet site would likely be established in the future. Again, the commission is encouraged by TDHS' cooperative interaction with the carriers and believes the database, its administration, and carrier use will evolve to accomplish the goal of automatic enrollment. Therefore, the commission has addressed the possibility of future evolution by maintaining neutrality in this section so that the parties may have the opportunity to create a database structure that meets their needs.

Subsection (f)(2)(C)

TDHS recommended the following revision to subsection (f)(2)(C): "TDHS and the eligible telecommunications carriers may agree on another format to the initial list. TDHS will provide each carrier's list using the same format." TDHS noted that it intends to provide data to each carrier using the same format and is negotiating with the carriers as a group to determine what that format will be.

The commission has incorporated changes to address TDHS' concern.

All parties unanimously supported the use of social security numbers to match customers.

AT&T believed the key element in identifying a qualifying customer is the telephone number and emphasized its concern regarding consistent availability of telephone numbers from TDHS' database. In addition, AT&T expressed its concern regarding customer privacy but noted that the rule does not address situations in which a telephone number does not match the name of the qualifying customer. Although AT&T does not use social security numbers, AT&T had no objection to carriers using social security numbers to identify customers.

Worldcom recommended modifying subsection (f)(2)(C) to have TDHS provide social security numbers because it is more reliable than phone numbers or addresses. Worldcom believed that this is the best way of matching customers, which lowers administrative costs to carriers and increases the number of

consumers receiving benefits, making the use of social security numbers good for consumers and carriers. In addition, Worldcom recommended that this subsection should be modified to say that monthly lists would only include new Lifeline eligible consumers and that there will be one annual file for deletions from the qualifying programs.

TDHS stated that it had received authorization from the Social Security Administration to share information related to supplemental security income recipients including social security numbers and also believed that the use of social security numbers would ensure more customers successfully being matched.

SWBT believed that there is no other reliable way to match consumers without social security numbers and strongly recommended that social security numbers be used to alleviate problems with similar or misspelled names or addresses.

Although TLSC usually does not support the of use social security numbers, TLSC believed that they are necessary in this instance to guarantee accuracy. TLSC believed that too many mismatches would occur without the ability of carriers to match customers using social security numbers.

The commission agrees with commentors that the use of social security numbers, where available to TDHS, in its database will increase the accuracy and number of matches. Although the commission is concerned about the use of social security numbers, the commission believes that the confidentiality agreement between TDHS and the LECs will ensure the necessary privacy protection for customers.

Subsection (f)(2)(D)

AT&T believed that TDHS should provide a list of the deleted consumers monthly instead of a list of the eligible consumers that would require the carrier to do a database search to eliminate the non-qualifying clients.

AT&T's recommendation has merit but is apparently impractical at present according to comments received at the hearing.

Subsection (g): Tariff requirement

No comments were received on this section.

Subsection (h): Review of Affidavits of Self-Certification, letters and notices provided by carriers

AT&T objected to any commission review *and approval* of its materials for consumers. Worldcom stated that it wants the flexibility to use whatever type of form it finds reasonable, so as not to incur any additional development costs in complying with the exact wording of a form that the commission might want to use as a uniform self-certification form. However, Worldcom concurred that it is reasonable in the future for the commission to create some uniformity with the forms.

After extensive discussion at the public hearing, the commission concludes that the commission must review the forms, but that the LECs will not be required to make immediate changes to printed materials. Instead, the commission proposes in a follow-up project to review these materials and work to develop uniform letters, notices and self-certification forms to be used by all parties on a going forward basis only.

Subsection (i): Implementation timeline

AT&T recommended the commission establish a compliance timeline and require a waiver if a carrier cannot meet that timeline.

TLSC was concerned about timely implementation and compliance by the carriers and believed that the rule proposed allows carriers too much time to comply with legislation already old. TLSC emphasized that the industry has had over a year to prepare for automatic enrollment and that implementation should occur immediately upon adoption of the rule.

Verizon disagreed with TLSC's recommendation regarding implementation and believes that six months is appropriate.

TTA & TSTCI took issue with TLSC's comments because of the implication that the industry is "holding up" the process of automatic enrollment and is not in compliance with legislative mandates. TTA & TSTCI believe that this process requires detailed coordination of efforts and TDHS cannot do the bulk of its work until a rule is finalized. TTA & TSTCI believe to do otherwise would be an ineffective use of resources and investment.

AT&T stated that TLSC's contention that all carriers should implement automatic enrollment at the time the commission adopts the rule is unsupportable and legally inaccurate, as well as fundamentally lacking in an understanding of the business needs of the carriers. AT&T projected a six-month period, at a cost of $300,000 - $600,000, between adoption of the rule and carrier implementation.

Worldcom and SWBT supported staff's language as proposed. SWBT outlined a process for implementation, which SWBT believed would take approximately six months to complete.

Although the commission appreciates TLSC's concerns regarding the timeline, the changes made in this section accept the practical implications of implementation as the parties have expressed them.

Subsection (j): Reporting requirements

AT&T opposed the collection and reporting of data on Lifeline customers because the notice required in subsection (e)(2)(A)(ii)(II) is wasteful and should be deleted and asserted that the information would be meaningless. AT&T stated that this runs counter to the goal of SB 560 which requires TDHS to identify the consumers who are eligible and create a database for the collection of such data as may be needed.

Worldcom believed that subsection (j)(1) should be modified as a result of the deletion of subsection (e)(2)(A)(i)(II).

SWBT suggested language "within one year of the effective date," because carriers have up to 180 days to implement, with a report due 180 days later.

The commission concludes that better information may be obtained after a full year of implementation and has made the appropriate changes allowing the commission to determine, based on carrier reports, the effectiveness of the automatic enrollment process.

Subsection (k): Notice of Lifeline and Link Up Services

AT&T recommended modification to clarify that notice in a directory is satisfactory.

TLSC stated that this section should be amended to include a bilingual notice. TLSC also stated that the goal here should be to have a rule that ensures that those people who are eligible for Link Up receive the benefits.

The annual bill notice in this section is a requirement of the federal statutes. In addition, as a result of the hearing discussions

with consumer groups, the commission has added language regarding bilingual notice with the intent of greater outreach.

Subsection (l): Confidentiality agreements

No comments were received on this section.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §55.012 and §55.015, which require that the commission adopt rules providing for automatic enrollment of eligible consumers to receive Lifeline Service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, §55.012 and §55.015.

§26.412. Lifeline Service and Link Up Service Programs.

(a) Scope and purpose. Through this rule the commission seeks to extend Lifeline Service and Link Up Service to all qualifying end users and establish a procedure for the Lifeline Automatic Enrollment Program. This section applies to eligible telecommunications carriers as defined by §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds) and §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(b) Lifeline Service and Link Up Service. Each eligible telecommunications carrier shall provide Lifeline Service and Link Up Service as provided by this section. A customer with an income at or below 125% of the federal poverty guidelines, or receiving benefits from any of the following programs qualifies for Lifeline and Link Up Services: Medicaid, food stamps, Supplemental Security Income (SSI), federal public housing assistance, or Low Income Energy Assistance Program (LIHEAP). A customer eligible for Lifeline Service is automatically eligible for Link Up Service. However, a customer may qualify for and receive Link Up Service independently of Lifeline Service. Nothing in this section shall prohibit a customer otherwise eligible to receive Lifeline Service and/or Link Up Service from obtaining and using telecommunications equipment or services designed to aid such customer in utilizing qualifying telecommunications services.

(c) Lifeline Service Program. Lifeline Service is a retail local service offering available to qualifying low-income customers. Eligible telecommunications' carriers provide qualifying end users with a waiver of the federal subscriber line charge (SLC) and an additional discount up to $7.00 per monthly bill and are reimbursed from federal and state universal service funds.

(1) Provision of Lifeline Service. Lifeline Service shall be provided according to the following requirements.

(A) Designated Lifeline services. The eligible telecommunications carrier shall offer the services or functionalities enumerated in 47 Code of Federal Regulations §54.101(a)(1)-(9) (relating to Supported Services for Rural, Insular and High Cost Areas).

(B) Toll blocking.

(i) Toll blocking requirements. The eligible telecommunications carrier shall offer toll blocking to all qualifying low-income customers at the time such customers subscribe to Lifeline Service. If the customer elects to receive toll blocking, that service shall become part of the customer's Lifeline Service and the customer's monthly bill will not be increased by the toll blocking charge.

(ii) Waiver. The commission may grant a waiver of the requirement of clause (i) of this subparagraph upon a finding that exceptional circumstances prevent an eligible telecommunications carrier from providing toll blocking. The period for the waiver shall not extend beyond the time that the commission deems necessary for that eligible telecommunications carrier to complete network upgrades to provide toll blocking services.

(C) Disconnection of service.

(i) Disconnection prohibition. An eligible telecommunications carrier may not disconnect Lifeline Service for non-payment of toll charges.

(ii) Discontinuance of Lifeline Discounts when eligibility ends. Upon notice by the Texas Department of Human Services (TDHS), pursuant to subsection (f)(2)(D) of this section, that an end user no longer qualifies for Lifeline Service, the eligible telecommunications carrier shall provide a direct mail notice to the end user advising that the Lifeline Service discount will be discontinued 30 days from the date of the notice unless the end user notifies the eligible carrier that an error has been made. If the end user notifies the carrier of an error, the Lifeline Service discount will be continued for an additional 30 days to allow the end user adequate time to correct records and obtain an affirmation of eligibility from TDHS. If the end user has not obtained an affirmation of eligibility from TDHS by the end of the 60-day period, Lifeline Service may be discontinued and the end user's service and billing will continue at applicable tariffed rates.

(iii) Discontinuance of Lifeline Discounts for customers who have self- certified. Individuals not receiving benefits through TDHS programs, but who have met Lifeline income qualifications in subsection (b) of this section, may be required to verify their status with an affidavit. Eligible telecommunications carriers may require such verification annually and notify customers receiving Lifeline Service by direct mail that the accompanying affidavit must be submitted within 60 days to continue the Lifeline service. If the customer does not respond within 60 days, the Lifeline discount will cease and service will continue at applicable tariffed rates.

(D) Service deposit prohibition. If the qualifying low-income customer voluntarily elects toll blocking from the eligible telecommunications carrier, the carrier may not collect a service deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits), in order to initiate Lifeline Service.

(2) Lifeline support.

(A) Lifeline support amounts. Lifeline support amounts per qualifying low- income customer shall be provided according to the provisions of this paragraph.

(i) Federal baseline Lifeline support amount. An eligible telecommunications carrier shall grant a waiver of the monthly federal subscriber line charge (SLC) to qualifying low-income customers. If the eligible telecommunications carrier does not charge the federal SLC, it shall apply the federal baseline support amount to reduce its lowest tariffed residential rate for supported services.

(ii) State-approved $1.75 reduction. Pursuant to 47 Code of Federal Regulations §54.403 (relating to Lifeline Support Amount), an eligible telecommunications carrier shall give a

qualifying low- income customer a state-approved reduction of $1.75 in the monthly amount of intrastate charges paid.

(iii) Additional state reduction with federal matching. Pursuant to 47 Code of Federal Regulations §54.403, an eligible telecommunications carrier shall give a qualifying low-income customer the following:

(I) an additional state-approved reduction of $3.50 in the monthly amount of intrastate charges; and

(II) a further federally approved reduction of $1.75.

(B) Recovery of support amounts.

(i) Federal baseline Lifeline support. An eligible telecommunications carrier shall be entitled to recover the support amount required by subparagraph (A)(i) of this paragraph pursuant to 47 Code of Federal Regulations §54.407 (relating to Reimbursement for offering Lifeline), through the federal USF.

(ii) State-approved $1.75 reduction. An eligible telecommunications carrier shall be entitled to recover federal Lifeline support pursuant to 47 Code of Federal Regulations §54.407 to recover the reduction amount required by subparagraph (A)(ii) of this paragraph.

(iii) Additional state reduction with federal matching.

(I) An eligible telecommunications carrier shall be entitled to recover support from the Texas Universal Service Fund to recover the reduction amount required by subparagraph (A)(iii)(I) of this paragraph.

(II) An eligible telecommunications carrier shall be entitled to recover federal Lifeline support pursuant to 47 Code of Federal Regulations §54.407 to recover the reduction amount required by subparagraph (A)(iii)(II) of this paragraph.

(C) Application of support amounts.

(i) An eligible telecommunications carrier that is also an incumbent local exchange company (ILEC) as defined by §26.5 of this title (relating to Definitions) that offered, as of June 1, 1997, a tariffed $3.50 Lifeline Service rate discount in addition to the $3.50 waiver of the federal SLC, must reduce rates for services determined appropriate by the commission by an amount equivalent to the amount of support it is eligible to receive. If such ILEC does not reduce its rates pursuant to a commission order, it shall not be eligible to receive support.

(ii) Eligible telecommunications carriers that charge the federal SLC or equivalent federal charges shall apply the federal baseline Lifeline support to waive a qualified low-income customer's federal SLC. The state-approved reductions of $1.75 and $3.50 and the additional federally approved reduction of $1.75 shall be applied to reduce the monthly intrastate end user charges paid by the qualifying low-income customers.

(iii) Eligible telecommunications carriers that do not charge the federal SLC or equivalent federal charges shall apply the federal baseline Lifeline support amount, plus the state-approved reduction of $1.75 and $3.50 and the additional federally approved reduction of $1.75 to reduce their lowest tariffed residential rate for the supported services and charge qualified low-income customers the resulting amount.

(iv) The monthly discounted residential rate for qualified low-income customers may not be reduced below $2.50.

(d) Link Up Service Program. This is a program certified by the Federal Communications Commission (FCC), pursuant to 47 CFR §54.411, that provides a qualifying low- income customer with the following assistance:

(1) Services.

(A) A qualifying low-income customer may receive a reduction in the eligible telecommunications carrier's customary charge for commencing telecommunications service for a primary single line connection at the customer's principal place of residence. The reduction shall be half of the customary charge or $30, whichever is less.

(B) A qualifying low-income customer may receive a deferred schedule for payment of the charges assessed for commencing service, for which the customer does not pay interest. Interest shall be waived for connection charges of up to $200 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements. Deferred payment of these charges will not be subject to late fees or additional service fees.

(2) Qualifying low-income customer choice. A qualifying low-income customer is eligible for both of the services set forth in paragraphs (1)(A) and (B) of this subsection.

(3) Limitation on receipt. An eligible telecommunications carrier's Link Up Service shall allow a qualifying low-income customer to receive the benefit of Link Up Service on subsequent occasions only for a principal place of residence with an address different from the residence address at which the Link Up Service was provided previously.

(e) Obligations of the customer and the eligible telecommunications carrier.

(1) Obligations of the customer. Customers who meet the low-income requirement for qualification but do not receive benefits under the programs listed in subsection (b) of this section may provide their local eligible telecommunications carrier with an affidavit of self-certification for Lifeline and/or Link Up Service benefits. Customers receiving benefits under the programs listed in subsection (b) of this section and who have telephone service will be subject to the Lifeline automatic enrollment procedures of TDHS unless they provide their local carrier with a request to be excluded from Lifeline Service. Customers receiving benefits under the programs listed in subsection (b) of this section and who do not have telephone service must initiate a request for service from eligible telecommunications carriers providing local service in their area.

(2) Obligations of eligible telecommunications carriers.

(A) Lifeline Service.

(i) The eligible telecommunications carrier shall provide Lifeline Service to all eligible customers identified by TDHS within its service area in accordance with this section.

(I) The eligible telecommunications carrier shall identify those customers on the initial list(s) provided by TDHS to whom it is providing telephone service and shall begin reduced billing for those qualifying low-income customers in accordance with the timeline filed with the commission pursuant to subsection (i) of this section.

(II) The eligible customer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated

with transferring the account into Lifeline Service. If the eligible customer changes the telephone service or initiates new service, the eligible telecommunications carrier shall begin reduced billing at the time the change of service becomes effective or at the time new service is established.

(ii) Upon receipt of the monthly update provided by TDHS under subsection (e)(2) of this section, the eligible telecommunications carrier shall begin reduced billing for those qualifying low-income customers subscribing to services within 30 days of receipt of the monthly update.

(iii) The eligible telecommunications carrier shall provide a blank affidavit of self-certification to all customers who may meet the low-income criteria of subsection (b) of this section but do not receive benefits from TDHS and shall provide such affidavit by direct mail at the customer's request. Upon receipt of the customer's signed affidavit the eligible telecommunications carrier shall initiate Lifeline Service within 30 days. The eligible telecommunications carrier may require annual verification pursuant to the procedure in subsection (c)(i)(C)(iii) of this section.

(B) Link Up Service. The eligible telecommunications carrier shall provide Link Up Service to all qualifying low-income customers as described in this section. Upon receipt of the self-certification affidavit, the eligible telecommunications carrier will initiate contact, by direct mail or telephone, with the qualifying customer to determine any necessary information required to accomplish a request for new service. The customer will remain eligible for the Link Up discounts for the 12-month period covered by the self-certification affidavit but the customer will be required to contact the eligible telecommunications carrier to initiate an order for service.

(f) Memorandum of Understanding. Pursuant to a Memorandum of Understanding (MOU) between the commission and TDHS to facilitate automatic enrollment of eligible customers in Lifeline, the commission and the TDHS will undertake the following obligations.

(1) Commitments of the commission.

(A) The commission will provide TDHS with a listing of eligible telecommunications carriers in the state. The listing will include the carriers' mailing addresses, a list of the counties served by each carrier, and a carrier contact for Lifeline and Link Up Services.

(B) On a monthly basis, the commission will provide electronic updates to the listing set out in subparagraph (A) of this paragraph, including changes, additions or deletions to the listing.

(C) The commission will work with TDHS and the eligible telecommunications carriers to develop informational material on Lifeline and Link Up Services for distribution to eligible customers through TDHS' field offices.

(D) The commission will provide TDHS with other information available to the commission that will assist TDHS in implementing an automatic enrollment system for eligible customers.

(2) Commitments of TDHS

(A) TDHS will identify all active recipients of the benefits in subsection (b) of this section who are therefore eligible for Lifeline and Link Up Service.

(B) By March 2, 2001, provided that TDHS has received a signed confidentiality agreement pursuant to subsection (1) of this section, TDHS will provide each eligible telecommunications carrier with an initial list of eligible customers for automatic enrollment in Lifeline Service in an electronic format.

(C) The initial list set out in subparagraph (B) of this paragraph shall include the name, address, county, telephone number, if available, and social security number (SSN) of the qualifying customer. TDHS and an eligible telecommunications carrier may agree on another format to the initial list.

(D) TDHS will provide electronic updates to the initial list, in the same format, to each eligible telecommunications carrier. The monthly updates provided by TDHS will include new eligible customers only. An annual update provided by TDHS will include "deletes", defined as a person or persons who have ceased being eligible or ceased receiving benefits from TDHS. The annual delete file will be provided by TDHS on February 1 of each year, beginning February 1, 2002.

(E) TDHS will work with the commission and the eligible telecommunications carriers to develop informational material on Lifeline and Link Up Services for distribution to eligible customers through TDHS' field offices.

(g) Tariff requirement. Each carrier seeking designation as an eligible telecommunications carrier shall file a tariff to implement Lifeline Service and Link Up Service, or revise its existing tariff for compliance with this section and with applicable law, prior to filing its application for designation as an eligible telecommunications carrier. Within 60 days of the effective date of this section all carriers currently offering Lifeline and Link Up Service shall file a revised tariff in compliance with this section. No other revision, addition, or deletion unrelated to Lifeline Service and Link Up Service shall be contained in the tariff application.

(h) Review of Affidavits of Self-Certification, letters and notices provided by eligible telecommunications carriers. Within 30 days of the effective date of this section, eligible telecommunications carriers must provide drafts of its standard affidavit of self- certification for low-income customers and any proposed letters, notices, or informational material, including text of its directory notice, to be used pursuant to this section for commission review and approval.

(i) Implementation timeline. Telecommunications carriers must implement the Lifeline Service Automatic Enrollment Program within 180 days after the effective date of this section.

(j) Reporting requirements.

(1) After receipt of the initial TDHS eligibility list and then annually on the anniversary of the date of the telecommunications carrier's full implementation of the automatic Lifeline enrollment process, all eligible telecommunications carriers shall file with the commission a report detailing how many customers were enrolled through the Lifeline Automatic Enrollment Program.

(2) Texas Universal Service Fund (TUSF). An eligible telecommunications carrier providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information.

(A) Initial reporting requirements. An eligible telecommunications carrier shall provide the commission and the TUSF administrator with information demonstrating that its Lifeline Service plan meets the requirements of this section.

(B) Monthly reporting requirements. An eligible telecommunications carrier shall report monthly to the TUSF administrator the total number of qualified low-income customers to whom Lifeline Service was provided for the month by the eligible telecommunications carrier.

(C) Other reporting requirements. An eligible telecommunications carrier shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

(3) Federal Lifeline Service Program. An eligible telecommunications carrier shall file the following information with the administrator of the Federal Lifeline Program:

(A) information demonstrating that the eligible telecommunications carrier's Lifeline Service plan meets the criteria set forth in 47 Code of Federal Regulations Subpart E (relating to Universal Service Support for Low- Income Consumers);

(B) the number of qualifying low-income customers served by the eligible telecommunications carrier;

(C) the amount of state assistance; and

(D) other information required by the administrator of the Federal Lifeline Program.

(k) Notice of Lifeline and Link Up Services. An eligible telecommunications provider shall provide notice of Lifeline and Link Up Services in any directory it distributes to its customers and shall provide an annual bill message advising customers of the availability of Lifeline and Link Up Services. In any instance where the carrier provides bilingual (English and Spanish) information in its directory and annual bill messages, the carrier must also provide its notice regarding Lifeline and Link Up Service in a bilingual format.

(l) Confidentiality agreements. Eligible telecommunications carriers must execute a confidentiality agreement with TDHS prior to receiving the eligible customer list pursuant to subsection (f)(2)(B) of this section. The agreement will specify that client information is released by TDHS to the carrier for the sole purpose of providing Lifeline and/or Link Up Service to eligible customers and that the information cannot be released by the carrier or used by the carrier for any other purpose.

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 February 12, 2001.

TRD-200100862
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 4, 2001
Proposal publication date: September 1, 2000
For further information, please call: (512) 936-7308

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

The Texas Education Agency (TEA) adopts amendments to 19 TAC §§66.1, 66.7, 66.10, 66.21, 66.24, 66.27, 66.28, 66.36, 66.54, 66.69, 66.78, 66.104, and 66.131, concerning state adoption and distribution of instructional materials. The sections establish procedures for the adoption, purchase, and distribution of instructional materials. The sections also specify definitions, requirements, and procedures related to: general provisions; state adoption of instructional materials; local operations; and disposition of instructional materials. Sections 66.1 and 66.10 are adopted with changes to the proposed text as published in the November 24, 2000, issue of the *Texas Register* (25 TexReg 11622). Sections 66.7, 66.21, 66.24, 66.27, 66.28, 66.36, 66.54, 66.69, 66.78, 66.104, and 66.131 are adopted without changes and will not be republished. The TEA withdraws the amendment to §66.51 that was filed as proposed in the November 24, 2000, issue of the *Texas Register* (25 TexReg 11625) in order to consider additional changes. The notice of withdrawal can be found in the Withdrawn Rules section in this issue.

The adopted amendments include changes relating to: scope of rules, back-order penalties; payment of fines; review and adoption cycles; review and renewal of contracts; maximum cost for instructional materials; adoptions by reference; samples; ancillary materials; notification of expected ship dates for back-ordered textbooks; school district responsibility to pay the portion of the cost of instructional materials above the state maximum; and disposition of out-of-adoption instructional materials.

A minor technical edit has been made to §66.1 to correct punctuation.

In response to comments, the following changes have been made to §66.10 since published as proposed.

The word "adopted" has been added to subsections (g) and (i) to references to instructional materials to clarify that the specified penalty provisions apply to failure to deliver adopted instructional materials.

The following comment was received regarding adoption of the amendments.

Comment. A publisher's representative requested an editorial change to the language in proposed amendments to §66.10(g) and §66.10(i) to clarify that references in these subsections refer to failure to deliver adopted instructional materials in a timely manner.

Agency Response. The agency agrees with the comment and has modified the section.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§66.1, 66.7, 66.10

The amendments are adopted under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

§66.1. Scope of Rules.

The State Board of Education (SBOE) shall adopt lists of conforming and nonconforming instructional materials for use in the public schools of Texas according to the Texas Education Code, Chapter 31, and the requirements in this chapter. Instructional materials recommended as suitable for use in special populations, including bilingual education programs, shall be adopted according to the rules in this chapter for adopting regular instructional materials.

§66.10. Procedures Governing Violations of Statutes -- Administrative Penalties.

(a) Complaints. An official complaint alleging a violation of the Texas Education Code, §31.151, must be filed with the commissioner of education. The commissioner may hold a formal or informal hearing in the case of an apparent violation of statute. Upon determining that a violation has occurred, the commissioner shall report his or her findings to the State Board of Education (SBOE).

(b) Administrative penalties. Under the Texas Education Code, §31.151(b), the SBOE may impose a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of §31.151(a). An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.

(c) Penalties for failure to correct factual errors.

(1) A factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.

(2) A factual error repeated in a single item or contained in both the student and teacher components of instructional material shall be counted once for the purpose of determining penalties.

(3) A penalty may be assessed for failure to correct a factual error identified in the list of editorial corrections submitted by a publisher under §66.54(g) of this title (relating to Samples) or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the SBOE. The publisher shall provide an errata sheet approved by the commissioner of education with each teacher component of an adopted title.

(4) A penalty not to exceed $3,000 may be assessed for each factual error identified after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.

(d) Categories of factual errors.

(1) Category 1. A factual error in a student component that interferes with student learning.

(2) Category 2. A factual error in a teacher component only.

(3) Category 3. A factual error in either a student or teacher component that reviewers do not consider serious.

(e) First-year penalties. The base and per-book penalties shall be assessed as follows for failure to correct factual errors described in subsections (c) and (d) of this section.

(1) Category 1 error. $25,000 base plus 1% of sales.

(2) Category 2 error. $15,000 base plus 1% of sales.

(3) Category 3 error. $5,000 base plus 1% of sales.

(f) Second-year penalties. The base and per-book penalties shall be assessed as follows if a publisher, after being penalized for failure to correct factual errors described in subsections (c) and (d) of this section, repeats the violation in the subsequent adoption.

(1) Category 1 error. $30,000 base plus 1% of sales.

(2) Category 2 error. $20,000 base plus 1% of sales.

(3) Category 3 error. $10,000 base plus 1% of sales.

(g) Penalties for failure to deliver adopted instructional materials in a timely manner. The SBOE may assess administrative penalties against publishers who fail to deliver adopted instructional materials in accordance with provisions in the contracts.

(h) State Board of Education discretion regarding penalties. The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.

(i) Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency (TEA) in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver adopted instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

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

Filed with the Office of the Secretary of State on February 12, 2001.

TRD-200100874
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Effective date: March 4, 2001
Proposal publication date: November 24, 2000
For further information, please call: (512) 463-9701

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SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.21, 66.24, 66.27, 6628, 66.36, 66.54, 66.69, 66.78

The amendments are adopted under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

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

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Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
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SUBCHAPTER C. LOCAL OPERATIONS

19 TAC §66.104

The amendment is adopted under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

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SUBCHAPTER E. DISPOSITION OF INSTRUCTIONAL MATERIALS

19 TAC §66.131

The amendment is adopted under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER D. UNIFORM BANK BID AND DEPOSITORY CONTRACT

19 TAC §109.51, §109.52

The Texas Education Agency (TEA) adopts amendments to 19 TAC §109.51 and §109.52, concerning uniform bank bids and depository contracts, without changes to the proposed text as published in the November 24, 2000, issue of the *Texas Register* (25 TexReg 11628) and will not be republished. Section 109.51 establishes the requirement that each school district submit a blank uniform bid form to each bank located in the district and, if desired, to other banks interested in acting as depository for all funds. The section includes the bid form prescribed by the State Board of Education (SBOE). Section 109.52 establishes the requirement that each school district select a bank or banks as school depository or depositories and enter into a depository contract or contracts with the bank or banks. A school district may also enter into a bond or bonds with the bank or banks. The section includes the depository contract form with the content prescribed by the SBOE.

The adopted amendments include updates to the bid form (Figure 19 TAC §109.51(b)) and the contract form (Figure 19 TAC §109.52(b)) and the addition of a new surety bond form (Figure 19 TAC §109.52(d)). Revisions to the bid form and contract form include: wording to specify that the content of a surety bond is defined in SBOE rule; details relating to surety bonds such as payments, signatures, school district board of trustee approval, and bond conditioning; specifications regarding the location for the venue for litigation; and conditions for early withdrawal penalties related to interest rates. In addition, revision to the contract form stipulates that the length of the contract extends until a successor is selected and qualified. The new surety bond form sets forth requirements relating to: guarantee; designation of depository owner(s) and account(s); limit of liability; payment of loss; termination or cancellation; responsibility of bank; consolidation or merger; and sole use and benefits.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §7.102(b)(34), which requires the SBOE to prescribe uniform bid blanks for school districts to use in selecting a depository bank as required under §45.206; and §45.208, which requires the SBOE to prescribe the form and content of a depository contract or contracts, bond or bonds, or other necessary instruments setting forth the duties and agreements pertaining to a depository.

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

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Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

The Texas Board of Architectural Examiners adopts an amendment to Chapter 1, Subchapter A, §1.5 concerning defined terms. The proposal to amend this rule was published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9805). The amendment is being adopted without changes. The text of the section will not be republished.

The amendment sets forth a definition for the word "reinstatement."

No public comments were received regarding the proposed amendment.

The amendment is adopted pursuant to Section 3b of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties.

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

Filed with the Office of the Secretary of State on February 7, 2001.

TRD-200100773
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: February 27, 2001
Proposal publication date: September 29, 2000
For further information, please call: (512) 305-8535

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SUBCHAPTER C. EXAMINATIONS

22 TAC §1.52

The Texas Board of Architectural Examiners adopts new §1.52 concerning the scholarship fund established by Section 7a of the Architects' Registration Law. The new §1.52 seeks to define how the scholarship fund will be administered. The proposal to adopt this rule was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10083). The rule is being adopted with changes. The changes are intended to allow the Board to choose between administering all aspects of the fund itself or selecting an outside entity to assist with administration; to allow the Board to refrain from collecting the fee on an annual basis; to allow the Board to distribute scholarship monies even after a candidate has completed the registration process, and to limit the appearance of impropriety in the awarding of scholarships by prohibiting awards to certain categories of people.

No public comments were received regarding the proposed rule.

The new sections are adopted pursuant to Section 7(a) of Article 249a, Vernon's Texas Civil Statutes, which requires the Texas Board of Architectural Examiners to create rules to implement a statutorily mandated scholarship fund.

These adopted sections do not affect any other statutes.

§1.52. Financial Assistance to ARE Candidates.

(a) The fund established by the 76th Texas Legislature to provide financial assistance to ARE Candidates shall be administered by the Board or, if authorized by law, by an independent scholarship administrator approved by the Board. As mandated by Section 7A of the Architects' Registration Law, the Architect Registration Examination Financial Assistance Fund (AREFAF) shall be funded by a mandatory fee from all Texas registered Architects.

(b) A one-time maximum award of $500 shall be awarded to each approved applicant. Each scholarship recipient shall meet the following criteria:

(1) Each scholarship recipient shall be a Texas resident who has resided in Texas for at least twelve (12) months immediately preceding the date the recipient submitted his or her application for the AREFAF award;

(2) Each scholarship recipient shall be a Candidate in good standing or shall be an Architect who completed the ARE after September 1, 1999;

(3) Each scholarship recipient shall demonstrate that the examination fee for the ARE would pose or has posed a financial hardship for him or her; and

(4) Each scholarship recipient shall have attained passing scores on sections of the ARE for which the combined fees total at least $500.

(c) The Board shall not award an AREFAF scholarship to any of the following persons:

(1) any member of the Board;

(2) any employee of TBAE;

(3) any person who assists in the administration of the AREFAF;

(4) any current or former member of the Texas Legislature; or

(5) any family member of any person described in subsection (c)(1), (c)(2), (c)(3), or (c)(4)of this section.

(d) Each applicant shall apply for an AREFAF award on an authorized form available in the Board's office or from an independent scholarship administrator that has been approved to administer the AREFAF.

(e) Each applicant shall be notified of the approval or rejection of the applicant's AREFAF application. Rejection of an application shall include an explanation of the reason for rejection.

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 February 7, 2001.

TRD-200100774
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: February 27, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 305-8535

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §1.121

The Texas Board of Architectural Examiners adopts an amendment to Chapter 1, Subchapter G, §1.121 concerning compliance and enforcement. The proposal to amend this rule was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10083). The amendment is being adopted with changes. The change is to add the words "use of the title architect" after the phrase "practice of architecture " as well as other minor changes which help clarify the rule.

This amendment is adopted as a result of the agency's review of Title 22, Chapter 1, Subchapter G, as mandated by Article IX of the General Appropriations Act.

No public comments were received regarding the proposed amendment.

The amendment is adopted pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

§1.121. General.

In carrying out its responsibility to insure strict enforcement of the Architects' Registration Law (the Act), the Board may investigate circumstances which appear to violate or abridge the requirements of the Act or the rules dealing with the practice of architecture and the use of the title "architect." The Board also may investigate representations which imply that a person or a business entity is legally authorized to offer or provide architectural services to the public. Violations of the Act or the rules which cannot be readily resolved through settlement shall be disposed of by administrative, civil, or criminal proceedings as authorized by law.

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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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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Proposal publication date: October 6, 2000
For further information, please call: (512) 305-8535

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22 TAC §§1.122 - 1.125

The Texas Board of Architectural Examiners adopts the repeal of §1.122 relating to the circumstances under which the application of a person against whom the Board has initiated legal action may be held without approval, disapproval, or rejection; §1.123 relating to the conditions that must be met if an architect or architectural firm maintains offices in more than one locality; §1.124 relating to the requirements for properly constituted business entities to acquire corporate architectural status via a No Objection letter issued by the Texas Board of Architectural Examiners; and §1.125 which describes authorized use of the title "Architect" and various constructions thereof by persons, firms, partnerships, corporations, and groups of persons. The proposal to repeal these rules was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10084). The repeal is being adopted without changes. The text of the section will not be republished.

Simultaneously, the agency is adopting new rules with section numbers 1.122 through 1.124 to replace the rules being repealed. The rule regarding applications has been relocated to Subchapter H. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 1, Subchapter G as mandated by Article IX of the General Appropriations Act.

No public comments were received regarding the proposed repeal of these rules.

The repeal is adopted pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

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

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For further information, please call: (512) 305-8535

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22 TAC §§1.122 - 1.124

The Texas Board of Architectural Examiners adopts new §1.122 relating to the conditions that must be satisfied in order for an Architect to associate to provide architectural services jointly with a person or groups of persons who is/are not a registered architect or architects; new §1.123 which describes the conditions under which persons and groups may use the title "architect" and various constructions thereof; and new §1.124 relating to a business entity's responsibility to register with the Board in order to offer or provide architectural services in Texas. The proposal to adopt these rules was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10084). The new rules are being adopted with changes. The changes are intended to clarify the Board's intent and make the rules easier to understand and follow.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being adopted as a result of the agency's review of Title 22, Chapter 1, Subchapter G as mandated by Article IX of the General Appropriations Act. The new §1.122 requires any Architect who forms a business association with a nonregistrant or a group of nonregistrants to enter into a written agreement of association whereby the Architect agrees to be responsible for the preparation of all Construction Documents and architectural work. The section defines what shall be included in the agreement of association, requires that all Construction Documents prepared pursuant

to the association be sealed, signed, dated, and retained by the Architect who sealed them for ten (10) years from the date of completion of the project. It requires a Texas Architect who associates with a registered architect in another jurisdiction who does not maintain an office in Texas to exercise Responsible Charge over the preparation of all Construction Documents and to provide written notification to each client stating that the non-Texas architect is not registered to practice architecture in Texas and that the Texas Architect will be in Responsible Charge of all Construction Documents issued as a result of his or her association with the non-Texas architect. New §1.123 authorizes only Architects duly registered in Texas to use any form of the word "architect" or the word "architecture" to describe themselves or services they offer or perform in Texas and defines the circumstances under which a firm, partnership, corporation, or other business association may use any form of the word "architect" or the word "architecture" in its name or to describe services it offers or performs in Texas. New §1.124 seeks to ensure that every business entity or association that offers or provides architectural services in Texas be registered with the Board by submitting a business registration application form accompanied by at least one Architect of Record affidavit. It requires the signer of an Architect of Record affidavit to notify the Board in writing if he or she ceases to provide architectural services on behalf of the business entity or association. It authorizes the Board to establish an initial business registration fee.

No public comments were received regarding the proposed rules.

The new sections are adopted pursuant to Section 1, Section 10(i), Section 13(a), and Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which prohibit non-architects from practicing architecture and using the title "architect" in Texas and provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to carry out its statutory duty to enforce the Act.

§1.122. Association.

(a) An Architect who forms a business association, either formally or informally, to jointly offer architectural services with any individual who is not a duly registered Texas Architect or bona fide employee working in the same firm where the Architect is employed or with any group of individuals who are not duly registered Texas Architects shall, prior to offering architectural services on behalf of the business association, enter into a written agreement of association with the nonregistrant(s) whereby the Architect agrees to be responsible for the preparation of all Construction Documents prepared and issued for use in Texas pursuant to the agreement of association. All Construction Documents prepared and issued for use in Texas pursuant to the agreement of association shall be prepared by the Architect or under the Architect's Supervision and Control unless the Construction Documents are prepared and issued as described in subsection (e) of this section.

(b) The written agreement of association shall be signed by all parties to the agreement. In addition to the provisions of subsection (a) of this section, the written agreement of association shall contain the following:

(1) The date when the agreement to associate is effective and the approximate date when the association will be dissolved if such association is not to be a continuing relationship. If the association is to be a continuing relationship, that fact shall be so noted in the agreement. If the association is only for one project, the project shall be identified in the agreement of association by listing both the client's and the project's names and addresses.

(2) The name, address, telephone number, registration number, and signature of each Architect who has agreed to associate with the nonregistrant(s).

(3) The name, address, telephone number, and signature of each nonregistrant with whom the Architect has agreed to associate.

(c) All Construction Documents prepared pursuant to the association described in this section shall be sealed, signed, and dated in accordance with the provisions of Subchapter F.

(d) Paper or microform copies of all Construction Documents resulting from the association, together with the written agreement of association, shall be retained by the Architect who sealed them and made available for review by the Board for ten (10) years from the date of substantial completion of each project.

(e) If, pursuant to Section 14.2 of the Act, a Texas Architect associates with a person who is not a Texas Architect but is duly registered as an architect in another jurisdiction and does not maintain or open an office in Texas, The Texas Architect shall, at a minimum, exercise Responsible Charge over the preparation of all Construction Documents issued for use in Texas as a result of the association. The Texas Architect shall seal, sign, and date all Construction Documents issued for use in Texas as a result of the association in the same manner as if the Architect had prepared the Construction Documents or they had been prepared under the Architect's Supervision and Control. The requirements of subsections (a), (b), and (d) of this section also must be satisfied. For purposes of subsections (a) and (b), the term "nonregistrant" shall include the non-Texas architect. The requirements of this subsection must be satisfied regardless of whether the Texas Architect or the non-Texas architect acts as the "consultant" as that term is used in Section 14.2 of the Act.

§1.123. Titles.

(a) Architects duly registered in Texas are authorized to use any form of the word "architect" or the word "architecture" to describe themselves and to describe services they offer and perform in Texas.

(b) A firm, partnership, corporation, or other business association may use any form of the word "architect" or the word "architecture" in its name or to describe services it offers or performs in Texas only under the following conditions:

(1) The business employs at least one Architect on a full-time basis or associates with at least one Architect pursuant to the provisions of section 1.122; and

(2) The Architect(s) employed by or associated with the business pursuant to subsection (b)(1) of this section exercise Supervision and Control over all architectural services performed by nonregistrants on behalf of the business, or in the case of services rendered pursuant to section 1.122(e), exercise, at a minimum, Responsible Charge over all such services.

(c) No entity other than those qualified in subsections (a) and (b) of this section may use any form of the word "architect" or "architecture" in its name or to describe services it offers or performs in Texas.

(d) A person enrolleld in the Intern Development Program (IDP) may use the title "architectural intern."

§1.124. Business Registration.

(a) Unless excepted from the Act in accordance with Section 10 or Section 14 of the Act, each business entity or association that offers or provides architectural services in Texas must register with the

Board by submitting a completed business registration form accompanied by at least one duly executed Architect of Record affidavit. Blank business registration forms and Architect of Record affidavit forms may be requested by contacting the Board's office.

(b) Once the Board has received a completed business registration form and a duly executed Architect of Record affidavit from a business entity or association, the Board shall enter the entity's or association's name into its registry of business entities and associations that are authorized to offer and provide architectural services in Texas.

(c) If an Architect who has signed an Architect of Record affidavit ceases to provide architectural services on behalf of the business entity or association for which the Architect signed the affidavit, the Architect must so notify the Board in writing. Such notification must be postmarked within thirty (30) days of the date the Architect ceases to provide architectural services on behalf of the business entity or association.

(d) Effective September 1, 2001, the Board may establish a business registration fee. All business entities required to register with the Board pursuant to the provisions of this section shall pay the business registration fee as prescribed by the Board.

(e) An Architect who is a sole proprietor doing business under his/her own name shall be exempt from the requirements of subsections (a) - (d) of this section.

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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Executive Director
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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §§1.141-1.150

The Texas Board of Architectural Examiners adopts the repeal of §1.141, which seeks to define generally the Board's authority to enforce the Regulation of the Practice of Architecture (the Act); §1.142, pertaining to an architect's professional responsibility as it affects the property, lives, safety, health, or welfare of the general public; §1.143, pertaining to an architect's independent professional judgment concerning employment, conflicts of interest with a client or employer, compensation, clients' and employers' property, and the completion or revision of work prepared by others; §1.144, pertaining to minimum standards of competence for architects; §1.145, pertaining to the conditions under which an architect shall reveal and/or make use of confidences and private information; §1.146, pertaining to securing architectural work or assignments, advertising, the representation of an architect's professional qualifications, and the Professional Services Procurement Act; §1.147, pertaining to the circumstances under which the Board may require an architect to enter a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse; §1.148, pertaining to an architect's professional responsibility to uphold the ethical standards of the profession; §1.149, pertaining to the prevention of unauthorized practice; and §1.150, pertaining to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes and how the Board will identify and evaluate criminal convictions of candidates and registrants. The repeal is being adopted without changes. The proposal to repeal these rules was published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12559).

Simultaneously, the agency is adopting new rules with section numbers 1.141 through 1.151 to replace the rules being repealed. Due to the extensive modifications to the new rules, amending the existing rules is less practical than repealing the existing rules and adopting new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 1, Subchapter H, as mandated by Article IX of the General Appropriations Act.

No comments were received regarding the proposal to repeal these rules.

The repeal of these rules is adopted pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to adopt rules necessary to perform its statutory duties; the authority to adopt rules impliedly authorizes the repeal of those rules which have been adopted.

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

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22 TAC §§1.141-1.151

The Texas Board of Architectural Examiners adopts new §1.141, which generally describes the Board's authority to promulgate rules necessary for the regulation of the practice of architecture and enforcement of Article 249a of Vernon's Texas Civil Statutes (the Act), generally describes the Board's authority to take different types of disciplinary action against an architect or an applicant, lists the factors the Board will consider in determining an appropriate sanction for misconduct, and states that architects must adhere to the Act and Rules even when providing services free of charge; new §1.142, pertaining to minimum competence to perform architectural services and defining "gross incompetency"; new §1.143, defining "recklessness"; new §1.144, relating to the performance or omission of acts with the intent to defraud or deceive, prohibiting an architect from securing architectural work or assignments through false advertising or through advertising that does not display an architectural registration number, and prohibiting an architect from soliciting,

offering, giving, or receiving something of value for securing a public project; new §1.145, relating to conflicts of interest; new §1.146, relating to an architect's responsibility to refrain from participating in or aiding or abetting a violation of the Act or Rules, an architect's responsibility to provide information about an applicant's qualifications, and an architect's responsibility to safeguard his or her professional seal; new §1.147, pertaining to the Professional Services Procurement Act; new §1.148, pertaining to the prohibition against unauthorized practice in another jurisdiction, the implications of disciplinary action by another jurisdiction, and the consequences of failure to renew a certificate of registration prior to its expiration; new §1.149, relating to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes and the potential effects of applicants' and registrants' criminal convictions on professional licensure; new §1.150, relating to the circumstances under which substance abuse may affect an architect's licensure and conditions under which the Board may require an architect to enter a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse; and new § 1.151, pertaining to the effect of enforcement proceedings on an application for architectural registration. Each rule is being adopted with minor changes which correct grammar and clarify the intent of each rule. The proposal to adopt these rules was published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12560).

Due to the proposal of extensive modifications, adopting amendments to the existing rules is less practical than the alternative of repealing the existing sections and adopting new sections. The new rules are being adopted as a result of the agency's review of Title 22, Chapter 1, Subchapter H as mandated by Article IX of the General Appropriations Act.

As a result of the new rules, the standards for professional practice will be better defined and easier to understand and also will better reflect current industry standards.

No comments were received regarding the proposal to adopt these rules

The new sections are adopted pursuant to Sections 3(b), 5(c), and 11(b) of Article 249a, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them; pursuant to Section 5(d) of Article 249a, Vernon's Texas Civil Statutes, which directs the Board to adopt rules to prevent registrants from participating in violations of the Professional Services Procurement Act; and pursuant to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes, which require the Board to take appropriate action to address criminal convictions entered against registrants and applicants.

§1.141. General.

(a) These rules of professional conduct are promulgated pursuant to the Architects' Registration Law (the Act), Article 249a, Vernon's Texas Civil Statutes, which directs the Board to make all rules consistent with the laws and constitution of Texas which are reasonably necessary for the regulation of the practice of architecture and the enforcement of the Act. Except as otherwise noted, these rules of professional conduct apply only to situations which are directly or indirectly related to the practice of architecture.

(b) The Board may revoke or suspend an Architect's certificate of registration, place on probation an Architect whose certificate of registration has been suspended, reprimand an Architect, or assess an administrative penalty against an Architect for a violation of any provision of these rules of professional conduct or other provisions of the Rules and Regulations of the Board or the Act. The Board also may take action against an Applicant pursuant to section 1.151. A single instance of misconduct may be grounds for disciplinary action by the Board.

(c) Upon a finding of professional misconduct, the Board shall consider the following factors in determining an appropriate sanction or sanctions:

(1) the seriousness of the conduct, including the hazard or potential hazard to the health or safety of the public;

(2) the economic damage or potential damage to property caused by the misconduct;

(3) the respondent's history concerning previous grounds for sanction;

(4) the sanction necessary to deter future misconduct;

(5) efforts to correct the misconduct; and

(6) any other matter justice may require.

(d) These rules of professional conduct are not intended to suggest or define standards of care in civil actions against Architects involving their professional conduct.

(e) An Architect may donate his/her services to charitable causes but must adhere to all provisions of the Act and the Rules and Regulations of the Board in the provision of all architectural services rendered regardless of whether the Architect is paid for the services.

§1.142. Competence.

(a) An Architect shall undertake to perform a professional service only when the Architect, together with those whom the Architect shall engage as consultants, is qualified by education and/or experience in the specific technical areas involved. During the delivery of a professional service, an Architect shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by reasonably prudent architects practicing under similar circumstances and conditions.

(b) An Architect shall not affix his/her signature or seal to any architectural plan or document dealing with subject matter in which he/she is not qualified by education and/or experience to form a reasonable judgment.

(c) "Gross Incompetency" shall be grounds for disciplinary action by the Board. An Architect may be found guilty of "Gross Incompetency" under any of the following circumstances:

(1) the Architect has engaged in conduct that provided evidence of an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of an Architect;

(2) the Architect engaged in conduct which provided evidence of an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent architect;

(3) the Architect has been adjudicated mentally incompetent by a court; or

(4) pursuant to section 1.150(b).

§1.143. Recklessness.

(a) An Architect shall not practice architecture in any manner which, when measured by generally accepted architectural standards or procedures, is reasonably likely to result or does result in the endangerment of the safety, health, or welfare of the public.

(b) "Recklessness" shall be grounds for disciplinary action by the Board. "Recklessness" shall include the following practices:

(1) conduct which indicates that the Architect is aware of yet consciously disregards a substantial risk of such a nature that its disregard constitutes a significant deviation from the standard of care that a reasonably prudent architect would exercise under the circumstances;

(2) knowing failure to exercise ordinary care and attention toward the intended result when a procedure, technique, material, or system is employed as a result of a decision made by the Architect and such failure jeopardizes any person's health, safety, or welfare; or

(3) action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to the design or construction of a particular project when such disregard jeopardizes any person's health, safety, or welfare.

§1.144. Dishonest Practice.

(a) An Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud,

(2) deceive, or

(3) create a misleading impression.

(b) An Architect may not advertise in a manner which is false, misleading, or deceptive. Each advertisement that offers the service of an Architect in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Architect's Texas architectural registration number. If an advertisement is for a business that employs more than one Architect, only the Texas architectural registration number for one Architect employed by the firm or associated with the firm pursuant to section 1.122 is required to be displayed.

(c) An Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded architectural work.

§1.145. Conflicts of Interest.

(a) If an Architect has any business association or financial interest which might reasonably appear to influence the Architect's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the Architect's client or employer, the Architect shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. Unless the client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest, the Architect shall either terminate the business association or financial interest or forego the project or employment.

(b) An Architect shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(c) An Architect shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Architect is performing or has contracted to perform architectural services.

(d) The phrase "benefit of any substantial nature" is defined to mean any act, article, money, or other material consideration which is of such value or proportion that its acceptance creates an obligation or the appearance of an obligation on the part of the Architect or otherwise could adversely affect the Architect's ability to exercise his/her own judgment without regard to such benefit.

§1.146. Responsibility to the Architectural Profession.

(a) An Architect shall not:

(1) knowingly participate, directly or indirectly, in any plan, scheme, or arrangement having as its purpose the violation of any provision of the Act or any provision of the Rules and Regulations of the Board;

(2) aid or abet, directly or indirectly:

(A) any unregistered person in connection with the unauthorized practice of architecture;

(B) any business entity in the practice of architecture unless carried on in accordance with the Act; or

(C) any person or any business entity in the use of a professional seal or other professional identification so as to create the opportunity for the unauthorized practice of architecture by any person or any business entity;

(3) fail to exercise reasonable care or diligence to prevent his/her partners, associates, shareholders, and employees from engaging in conduct which, if done by him/her, would violate any provision of the Act or any provision of the Rules and Regulations of the Board.

(b) An Architect possessing knowledge of an Applicant's qualifications for registration shall cooperate with the Board by responding in writing to the Board regarding those qualifications when requested to do so by the Board.

(c) An Architect shall be responsible and accountable for the care, custody, control, and use of his/her architectural seal, professional signature, and other professional identification. An Architect whose seal has been lost, stolen, or otherwise misused shall report the loss, theft, or misuse to the Board immediately upon discovery of the loss, theft, or misuse. The Board may invalidate the registration number of the lost, stolen, or misused seal upon the request of the Architect if the Board deems it necessary.

§1.147. Professional Services Procurement Act.

An Architect shall neither submit a competitive bid to nor solicit a competitive bid on behalf of any governmental entity that is prohibited by the Professional Services Procurement Act, Subchapter A, Chapter 2254, Government Code, from making a selection or awarding a contract on the basis of competitive bids. An Architect may submit information related to the monetary cost of a professional service, including information found in a fee schedule, only after the governmental entity has selected the Architect on the basis of demonstrated competence and qualifications pursuant to the Professional Services Procurement Act.

§1.148. Prevention of Unauthorized Practice.

(a) An Architect shall not practice or offer to practice architecture in any governmental jurisdiction in which to do so would be in violation of a law regulating the practice of architecture in that jurisdiction.

(b) The revocation, suspension, or denial of a registration to practice architecture in another jurisdiction shall be sufficient cause for the revocation, suspension, or denial of a registration to practice architecture in the State of Texas.

(c) An Architect who fails to renew his/her certificate of registration prior to its annual expiration date shall not use the title "architect" and shall not "practice architecture" as defined by Section 10 of the Act until after the Architect's certificate of registration has been properly renewed.

§1.149. Criminal Convictions.

(a) Pursuant to Article 6252-13c and Article 6252-13d, Vernon's Texas Civil Statutes, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction of a crime if the crime directly relates to the duties and responsibilities of a registered architect. The following procedures will apply in the consideration of an application for registration as an Architect or in the consideration of a Registrant's criminal history:

(1) Each Applicant will be required to provide information regarding the Applicant's criminal history as part of the application process. Each Registrant will be required to report any criminal conviction to the Board within thirty (30) days of the date the conviction is entered by the court and to verify the status of the Registrant's criminal history on each registration renewal form. An Applicant or Registrant shall not be required to report a conviction for a minor traffic offense.

(2) An Applicant or Registrant who has been convicted of any crime will be required to provide a summary of each conviction in sufficient detail to allow the executive director to determine whether it appears to directly relate to the duties and responsibilities of a registered architect.

(3) If the executive director determines the conviction might be directly related to the duties and responsibilities of a registered architect, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(b) In determining whether a criminal conviction is directly related to the duties and responsibilities of a registered architect, the executive director and the Board will consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice architecture;

(3) the extent to which architectural registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registered architect.

(c) In addition to the factors that may be considered under subsection (b) of this section, the executive director and the Board shall consider the following:

(1) the extent and nature of the Applicant's or Registrant's past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed and the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

(3) the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(4) evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort;

(5) other evidence of the Applicant's or Registrant's present fitness to practice as an Architect, including letters of recommendation from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and

(6) proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered.

(d) Crimes directly related to the duties and responsibilities of a registered architect include any crime that reflects a lack of fitness for professional licensure or a disregard of the standards commonly upheld for the professional practice of architecture, such as the following:

(1) criminal negligence;

(2) soliciting, offering, giving, or receiving any form of bribe;

(3) the unauthorized use of property, funds, or proprietary information belonging to a client or employer;

(4) acts relating to the malicious acquisition, use, or dissemination of confidential information related to architecture; and

(5) any intentional violation as an individual or as a consenting party of any provision of the Act.

(e) The Board shall revoke the certificate of registration of any Registrant who is convicted of any felony if the felony conviction results in incarceration. The Board also shall revoke the certificate of registration of any Registrant whose felony probation, parole, or mandatory supervision is revoked.

(f) If an Applicant is incarcerated as the result of a felony conviction, the Board may not approve the Applicant for registration during the period of incarceration. If an Applicant's felony probation, parole, or mandatory supervision is revoked, the Board may not approve the Applicant for registration until the Applicant successfully completes the sentence imposed as a result of the revocation.

(g) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant's certificate of registration;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final; and

(3) the earliest date the person may appeal.

(h) All proceedings pursuant to this section shall be governed by the Administrative Procedure Act, Chapter 2001, Government Code.

§1.150. Substance Abuse.

(a) If in the course of a disciplinary proceeding, it is found by the Board that an Architect's abuse of alcohol or a controlled substance, as defined by the Texas Controlled Substances Act, Chapter 481, Health and Safety Code, contributed to a violation of the Act or the Rules and Regulations of the Board, the Board may condition its disposition of the disciplinary matter on the Architect's completion of

a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse that may include rehabilitation at a facility also approved by the Commission.

(b) An Architect's abuse of alcohol or a controlled substance that results in the impairment of the Architect's professional skill so as to cause a direct threat to the property, safety, health, or welfare of the public may be deemed "Gross Incompetency" and may be grounds for the indefinite suspension of an Architect's certificate of registration until such time as he or she is able to demonstrate to the Board's satisfaction that the reasons for suspension no longer exist and that the termination of the suspension would not endanger the public.

(c) In order to determine whether abuse of alcohol or a controlled substance contributed to a violation or has resulted in "gross incompetency," the Board may order an examination by one or more health care providers trained in the diagnosis or treatment of substance abuse.

§1.151. Effect of Enforcement Proceedings on Application.

(a) The application of an Applicant against whom the Board has initiated an enforcement proceeding may be held at the Board's discretion, without approval, disapproval, or rejection until:

(1) all enforcement proceedings have been terminated by a final judgment or order and the time for appeal has expired, or if an appeal is taken, such appeal has been terminated;

(2) the Applicant is in full compliance with all orders and judgments of the court, all orders and rules of the Board, and all provisions of the Act; and

(3) the Applicant has complied with all requests of the Board for information related to such compliance, upon which the Board shall complete the consideration of the application in the regular order of business.

(b) An "enforcement proceeding" is initiated by the commencement of an investigation that is based either on a formal complaint filed with the Board or on information presented to the Board that establishes probable cause for a belief in the existence of facts that would constitute a violation of the Act or the Rules and Regulations of the Board.

(c) The following sanctions may be imposed against an Applicant who is found to have falsified information provided to the Board, violated any of the practice or title restrictions of the Act, violated any similar practice or title restriction of another jurisdiction, or otherwise violated any of the statutory provisions or rules enforced by the Board:

(1) reprimand;

(2) the imposition of an administrative penalty;

(3) suspension of the registration certificate upon its effective date;

(4) rejection of the application; or

(5) denial of the right to reapply for registration for a period not to exceed five years.

(d) The Board may take action against an Applicant for any act or omission if the same conduct would be a ground for disciplinary action against an Architect.

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

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SUBCHAPTER K. PRACTICE; ARCHITECT REQUIRED

22 TAC §1.213

The Texas Board of Architectural Examiners adopts an amendment to Chapter 1, Subchapter K, §1.213 concerning alterations and additions to existing buildings. The proposal to amend this rule was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10091). The amendment is being adopted with changes. The change eliminates redundant text in order to clarify the rule.

No public comments were received regarding the proposed amendment.

The amendment is adopted pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

§1.213. Alterations and Additions to Existing Buildings.

Construction Documents for any alteration or addition to an existing building involving structural changes which require the services of a registered professional engineer in accordance with Texas Civil Statutes, Article 3271a, the Texas Engineering Practice Act, or which involve exitway changes affecting the building's egress by more than fifty (50) building occupants shall be prepared under the supervision of an architect unless excepted in accordance with §1.211.

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 February 7, 2001.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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Proposal publication date: October 6, 2000
For further information, please call: (512) 305-8535

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CHAPTER 3. LANDSCAPE ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

The Texas Board of Architectural Examiners adopts an amendment to Chapter 3, Subchapter A, §3.5 concerning defined

terms. The proposal to amend this rule was published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9808). The amendment is being adopted without changes. The text of the section will not be republished.

The amendment sets forth a definition for the word "reinstatement."

No public comments were received regarding the proposed amendment.

The amendment is adopted pursuant to Section 4a of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties.

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

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §3.121

The Texas Board of Architectural Examiners adopts an amendment to Chapter 3, Subchapter G, §3.121 concerning compliance and enforcement. The proposal to amend this rule was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10093). The amendment is being adopted with changes. The change is to add the words "use of the title landscape architect and the term landscape architecture" after the phrase "practice of landscape architecture" and other minor changes in order to clarify the rule.

This amendment is proposed as a result of the agency's review of Title 22, Chapter 3, Subchapter G, as mandated by Article IX of the General Appropriations Act.

Public comment was received from Eddy Edmondson, President of the Texas Nursery and Landscape Association. He suggested replacing the language "rules dealing with the practice of landscape architecture" with "rules dealing with the professional practices of registered landscape architect." The Board declined to change the language as recommended by Mr. Edmondson because the Board determined that the language as proposed more closely reflects the language used in Section 4(a), Article 249c, Vernon's Texas Civil Statutes.

The amendment is adopted pursuant to Section 4(a) of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

§3.121. General.

In carrying out its responsibility to insure strict enforcement of the Landscape Architects' Registration Law (the Act), the Board may investigate circumstances which appear to violate or abridge the requirements of the Act or the rules dealing with the practice of landscape architecture and the use of the title "landscape architect" and the term "landscape architecture." The Board may also investigate representations which imply that an individual is registered to practice landscape architecture in Texas. Violations of the Act or the rules which cannot be readily resolved through settlement shall be disposed of by administrative, civil, or criminal proceedings as authorized by law.

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

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22 TAC §§3.122 - 3.125

The Texas Board of Architectural Examiners adopts the repeal of §3.122 relating to the circumstances under which the application of a person against whom the Board has initiated legal action may be held without approval, disapproval, or rejection; §3.123 relating to the conditions that must be met if a landscape architect or landscape architectural firm maintains offices in more than one locality; §3.124 relating to the requirements for properly constituted business entities to acquire corporate status via a No Objection letter issued by the Texas Board of Architectural Examiners; and §3.125 which describes authorized use of the title "Landscape Architect" and various constructions thereof by persons, firms, partnerships, corporations, and groups of persons. The proposal to repeal these rules was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10093). The repeal is being adopted without changes. The text of the section will not be republished.

Simultaneously, the agency is adopting new rules with section numbers 3.122 through 3.124 to replace the rules proposed for repeal. The rule regarding applications has been relocated to Subchapter H. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 3, Subchapter G as mandated by Article IX of the General Appropriations Act.

No public comments were received regarding the proposed amendments.

The repeal is adopted pursuant to Section 4(a) of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

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

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22 TAC §§3.122 - 3.124

The Texas Board of Architectural Examiners adopts new §3.122 relating to the conditions that must be satisfied in order for a Landscape Architect to associate to provide services designated as "landscape architecture" jointly with a person or group of persons who is/are not a registered landscape architect or landscape architects; new §3.123 which describes authorized use of the title "landscape architect" and the term "landscape architecture" by persons, firms, partnerships, corporations, or groups of persons; and new §3.124 relating to a business entity's responsibility to register with the Board in order to represent that it is registered to practice landscape architecture in Texas. The proposal to adopt these new rules was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10094). The new rules are being adopted with changes. The changes are intended to clarify the Board's intent and make the rules easier to understand and follow.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being proposed as a result of the agency's review of Title 22, Chapter 3, Subchapter G as mandated by Article IX of the General Appropriations Act. The new §3.122 requires any Landscape Architect who forms a business association with a nonregistrant or group of nonregistrants to enter into a written agreement of association whereby the Landscape Architect agrees to be responsible for the preparation of all Construction Documents and landscape architectural work. The section defines what shall be included in the agreement of association, requires that all Construction Documents prepared pursuant to the association be sealed, signed, dated, and retained by the Landscape Architect who sealed them for ten (10) years from the date of completion of the project. New §3.123 authorizes only Landscape Architects duly registered in Texas to use the term "landscape architect" or the term "landscape architecture" to describe themselves or services they offer or perform in Texas and defines the circumstances under which a firm, partnership, corporation, or other business association may use the term "landscape architect" or the term "landscape architecture" in its name or to describe services it offers or performs in Texas. New §3.124 seeks to ensure that every business entity or association that offers or provides landscape architectural services in Texas be registered with the Board by submitting a business registration application form accompanied by at least one Landscape Architect of Record affidavit. It requires the signer of a Landscape Architect of Record affidavit to notify the Board in writing if he or she ceases to provide landscape architectural services on behalf of the business entity or association. It authorizes the Board to establish an initial business registration fee.

No public comments were received regarding the proposed rules.

The new sections are being adopted pursuant to Section 5(a) and Section 4(a) of Article 249c, Vernon's Texas Civil Statutes, which prohibit persons who are not registered landscape architects from representing themselves as if they are registered and also provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to carry out its statutory duty to enforce the Act.

§3.122. Association.

(a) A Landscape Architect who forms a business association, either formally or informally, to jointly offer services designated as "landscape architecture" with any person who is not a duly registered Texas Landscape Architect or bona fide employee working in the same firm where the Landscape Architect is employed or with any group of individuals who are not duly registered Texas Landscape Architects shall, prior to offering such services on behalf of the business association, enter into a written agreement of association with the nonregistrant(s) whereby the Landscape Architect agrees to be responsible for the preparation of all Construction Documents prepared and issued for use in Texas pursuant to the agreement of association. All Construction Documents prepared and issued for use in Texas pursuant to the agreement of association shall be prepared by the Landscape Architect or under the Landscape Architect's Supervision and Control.

(b) The written agreement of association shall be signed by all parties to the agreement. In addition to the provisions of subsection (a) of this section, the written agreement of association shall contain the following:

(1) The date when the agreement to associate is effective and the approximate date when the association will be dissolved if such association is not to be a continuing relationship. If the association is to be a continuing relationship, that fact shall be so noted in the agreement. If the association is only for one project, the project shall be identified in the agreement of association by listing both the client's and the project's names and addresses.

(2) The name, address, telephone number, registration number, and signature of each Landscape Architect who has agreed to associate with the nonregistrant(s).

(3) The name, address, telephone number, and signature of each nonregistrant with whom then Landscape Architect has agreed to associate.

(c) All Construction Documents prepared pursuant to the association described in this section shall be sealed, signed, and dated in accordance with the provisions of Subchapter F.

(d) Paper or microform copies of all Construction Documents resulting from the association, together with the written agreement of association, shall be retained by the Landscape Architect who sealed them and made available for review by the Board for ten (10) years from the date of substantial completion of each project.

§3.123. Titles.

(a) Landscape Architects duly registered in Texas are authorized to use the title "landscape architect" to describe themselves and the term "landscape architecture" to describe services they offer and perform in Texas and to otherwise represent that they are licensed to practice landscape architecture in Texas.

(b) A firm, partnership, corporation, or other business association may use the title "landscape architect" or the term "landscape architecture" in its name or to describe services it offers or performs in

Texas or may otherwise represent that it is registered to practice landscape architecture in Texas only under the following conditions:

(1) The business employs at least one Landscape Architect on a full-time basis or associates with at least one Landscape Architect pursuant to the provisions of §3.122; and

(2) The Landscape Architect(s) employed by or associated with the business pursuant to subsection (b)(1) of this section exercise Supervision and Control over all landscape architectural services performed by nonregistrants on behalf of the business.

(c) No entity other than those qualified under subsections (a) and (b) of this section may use the title "landscape architect" or the term "landscape architecture" in its name or to describe services it offers or performs in Texas or may otherwise represent that it is registered to practice landscape architecture in Texas.

(d) A person participating in an internship to complete the experiential requirements for landscape architectural registration in Texas may use the title "landscape architectural intern."

§3.124. Business Registration.

(a) Each business entity or association that uses the title "landscape architect" or the term "landscape architecture" or otherwise represents that it is registered to practice landscape architecture in Texas must register with the Board by submitting a completed business registration form accompanied by at least one duly executed Landscape Architect of Record affidavit. Blank business registration forms and Landscape Architect of Record affidavit forms may be requested by contacting the Board's office.

(b) Once the Board has received a completed business registration form and a duly executed Landscape Architect of Record affidavit from a business entity or association, the Board shall enter the entity's or association's name into its registry of business entities and associations that are authorized to use the title "landscape architect" and the term "landscape architecture" and otherwise represent that they are registered to practice landscape architecture in Texas.

(c) If a Landscape Architect who has signed a Landscape Architect of Record affidavit ceases to provide landscape architectural services on behalf of the business entity or association for which the Landscape Architect signed the affidavit, the Landscape Architect must so notify the Board in writing. Such notification must be postmarked within thirty (30) days of the date the Landscape Architect ceases to provide landscape architectural services on behalf of the business entity or association.

(d) Effective September 1, 2001, the Board may establish a business registration fee. All business entities required to register with the Board pursuant to the provisions of this section shall pay the business registration fee as prescribed by the Board.

(e) A Landscape Architect who is a sole proprietor doing business under his/her own name shall be exempt from the requirements of subsections (a) - (d) of this section.

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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Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §§3.141-3.150

The Texas Board of Architectural Examiners adopts the repeal of §3.141, which seeks to define generally the Board's authority to enforce the Regulation of the Practice of Landscape Architecture (the Act); §3.142, pertaining to a landscape architect's professional responsibility as it affects the property, lives, safety, health, or welfare of the general public; §3.143, relating to a landscape architect's independent professional judgment concerning employment, conflicts of interest with a client or employer, compensation, clients' and employers' property, and the completion or revision of work prepared by others; §3.144, pertaining to minimum standards of competence for landscape architects; §3.145, relating to the conditions under which a landscape architect shall reveal and/or make use of confidences and private information; §3.146, relating to securing landscape architectural work or assignments, advertising, and the representation of a landscape architect's professional qualifications; §3.147, relating to the circumstances under which the Board may require a landscape architect to enter a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse; §3.148, relating to a landscape architect's professional responsibility to uphold the ethical standards of the profession; §3.149, relating to the prevention of unauthorized practice; and §3.150, pertaining to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes and how the Board will identify and evaluate criminal convictions of candidates and registrants. The repeal is being adopted without changes. The proposal to repeal these rules was published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12564).

Simultaneously, the agency is adopting new rules with section numbers 3.141 through 3.151 to replace the rules being repealed. Due to the extensive modifications to the new rules, amending the existing rules is less practical than repealing the existing rules and adopting new rules. The modifications are being adopted as a result of the agency's review of Title 22, Chapter 3, Subchapter H, as mandated by Article IX of the General Appropriations Act.

No comments were received regarding the proposal to repeal these rules.

The repeal of these rules is adopted pursuant to Section 4(a) of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to adopt rules necessary to perform its statutory duties; the authority to adopt rules impliedly authorizes the repeal of those rules which have been adopted.

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 February 9, 2001.

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Cathy L. Hendricks
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §§3.141-3.151

The Texas Board of Architectural Examiners adopts new §3.141, which generally describes the Board's authority to promulgate rules necessary for the regulation of the practice of landscape architecture and enforcement of Article 249c of Vernon's Texas Civil Statutes (the Act), generally describes the Board's authority to take different types of disciplinary action against a landscape architect or an applicant, lists the factors the Board will consider in determining an appropriate sanction for misconduct, and states that landscape architects must adhere to the Act and Rules even when providing services free of charge; new §3.142, pertaining to minimum competence to perform landscape architectural services and defining "gross incompetency"; new §3.143, defining "recklessness"; new §3.144, relating to the performance or omission of acts with the intent to defraud or deceive, prohibiting a landscape architect from securing landscape architectural work or assignments through false advertising or through advertising that does not display a landscape architectural registration number, and prohibiting a landscape architect from soliciting, offering, giving, or receiving something of value for securing a public project; new §3.145, relating to conflicts of interest; new §3.146, relating to a landscape architect's responsibility to refrain from participating in or aiding or abetting a violation of the Act or Rules, a landscape architect's responsibility to provide information about an applicant's qualifications, and a landscape architect's responsibility to safeguard his or her professional seal; new §3.147, pertaining to the Professional Services Procurement Act; new §3.148, pertaining to the prohibition against unauthorized practice in another jurisdiction, the implications of disciplinary action by another jurisdiction, and the consequences of failure to renew a certificate of registration prior to its expiration; new §3.149, relating to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes and the potential effects of applicants' and registrants' criminal convictions on professional licensure; new §3.150, relating to the circumstances under which substance abuse may affect a landscape architect's licensure and conditions under which the Board may require a landscape architect to enter a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse; and new §3.151, pertaining to the effect of enforcement proceedings on an application for landscape architectural registration. Each rule is being adopted with minor changes which correct grammar and clarify the intent of each rule. The proposal to adopt these rules was published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12565).

Due to the proposal of extensive modifications, adopting amendments to the existing rules is less practical than the alternative of repealing the existing sections and adopting new sections. The new rules are being adopted as a result of the agency's review of Title 22, Chapter 3, Subchapter H as mandated by Article IX of the General Appropriations Act.

As a result of the new rules, the standards for professional practice will be better defined and easier to understand and also will better reflect current industry standards.

No comments were received regarding the proposal to adopt these rules

The new rules are adopted pursuant to Section 4(a) and Section 8 of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them; pursuant to Section 5(d) of Article 249a, Vernon's Texas Civil Statutes, which directs the Board to adopt rules to prevent registrants from participating in violations of the Professional Services Procurement Act; and pursuant to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes, which require the Board to take appropriate action to address criminal convictions entered against registrants and applicants.

§3.141. General.

(a) These rules of professional conduct are promulgated pursuant to the Landscape Architects' Registration Law (the Act), Article 249c, Vernon's Texas Civil Statutes, which directs the Board to make all rules consistent with the laws and constitution of Texas which are reasonably necessary for the regulation of the practice of landscape architecture and the enforcement of the Act. Except as otherwise noted, these rules of professional conduct apply only to situations which are directly or indirectly related to the practice of landscape architecture.

(b) The Board may revoke or suspend a Landscape Architect's certificate of registration, place on probation a Landscape Architect whose certificate of registration has been suspended, reprimand a Landscape Architect, or assess an administrative penalty against a Landscape Architect for a violation of any provision of these rules of professional conduct or other provisions of the Rules and Regulations of the Board or the Act. The Board also may take action against an Applicant pursuant to section 3.151. A single instance of misconduct may be grounds for disciplinary action by the Board.

(c) Upon a finding of professional misconduct, the Board shall consider the following factors in determining an appropriate sanction or sanctions:

(1) the seriousness of the conduct, including the hazard or potential hazard to the health or safety of the public;

(2) the economic damage or potential damage to property caused by the misconduct;

(3) the respondent's history concerning previous grounds for sanction;

(4) the sanction necessary to deter future misconduct;

(5) efforts to correct the misconduct; and

(6) any other matter justice may require.

(d) These rules of professional conduct are not intended to suggest or define standards of care in civil actions against Landscape Architects involving their professional conduct.

(e) A Landscape Architect may donate his/her services to charitable causes but must adhere to all provisions of the Act and the Rules and Regulations of the Board in the provision of all landscape architectural services rendered regardless of whether the Landscape Architect is paid for the services.

§3.142. Competence.

(a) A Landscape Architect shall undertake to perform a professional service only when the Landscape Architect, together with

those whom the Landscape Architect shall engage as consultants, is qualified by education and/or experience in the specific technical areas involved. During the delivery of a professional service, a Landscape Architect shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by reasonably prudent landscape architects practicing under similar circumstances and conditions.

(b) A Landscape Architect shall not affix his/her signature or seal to any landscape architectural plan or document dealing with subject matter in which he/she is not qualified by education and/or experience to form a reasonable judgment.

(c) "Gross Incompetency" shall be grounds for disciplinary action by the Board. A Landscape Architect may be found guilty of "Gross Incompetency" under any of the following circumstances:

(1) the Landscape Architect has engaged in conduct that provided evidence of an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Landscape Architect;

(2) the Landscape Architect engaged in conduct which provided evidence of an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent landscape architect;

(3) the Landscape Architect has been adjudicated mentally incompetent by a court; or

(4) pursuant to section 3.150(b).

§3.143. Recklessness.

(a) A Landscape Architect shall not practice landscape architecture in any manner which, when measured by generally accepted landscape architectural standards or procedures, is reasonably likely to result or does result in the endangerment of the safety, health, or welfare of the public.

(b) "Recklessness" shall be grounds for disciplinary action by the Board. "Recklessness" shall include the following practices:

(1) conduct which indicates that the Landscape Architect is aware of yet consciously disregards a substantial risk of such a nature that its disregard constitutes a significant deviation from the standard of care that a reasonably prudent landscape architect would exercise under the circumstances;

(2) knowing failure to exercise ordinary care and attention toward the intended result when a procedure, technique, material, or system is employed as a result of a decision made by the Landscape Architect and such failure jeopardizes any person's health, safety, or welfare; or

(3) action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to the design or construction of a particular project when such disregard jeopardizes any person's health, safety, or welfare.

§3.144. Dishonest Practice.

(a) A Landscape Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud,

(2) deceive, or

(3) create a misleading impression.

(b) A Landscape Architect may not advertise in a manner which is false, misleading, or deceptive. Each advertisement that offers the service of a Landscape Architect in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Landscape Architect's Texas landscape architectural registration number. If an advertisement is for a business that employs more than one Landscape Architect, only the Texas landscape architectural registration number for one Landscape Architect employed by the firm or associated with the firm pursuant to section 3.122 is required to be displayed.

(c) A Landscape Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded landscape architectural work.

§3.145. Conflicts of Interest.

(a) If a Landscape Architect has any business association or financial interest which might reasonably appear to influence the Landscape Architect's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the Landscape Architect's client or employer, the Landscape Architect shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. Unless the client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest, the Landscape Architect shall either terminate the business association or financial interest or forego the project or employment.

(b) A Landscape Architect shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(c) A Landscape Architect shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Landscape Architect is performing or has contracted to perform landscape architectural services.

(d) The phrase "benefit of any substantial nature" is defined to mean any act, article, money, or other material consideration which is of such value or proportion that its acceptance creates an obligation or the appearance of an obligation on the part of the Landscape Architect or otherwise could adversely affect the Landscape Architect's ability to exercise his/her own judgment without regard to such benefit.

§3.146. Responsibility to the Landscape Architectural Profession.

(a) A Landscape Architect shall not:

(1) knowingly participate, directly or indirectly, in any plan, scheme, or arrangement having as its purpose the violation of any provision of the Act or any provision of the Rules and Regulations of the Board;

(2) aid or abet, directly or indirectly:

(A) any unregistered person in connection with the unauthorized practice of landscape architecture;

(B) any business entity in the practice of landscape architecture unless carried on in accordance with the Act; or

(C) any person or any business entity in the use of a professional seal or other professional identification so as to create the opportunity for the unauthorized practice of landscape architecture by any person or any business entity;

(3) fail to exercise reasonable care or diligence to prevent his/her partners, associates, shareholders, and employees from engaging in conduct which, if done by him/her, would violate any provision of the Act or any provision of the Rules and Regulations of the Board.

(b) A Landscape Architect possessing knowledge of an Applicant's qualifications for registration shall cooperate with the Board by responding in writing to the Board regarding those qualifications when requested to do so by the Board.

(c) A Landscape Architect shall be responsible and accountable for the care, custody, control, and use of his/her landscape architectural seal, professional signature, and other professional identification. A Landscape Architect whose seal has been lost, stolen, or otherwise misused shall report the loss, theft, or misuse to the Board immediately upon discovery of the loss, theft, or misuse. The Board may invalidate the registration number of the lost, stolen, or misused seal upon the request of the Landscape Architect if the Board deems it necessary.

§3.147. Professional Services Procurement Act.

A Landscape Architect shall neither submit a competitive bid to nor solicit a competitive bid on behalf of any governmental entity that is prohibited by the Professional Services Procurement Act, Subchapter A, Chapter 2254, Government Code, from making a selection or awarding a contract on the basis of competitive bids. A Landscape Architect may submit information related to the monetary cost of a professional service, including information found in a fee schedule, only after the governmental entity has selected the Landscape Architect on the basis of demonstrated competence and qualifications pursuant to the Professional Services Procurement Act.

§3.148. Prevention of Unauthorized Practice.

(a) A Landscape Architect shall not practice or offer to practice landscape architecture in any governmental jurisdiction in which to do so would be in violation of a law regulating the practice of landscape architecture in that jurisdiction.

(b) The revocation, suspension, or denial of a registration to practice landscape architecture in another jurisdiction shall be sufficient cause for the revocation, suspension, or denial of a registration to practice landscape architecture in the State of Texas.

(c) A Landscape Architect who fails to renew his/her certificate of registration prior to its annual expiration date shall not use the title "landscape architect" until after the Landscape Architect's certificate of registration has been properly renewed.

§3.149. Criminal Convictions.

(a) Pursuant to Article 6252-13c and Article 6252-13d, Vernon's Texas Civil Statutes, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction of a crime if the crime directly relates to the duties and responsibilities of a registered landscape architect. The following procedures will apply in the consideration of an application for registration as a Landscape Architect or in the consideration of a Registrant's criminal history:

(1) Each Applicant will be required to provide information regarding the Applicant's criminal history as part of the application process. Each Registrant will be required to report any criminal conviction to the Board within thirty (30) days of the date the conviction is entered by the court and to verify the status of the Registrant's criminal history on each registration renewal form. An Applicant or Registrant shall not be required to report a conviction for a minor traffic offense.

(2) An Applicant or Registrant who has been convicted of any crime will be required to provide a summary of each conviction in sufficient detail to allow the executive director to determine whether it appears to directly relate to the duties and responsibilities of a registered landscape architect.

(3) If the executive director determines the conviction might be directly related to the duties and responsibilities of a registered landscape architect, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(b) In determining whether a criminal conviction is directly related to the duties and responsibilities of a registered landscape architect, the executive director and the Board will consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice landscape architecture;

(3) the extent to which landscape architectural registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registered landscape architect.

(c) In addition to the factors that may be considered under subsection (b) of this section, the executive director and the Board shall consider the following:

(1) the extent and nature of the Applicant's or Registrant's past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed and the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

(3) the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(4) evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort;

(5) other evidence of the Applicant's or Registrant's present fitness to practice as a Landscape Architect, including letters of recommendation from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and

(6) proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered.

(d) Crimes directly related to the duties and responsibilities of a registered landscape architect include any crime that reflects a lack of fitness for professional licensure or a disregard of the standards commonly upheld for the professional practice of landscape architecture, such as the following:

(1) criminal negligence;

(2) soliciting, offering, giving, or receiving any form of bribe;

(3) the unauthorized use of property, funds, or proprietary information belonging to a client or employer;

(4) acts relating to the malicious acquisition, use, or dissemination of confidential information related to landscape architecture; and

(5) any intentional violation as an individual or as a consenting party of any provision of the Act.

(e) The Board shall revoke the certificate of registration of any Registrant who is convicted of any felony if the felony conviction results in incarceration. The Board also shall revoke the certificate of registration of any Registrant whose felony probation, parole, or mandatory supervision is revoked.

(f) If an Applicant is incarcerated as the result of a felony conviction, the Board may not approve the Applicant for registration during the period of incarceration. If an Applicant's felony probation, parole, or mandatory supervision is revoked, the Board may not approve the Applicant for registration until the Applicant successfully completes the sentence imposed as a result of the revocation.

(g) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant's certificate of registration;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final; and

(3) the earliest date the person may appeal.

(h) All proceedings pursuant to this section shall be governed by the Administrative Procedure Act, Chapter 2001, Government Code.

§3.150. Substance Abuse.

(a) If in the course of a disciplinary proceeding, it is found by the Board that a Landscape Architect's abuse of alcohol or a controlled substance, as defined by the Texas Controlled Substances Act, Chapter 481, Health and Safety Code, contributed to a violation of the Act or the Rules and Regulations of the Board, the Board may condition its disposition of the disciplinary matter on the Landscape Architect's completion of a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse that may include rehabilitation at a facility also approved by the Commission.

(b) A Landscape Architect's abuse of alcohol or a controlled substance that results in the impairment of the Landscape Architect's professional skill so as to cause a direct threat to the property, safety, health, or welfare of the public may be deemed "Gross Incompetency" and may be grounds for the indefinite suspension of a Landscape Architect's certificate of registration until such time as he or she is able to demonstrate to the Board's satisfaction that the reasons for suspension no longer exist and that the termination of the suspension would not endanger the public.

(c) In order to determine whether abuse of alcohol or a controlled substance contributed to a violation or has resulted in "gross incompetency," the Board may order an examination by one or more health care providers trained in the diagnosis or treatment of substance abuse.

§3.151. Effect Of Enforcement Proceedings On Application.

(a) The application of an Applicant against whom the Board has initiated an enforcement proceeding may be held at the Board's discretion, without approval, disapproval, or rejection until:

(1) all enforcement proceedings have been terminated by a final judgment or order and the time for appeal has expired, or if an appeal is taken, such appeal has been terminated;

(2) the Applicant is in full compliance with all orders and judgments of the court, all orders and rules of the Board, and all provisions of the Act; and

(3) the Applicant has complied with all requests of the Board for information related to such compliance, upon which the Board shall complete the consideration of the application in the regular order of business.

(b) An "enforcement proceeding" is initiated by the commencement of an investigation that is based either on a formal complaint filed with the Board or on information presented to the Board that establishes probable cause for a belief in the existence of facts that would constitute a violation of the Act or the Rules and Regulations of the Board.

(c) The following sanctions may be imposed against an Applicant who is found to have falsified information provided to the Board, violated any of the title restrictions of the Act, violated any practice or title restriction of another jurisdiction, or otherwise violated any of the statutory provisions or rules enforced by the Board:

(1) reprimand;

(2) the imposition of an administrative penalty;

(3) suspension of the registration certificate upon its effective date;

(4) rejection of the application; or

(5) denial of the right to reapply for registration for a period not to exceed five years.

(d) The Board may take action against an Applicant for any act or omission if the same conduct would be a ground for disciplinary action against a Landscape Architect.

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

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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

The Texas Board of Architectural Examiners adopts an amendment to Chapter 5, Subchapter A, §5.5 concerning defined terms. The proposal to amend this rule was published in the

September 29, 2000, issue of the *Texas Register* (25 TexReg 9811). The amendment is being adopted without changes. The text of the section will not be republished.

The amendment sets forth a definition for the word "reinstatement."

No public comments were received regarding the proposed amendment.

The amendment is adopted pursuant to Section 5d of Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties.

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

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §5.131

The Texas Board of Architectural Examiners adopts an amendment to Chapter 5, Subchapter G, §5.131 concerning compliance and enforcement. The proposal to amend this rule was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10101). The amendment is being adopted with changes. The change is to add the words "use of the title "interior designer" and the term "interior design" after the phrase "practice of interior design" as well as other minor changes which help clarify the rule.

No public comment was received.

The amendment is adopted pursuant Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

§5.131. General.

In carrying out its responsibility to insure strict enforcement of the Interior Designers' Registration Law (the Act), the Board may investigate circumstances which appear to violate or abridge the requirements of the Act or the rules dealing with the practice of interior design and the use of the title "interior designer" and the term "interior design." Violations of the Act or the rules which cannot be readily resolved through settlement shall be disposed of by administrative, civil, or criminal proceedings as authorized by law.

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

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22 TAC §§5.132 - 5.135

The Texas Board of Architectural Examiners adopts the repeal of §5.132 relating to the circumstances under which the application of a person against whom the Board has initiated legal action may be held without approval, disapproval, or rejection; §5.133 relating to the conditions that must be met if an interior designer or interior design firm maintains offices in more than one locality; §5.134 relating to the requirements for properly constituted business entities to acquire corporate status via a No Objection letter issued by the Texas Board of Architectural Examiners; and §5.135 which describes authorized use of the title "Interior Designer" and various constructions thereof by persons, firms, partnerships, corporations, and groups of persons. The proposal to amend this rule was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10102). The repeals are being adopted without changes. The text of the section will not be published.

Simultaneously, the agency is adopting new rules with section numbers 5.132 through 5.134 to replace the rules proposed for repeal. The rule regarding applications has been relocated to Subchapter H. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 5, Subchapter G as mandated by Article IX of the General Appropriations Act.

No public comments were received regarding the proposed amendment.

The repeal is adopted pursuant to Section 5(d) of Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

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

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22 TAC §§5.132 - 5.134

The Texas Board of Architectural Examiners adopts new §5.132 relating to the conditions that must be satisfied in order for an Interior Designer to associate to provide services designated as "interior design" jointly with a person who is not a registered interior designer or with a group of unregistered persons; new §5.133 which describes authorized use of the title "interior designer" and the term "interior design" by persons, firms, partnerships, corporations, or groups of persons; and new §5.134 relating to a business entity's responsibility to register with the Board in order to use the title "interior designer" or the term "interior design." The proposal to adopt these rules was published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10102). The new rules are being adopted with changes. The changes are intended to clarify the Board's intent and make the rules easier to understand and follow.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being proposed as a result of the agency's review of Title 22, Chapter 5, Subchapter G as mandated by Article IX of the General Appropriations Act. The new §5.132 requires any Interior Designer who forms a business association with a nonregistrant or group of nonregistrants to enter into a written agreement of association whereby the Interior Designer agrees to be responsible for the preparation of all Construction Documents and interior design work. The section defines what shall be included in the agreement of association, requires that all Construction Documents prepared pursuant to the association be sealed, signed, dated, and retained by the Interior Designer who sealed them for ten (10) years from the date of completion of the project. New §5.133 authorizes only Interior Designers duly registered in Texas to use the term "interior design" or the term "interior designer" to describe themselves or services they offer or perform in Texas and defines the circumstances under which a firm, partnership, corporation, or other business association may use the term "interior designer" or the term "interior design" in its name or to describe services it offers or performs in Texas. New §5.134 seeks to ensure that every business entity or association that offers or provides interior design services in Texas be registered with the Board by submitting a business registration application form accompanied by at least one Interior Designer of Record affidavit. It requires the signer of an Interior Designer of Record affidavit to notify the Board in writing if he or she ceases to provide interior design services on behalf of the business entity or association. It authorizes the Board to establish an initial business registration fee.

No public comments were received regarding the proposed rules.

The new sections are adopted pursuant to Section 3 and Section 5(d) of Article 249e, Vernon's Texas Civil Statutes, which prohibit unregistered persons from using the title "interior designer" and the term "interior design" and also provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to carry out its statutory duty to enforce the Act.

§5.132. Association.

(a) An Interior Designer who forms a business association, either formally or informally, to jointly offer services designated as "interior design" with any person who is not a duly registered Texas Interior Designer or bona fide employee working in the same firm where the Interior Designer is employed or with any group of individuals who are not duly registered Texas Interior Designers shall, prior to offering such services on behalf of the business association, enter into a written agreement of association with the nonregistrant whereby the Interior Designer agrees to be responsible for the preparation of all Construction Documents prepared and issued for use in Texas pursuant to the agreement of association. All Construction Documents prepared and issued for use in Texas pursuant to the agreement of association shall be prepared by the Interior Designer or under the Interior Designer's supervision and control.

(b) The written agreement of association shall be signed by all parties to the agreement. In addition to the provisions of subsection (a) of this section, the written agreement of association shall contain the following:

(1) The date when the agreement to associate is effective and the approximate date when the association will be dissolved if such association is not to be a continuing relationship. If the association is to be a continuing relationship, that fact shall be so noted in the agreement. If the association is only for one project, the project shall be identified in the agreement of association by listing both the client's and the project's names and addresses.

(2) The name, address, telephone number, registration number, and signature of each Interior Designer who has agreed to associate with the nonregistrant(s).

(3) The name, address, telephone number, and signature of each nonregistrant with whom the Interior Designer has agreed to associate.

(c) All Construction Documents prepared pursuant to the association described in this section shall be sealed, signed, and dated in accordance with the provisions of Subchapter F.

(d) Paper or microform copies of all Construction Documents resulting from the association, together with the written agreement of association, shall be retained by the Interior Designer who sealed them and made available for review by the Board for ten (10) years from the date of substantial completion of each project.

§5.133. Titles.

(a) Interior Designers duly registered in Texas are authorized to use the title "interior designer" to describe themselves and use the term "interior design" to describe services they offer and perform in Texas.

(b) A firm, partnership, corporation, or other business association may use the title "interior designer" or the term "interior design" in its name or to describe services it offers or performs in Texas only under the following conditions:

(1) The business employs at least one Interior Designer on a full-time basis or associates with at least one Interior Designer pursuant to the provisions of section 5.132; and

(2) The Interior Designer(s) employed by or associated with the business pursuant to subsection (b)(1) of this section exercise Supervision and Control over all interior design services performed by nonregistrants on behalf of the business.

(c) No entity other than those qualified under subsections (a) and (b) of this section may use the title "interior designer" or the term "interior design" in its name or to describe services it offers or performs in Texas.

(d) A person participating in an internship to complete the experiential requirements for interior design registration in Texas may use the title "interior design intern."

§5.134. Business Registration.

(a) Each business entity or association that uses the title "interior designer" or the term "interior design" to describe itself or a service it offers or performs in Texas must register with the Board by submitting a completed business registration form accompanied by at least one duly executed Interior Designer of Record affidavit. Blank business registration forms and Interior Designer of Record affidavit forms may be requested by contacting the Board's office.

(b) Once the Board has received a completed business registration form and a duly executed Interior Designer of Record affidavit from a business entity or association, the Board shall enter the entity's or association's name into its registry of business entities and associations that are authorized to use the title "interior designer" and the term "interior design" to describe themselves and services they offer and perform in Texas.

(c) If an Interior Designer who has signed an Interior Designer of Record affidavit ceases to provide interior design services on behalf of the business entity or association for which the Interior Designer signed the affidavit, the Interior Designer must notify the Board in writing. Such notification must be postmarked within thirty (30) days of the date the Interior Designer ceases to provide interior design services on behalf of the business entity or association.

(d) Effective September 1, 2001, the Board may establish a business registration fee. All business entities required to register with the Board pursuant to the provisions of this section shall pay the business registration fee as prescribed by the Board.

(e) An Interior Designer who is a sole proprietor doing business under his/her own name shall be exempt from the requirements of subsections (a) - (d) of this section.

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

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §§5.151-5.160

The Texas Board of Architectural Examiners adopts the repeal of §5.151, which seeks to define generally the Board's authority to enforce the Regulation of the Practice of Interior Design (the Act); §5.152, pertaining to an interior designer's professional responsibility as it affects the property, lives, safety, health, or welfare of the general public; §5.153, pertaining to an interior designer's independent professional judgment concerning employment, conflicts of interest with a client or employer, compensation, clients' and employers' property, and the completion or revision of work prepared by others; §5.154, pertaining to minimum standards of competence for interior designers; §5.155, pertaining to the conditions under which an interior designer shall reveal and/or make use of confidences and private information; §5.156, pertaining to securing interior design work or assignments, advertising, and the representation of an interior designer's professional qualifications; §5.157, pertaining to the circumstances under which the Board may require an interior designer to enter a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse; §5.158, pertaining to an interior designer's professional responsibility to uphold the ethical standards of the profession; §5.159, pertaining to the prevention of unauthorized practice; and §5.160, pertaining to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes and how the Board will identify and evaluate criminal convictions of candidates and registrants. The repeal is being adopted without changes. The proposal to repeal these rules was published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12569).

Simultaneously, the agency is adopting new rules with section numbers 5.151 through 5.160 to replace the rules being repealed. Due to the extensive modifications to the new rules, amending the existing rules is less practical than repealing the existing rules and adopting new rules. The modifications are being adopted as a result of the agency's review of Title 22, Chapter 5, Subchapter H, as mandated by Article IX of the General Appropriations Act.

No comments were received regarding the proposal to repeal these rules.

The repeal of these rules is adopted pursuant to Section 5(d) of Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to adopt rules necessary to perform its statutory duties; the authority to adopt rules impliedly authorizes the repeal of those rules which have been adopted.

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

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22 TAC §§5.151-5.160

The Texas Board of Architectural Examiners adopts new §5.151, which generally describes the Board's authority to promulgate rules necessary for the regulation of the practice of interior design and enforcement of Article 249e of Vernon's Texas Civil Statutes (the Act), generally describes the Board's authority to take different types of disciplinary action against an interior designer or an applicant, lists the factors the Board will consider in determining an appropriate sanction for misconduct, and states that interior designers must adhere to the Act and Rules even when providing services free of charge; new §5.152, pertaining to minimum competence to perform interior design services and defining "gross incompetency"; new §5.153, defining "recklessness"; new §5.154, relating to the performance or omission of acts with the intent to defraud or deceive, prohibiting an interior designer from securing interior design work or assignments

through false advertising or through advertising that does not display an interior design registration number, and prohibiting an interior designer from soliciting, offering, giving, or receiving something of value for securing a public project; new §5.155, relating to conflicts of interest; new §5.156, relating to an interior designer's responsibility to refrain from participating in or aiding or abetting a violation of the Act or Rules, an interior designer's responsibility to provide information about an applicant's qualifications, and an interior designer's responsibility to safeguard his or her professional seal; new §5.157, pertaining to the prohibition against unauthorized practice in another jurisdiction, the implications of disciplinary action by another jurisdiction, and the consequences of failure to renew a certificate of registration prior to its expiration; new §5.158, relating to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes and the potential effects of applicants' and registrants' criminal convictions on professional licensure; new §5.159, relating to the circumstances under which substance abuse may affect an interior designer's licensure and conditions under which the Board may require an interior designer to enter a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse; and new §5.160, pertaining to the effect of enforcement proceedings on an application for interior design registration. Each rule is being adopted with minor changes which correct grammar and clarify the intent of each rule. The proposal to adopt these rules was published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12569).

Due to the proposal of extensive modifications, adopting amendments to the existing rules is less practical than the alternative of repealing the existing sections and adopting new sections. The new rules are being adopted as a result of the agency's review of Title 22, Chapter 5, Subchapter H as mandated by Article IX of the General Appropriations Act.

As a result of the new rules, the standards for professional practice will be better defined and easier to understand and also will better reflect current industry standards.

No comments were received regarding the proposal to adopt these rules

The new rules are adopted pursuant to Sections 5(b), 5(d), 5(g), 15, and 17(a) of Article 249e, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules and take action to enforce them; and pursuant to Articles 6252-13c and 13d of Vernon's Texas Civil Statutes, which require the Board to take appropriate action to address criminal convictions entered against registrants and applicants.

§5.151. General.

(a) These rules of professional conduct are promulgated pursuant to the Interior Designers' Registration Law (the Act), Article 249e, Vernon's Texas Civil Statutes, which directs the Board to make all rules consistent with the laws and constitution of Texas which are reasonably necessary for the regulation of the practice of interior design and the enforcement of the Act. Except as otherwise noted, these rules of professional conduct apply only to situations which are directly or indirectly related to the practice of interior design.

(b) The Board may revoke or suspend an Interior Designer's certificate of registration, place on probation an Interior Designer whose certificate of registration has been suspended, reprimand an Interior Designer, or assess an administrative penalty against an Interior Designer for a violation of any provision of these rules of professional conduct or other provisions of the Rules and Regulations of the Board or the Act. The Board also may take action against an Applicant pursuant to section 5.160. A single instance of misconduct may be grounds for disciplinary action by the Board.

(c) Upon a finding of professional misconduct, the Board shall consider the following factors in determining an appropriate sanction or sanctions:

(1) the seriousness of the conduct, including the hazard or potential hazard to the health or safety of the public;

(2) the economic damage or potential damage to property caused by the misconduct;

(3) the respondent's history concerning previous grounds for sanction;

(4) the sanction necessary to deter future misconduct;

(5) efforts to correct the misconduct; and

(6) any other matter justice may require.

(d) These rules of professional conduct are not intended to suggest or define standards of care in civil actions against Interior Designers involving their professional conduct.

(e) An Interior Designer may donate his/her services to charitable causes but must adhere to all provisions of the Act and the Rules and Regulations of the Board in the provision of all interior design services rendered regardless of whether the Interior Designer is paid for the services.

§5.152. Competence.

(a) An Interior Designer shall undertake to perform a professional service only when the Interior Designer, together with those whom the Interior Designer shall engage as consultants, is qualified by education and/or experience in the specific technical areas involved. During the delivery of a professional service, an Interior Designer shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by reasonably prudent interior designers practicing under similar circumstances and conditions.

(b) An Interior Designer shall not affix his/her signature or seal to any interior design plan or document dealing with subject matter in which he/she is not qualified by education and/or experience to form a reasonable judgment.

(c) "Gross Incompetency" shall be grounds for disciplinary action by the Board. An Interior Designer may be found guilty of "Gross Incompetency" under any of the following circumstances:

(1) the Interior Designer has engaged in conduct that provided evidence of an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of an Interior Designer;

(2) the Interior Designer engaged in conduct which provided evidence of an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent interior designer;

(3) the Interior Designer has been adjudicated mentally incompetent by a court; or

(4) pursuant to section 5.159(b).

§5.153. Recklessness.

(a) An Interior Designer shall not practice interior design in any manner which, when measured by generally accepted interior design standards or procedures, is reasonably likely to result or does result in the endangerment of the safety, health, or welfare of the public.

(b) "Recklessness" shall be grounds for disciplinary action by the Board. "Recklessness" shall include the following practices:

(1) conduct which indicates that the Interior Designer is aware of yet consciously disregards a substantial risk of such a nature that its disregard constitutes a significant deviation from the standard of care that a reasonably prudent interior designer would exercise under the circumstances;

(2) knowing failure to exercise ordinary care and attention toward the intended result when a procedure, technique, material, or system is employed as a result of a decision made by the Interior Designer and such failure jeopardizes any person's health, safety, or welfare; or

(3) action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to the design or construction of a particular project when such disregard jeopardizes any person's health, safety, or welfare.

§5.154. Dishonest Practice.

(a) An Interior Designer may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud,

(2) deceive, or

(3) create a misleading impression.

(b) An Interior Designer may not advertise in a manner which is false, misleading, or deceptive. Each advertisement that offers the services of an Interior Designer in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Interior Designer's Texas interior design registration number. If an advertisement is for a business that employs more than one Interior Designer, only the Texas interior design registration number for one Interior Designer employed by the firm or associated with the firm pursuant to section 5.132 is required to be displayed.

(c) An Interior Designer may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded interior design work.

§5.155. Conflicts Of Interest.

(a) If an Interior Designer has any business association or financial interest which might reasonably appear to influence the Interior Designer's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the Interior Designer's client or employer, the Interior Designer shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. Unless the client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest, the Interior Designer shall either terminate the business association or financial interest or forego the project or employment.

(b) An Interior Designer shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(c) An Interior Designer shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Interior Designer is performing or has contracted to perform interior design services.

(d) The phrase "benefit of any substantial nature" is defined to mean any act, article, money, or other material consideration which is of such value or proportion that its acceptance creates an obligation or the appearance of an obligation on the part of the Interior Designer or otherwise could adversely affect the Interior Designer's ability to exercise his/her own judgment without regard to such benefit.

§5.156. Responsibility to the Interior Design Profession.

(a) An Interior Designer shall not:

(1) knowingly participate, directly or indirectly, in any plan, scheme, or arrangement having as its purpose the violation of any provision of the Act or any provision of the Rules and Regulations of the Board;

(2) aid or abet, directly or indirectly:

(A) any unregistered person in connection with the unauthorized practice of interior design;

(B) any business entity in the practice of interior design unless carried on in accordance with the Act; or

(C) any person or any business entity in the use of a professional seal or other professional identification so as to create the opportunity for the unauthorized practice of interior design by any person or any business entity;

(3) fail to exercise reasonable care or diligence to prevent his/her partners, associates, shareholders, and employees from engaging in conduct which, if done by him/her, would violate any provision of the Act or any provision of the Rules and Regulations of the Board.

(b) An Interior Designer possessing knowledge of an Applicant's qualifications for registration shall cooperate with the Board by responding in writing to the Board regarding those qualifications when requested to do so by the Board.

(c) An Interior Designer shall be responsible and accountable for the care, custody, control, and use of his/her interior design seal, professional signature, and other professional identification. An Interior Designer whose seal has been lost, stolen, or otherwise misused shall report the loss, theft, or misuse to the Board immediately upon discovery of the loss, theft, or misuse. The Board may invalidate the registration number of the lost, stolen, or misused seal upon the request of the Interior Designer if the Board deems it necessary.

§5.157. Prevention of Unauthorized Practice.

(a) An Interior Designer shall not practice or offer to practice interior design in any governmental jurisdiction in which to do so would be in violation of a law regulating the practice of interior design in that jurisdiction.

(b) The revocation, suspension, or denial of a registration to practice interior design in another jurisdiction shall be sufficient cause for the revocation, suspension, or denial of a registration to practice interior design in the State of Texas.

(c) An Interior Designer who fails to renew his/her certificate of registration prior to its annual expiration date shall not use the title "interior designer" to describe himself/herself and shall not use the term "interior design" to describe a service he/she offers or performs until after the Interior Designer's certificate of registration has been properly renewed.

§5.158. Criminal Convictions.

(a) Pursuant to Article 6252-13c and Article 6252-13d, Vernon's Texas Civil Statutes, the Board may suspend or revoke an existing

certificate of registration, disqualify a person from receiving a certificate of registration, or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction of a crime if the crime directly relates to the duties and responsibilities of a registered interior designer. The following procedures will apply in the consideration of an application for registration as an Interior Designer or in the consideration of a Registrant's criminal history:

(1) Each Applicant will be required to provide information regarding the Applicant's criminal history as part of the application process. Each Registrant will be required to report any criminal conviction to the Board within thirty (30) days of the date the conviction is entered by the court and to verify the status of the Registrant's criminal history on each registration renewal form. An Applicant or Registrant shall not be required to report a conviction for a minor traffic offense.

(2) An Applicant or Registrant who has been convicted of any crime will be required to provide a summary of each conviction in sufficient detail to allow the executive director to determine whether it appears to directly relate to the duties and responsibilities of a registered interior designer.

(3) If the executive director determines the conviction might be directly related to the duties and responsibilities of a registered interior designer, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(b) In determining whether a criminal conviction is directly related to the duties and responsibilities of a registered interior designer, the executive director and the Board will consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice interior design;

(3) the extent to which interior design registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registered interior designer.

(c) In addition to the factors that may be considered under subsection (b) of this section, the executive director and the Board shall consider the following:

(1) the extent and nature of the Applicant's or Registrant's past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed and the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

(3) the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(4) evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort;

(5) other evidence of the Applicant's or Registrant's present fitness to practice as an Interior Designer, including letters of recommendation from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and

(6) proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered.

(d) Crimes directly related to the duties and responsibilities of a registered interior designer include any crime that reflects a lack of fitness for professional licensure or a disregard of the standards commonly upheld for the professional practice of interior design, such as the following:

(1) criminal negligence;

(2) soliciting, offering, giving, or receiving any form of bribe;

(3) the unauthorized use of property, funds, or proprietary information belonging to a client or employer;

(4) acts relating to the malicious acquisition, use, or dissemination of confidential information related to interior design; and

(5) any intentional violation as an individual or as a consenting party of any provision of the Act.

(e) The Board shall revoke the certificate of registration of any Registrant who is convicted of any felony if the felony conviction results in incarceration. The Board also shall revoke the certificate of registration of any Registrant whose felony probation, parole, or mandatory supervision is revoked.

(f) If an Applicant is incarcerated as the result of a felony conviction, the Board may not approve the Applicant for registration during the period of incarceration. If an Applicant's felony probation, parole, or mandatory supervision is revoked, the Board may not approve the Applicant for registration until the Applicant successfully completes the sentence imposed as a result of the revocation.

(g) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant's certificate of registration;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final; and

(3) the earliest date the person may appeal.

(h) All proceedings pursuant to this section shall be governed by the Administrative Procedure Act, Chapter 2001, Government Code.

§5.159. Substance Abuse.

(a) If in the course of a disciplinary proceeding, it is found by the Board that an Interior Designer's abuse of alcohol or a controlled substance, as defined by the Texas Controlled Substances Act, Chapter 481, Health and Safety Code, contributed to a violation of the Act or the Rules and Regulations of the Board, the Board may condition its disposition of the disciplinary matter on the Interior Designer's completion of a rehabilitation program approved by the Texas Commission on Alcohol and Drug Abuse that may include rehabilitation at a facility also approved by the Commission.

(b) An Interior Designer's abuse of alcohol or a controlled substance that results in the impairment of the Interior Designer's professional skill so as to cause a direct threat to the property, safety, health, or welfare of the public may be deemed "Gross Incompetency" and may be grounds for the indefinite suspension of an Interior Designer's certificate of registration until such time as he or she is able to demonstrate to the Board's satisfaction that the reasons for suspension no longer exist and that the termination of the suspension would not endanger the public.

(c) In order to determine whether abuse of alcohol or a controlled substance contributed to a violation or has resulted in "gross incompetency," the Board may order an examination by one or more health care providers trained in the diagnosis or treatment of substance abuse.

§5.160. Effect of Enforcement Proceedings on Application.

(a) The application of an Applicant against whom the Board has initiated an enforcement proceeding may be held at the Board's discretion, without approval, disapproval, or rejection until:

(1) all enforcement proceedings have been terminated by a final judgment or order and the time for appeal has expired, or if an appeal is taken, such appeal has been terminated;

(2) the Applicant is in full compliance with all orders and judgments of the court, all orders and rules of the Board, and all provisions of the Act; and

(3) the Applicant has complied with all requests of the Board for information related to such compliance, upon which the Board shall complete the consideration of the application in the regular order of business.

(b) An "enforcement proceeding" is initiated by the commencement of an investigation that is based either on a formal complaint filed with the Board or on information presented to the Board that establishes probable cause for a belief in the existence of facts that would constitute a violation of the Act or the Rules and Regulations of the Board.

(c) The following sanctions may be imposed against an Applicant who is found to have falsified information provided to the Board, violated any of the title restrictions of the Act, violated any practice or title restriction of another jurisdiction, or otherwise violated any of the statutory provisions or rules enforced by the Board:

(1) reprimand;

(2) the imposition of an administrative penalty;

(3) suspension of the registration certificate upon its effective date;

(4) rejection of the application; or

(5) denial of the right to reapply for registration for a period not to exceed five years.

(d) The Board may take action against an Applicant for any act or omission if the same conduct would be a ground for disciplinary action against an Interior Designer.

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 February 9, 2001.

TRD-200100852

Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 1, 2001
Proposal publication date: December 22, 2000
For further information, please call: (512) 305-8535

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 401. SYSTEM ADMINISTRATION

SUBCHAPTER F. INTERNAL AUDIT

25 TAC §§401.401 - 401.413

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of Chapter 401, Subchapter F, §§401.401-401.413, are adopted without changes to the proposed in the October 20, issue of the *Texas Register* (25 TexReg 10433-10434). The new Chapter 411, Subchapter F, §§411.251-411.267, governing internal audits and investigations replace the repealed sections, which are contemporaneously adopted in this issue of the *Texas Register*.

The adopted repeals and new §§411.251-411.267 are made to authorize the department's internal auditors and investigators access to employees and records of contractors and subcontractors receiving appropriated funds through TDMHMR. The proposed repeals and new rules fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of department rules.

No public hearing was held. No written comments were received.

The repeals are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority and the Internal Auditing Act, Texas Government Code, Chapter 2102, which describes the standards for conducting internal audits.

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 February 5, 2001.

TRD-200100730
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 25, 2001
Proposal publication date: October 20, 2000
For further information, please call: (512) 206-4516

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CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER F. INTERNAL AUDITS AND INVESTIGATIONS

25 TAC §§411.251 - 411.267

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new Chapter 411, Subchapter F, §§411.251-411.267, governing internal audits and investigations. Sections 411.252-411.256, 411.260-411.263, 411.265 and 411.266 are adopted with changes to the proposed text published in the October 20, 2000, issue of the *Texas Register* (25 TexReg 10433 -10437). Sections 411.251, 411.257-411.259, 411.264, and 411.267 are adopted without changes. The new sections replace §§401.401-401.413, relating to internal audit, of Chapter 401, concerning system administration, which are contemporaneously repealed in this issue of the *Texas Register*.

The adoption of new §§411.251-411.267 and the contemporaneous repeals of §§401.401-401.413 are made to authorize the department's internal auditors and investigators to access employees and records of contractors and subcontractors receiving appropriated funds through TDMHMR. The adoption of the new rules and repeals fulfills the requirements of Texas Government Code, §2001.039, concerning the periodic review of department rules.

Minor grammatical changes and clarifying language were made to the subchapter. Throughout the subchapter references to "the director of Internal Audit" were changed to "the director" and references to "the director of Internal Audit or director of Investigations" were changed to "director or designee" to clarify the responsibilities of the director of Internal Audit.

Language in §411.252, revised consistent with the definitions of "contract" and "subcontract." In Section §411.253, language was added to the definition of "audit" to clarify who may be subject to an audit under the new subchapter. Definitions of "business entity," "contract," "contractor," "subcontract," and "subcontractor" were added to clarify how the subchapter applies to contractors and subcontractor. A definition of "director" also was added and the section was renumbered.

Concerning §411.261, language was added to clarify who is invited to attend the exit conference. Language was added in §411.262 to clarify that a subcontractor must provide copies of its response to audit findings not only to TDMHMR but also to the contractor. In §411.265(a), language unnecessary to the meaning of the subsection was deleted. Clarifying language was added in §411.265(g) to reflect the responsibilities of staff who are briefing executive staff on the status or outcome of an investigation.

Public comment was received from The Texas Council of Community Mental Health and Mental Retardation Centers, Inc., Austin.

The commenter requested that the terminology used in the subchapter be consistent with that found in the Internal Auditing Act, Texas Government Code, Chapter 2102, specifically with reference to the terms "audit" and "investigation." The commenter explained that by using separate definitions for the terms "audit" and "investigation," §411.265(a) is confusing with regard to the roles of the director of Internal Audit and the director of Investigations.

The department responds that the definitions of "audit" and "investigation" in the subchapter are consistent with those found in the Internal Auditing Act and are understandable by the general public and persons who are required to comply with the subchapter. In addition to the Internal Auditing Act, the terminology used in the subchapter must comply with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions of the Comptroller General of the United States; Standards for the Professional Practice of Internal Auditing* of The Institute of Internal Auditors, Inc.; the Code of Ethics of the Institute of Internal Auditors, Inc.; the Statement of Responsibilities of Internal Auditing of the Institute of Internal Auditors, Inc.; and Standards and Code of Ethics of the Association of Certified Fraud Examiners, Inc. The department agrees that the language as proposed was confusing with regard to the roles and responsibilities of the director, Internal Audit, and director, Investigations, and has revised the language identifying the director, Internal Audit, or designee responsible for the audit and investigations functions.

The commenter asked that the subchapters concerning program audits and management audits be referenced to clarify the relationship of all the rules relating to audits and investigations.

The commenter stated that the subchapter is applicable to audits involving entities receiving state funds, and as such, it does not address the department's responsibility for conducting "program reviews and management audits" of "community MHMR centers" pursuant to the Texas Health and Safety Code, §534.035. The commenter requested that language be added distinguishing between the audits that are within the purview of the Office of Internal Audit under these rules and the management and program audits that are within the purview of other department rules.

The department declines to add language as requested because, as the commenter noted, the application section states that the subchapter applies to facilities of TDMHMR and contractors and subcontractors. The department supports the proposed language, which indicates that the subchapter would not apply to a community center, or any entity, that does not contract with TDMHMR. The department notes that it contracts with local authorities, many of which are community centers, and any audit of a local authority that is also a community center would be in accordance with this subchapter. The department also notes that its rules governing community centers (Chapter 411, Subchapter G) address the department's procedures for auditing and reviewing community centers pursuant to the Texas Health and Safety Code, §534.035.

The commenter requested that the definitions of the terms "contractor" and "subcontractor" in the subchapter be consistent with those in proposed Chapter 412, Subchapter B, concerning contracts management for local authorities, and be used consistently in all department rules. The department responds that the subchapter is written to address contractors and subcontractors of the state authority, not local authorities governed by Chapter 412, Subchapter B.

The commenter asked for clarification regarding the department's intent to include a contractor in an exit conference involving a subcontractor. The department responds that the contractor would be advised by audit staff of the date, time, and location of the exit conference with a subcontractor, and has added clarifying language to the subchapter.

The commenter asked if §411.262, Responses to Audit Findings, serves as a venue for contesting audit findings. If not, the commenter asked how the audited party can make known any disagreement with the audit findings. The commenter asked that procedures clearly provide for a contractor to receive a copy of the subcontractor's audit responses. The department responds

that it is appropriate for the audited party to contest audit findings in its response and has added language to the subsection clarifying that a subcontractor provides its responses to contractors as well as to the appropriate deputy commissioner or director.

The commenter requested that the subchapter be more clear about the nature of the complaints that would trigger an investigation under this section. In addition, the commenter asked for clarification about how the Office of Internal Audit would respond to a complaint related to the Medicaid Program's requirements and to the requirements of other state agencies, e.g., the Texas Commission on Alcohol and Drug Abuse. The department responds that the Office of Investigations receives reports of alleged misconduct from numerous sources, e.g., Attorney General's Office, Texas Workers Compensation Commission, State Office of Risk Management, other state agencies, law enforcement, facility CEOs, MHMR employees, and the general public. The director or designee reviews the reports and, based on whether a violation of any law or department policy has occurred or may have occurred, recommends a course of action to the commissioner. Complaints against the Medicaid program additionally may be referred to the Attorney General's Office, Medicaid Fraud Unit, or the entity with authority over the program.

The commenter acknowledged that the department may conduct an investigation of a subcontractor, but not the contractor, and asked that the department add a provision that would require that the department notify the contractor about any investigation of a subcontractor. The department responds that unless the contractor's administrative staff or governing body are implicated in the alleged misconduct, a contractor would be notified about the investigation of its subcontractor. The department has added clarifying language to the subsection and notes that to protect the integrity of the investigation, the conveyance of information pertinent to the investigation may be limited to notification only.

The new sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Internal Auditing Act, Texas Government Code, Chapter 2102, which describes the standards for conducting internal audits.

§411.252. Application.

This subchapter applies to the facilities of the Texas Department of Mental Health and Mental Retardation and contractors and subcontractors.

§411.253. Definitions.

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

(1) Audit committee--The audit committee of the Texas of Mental Health and Mental Retardation Board.

(2) Audit--A review of financial, program, or management functions of a facility, contractor, or subcontractor.

(3) 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.

(4) Commissioner--The commissioner of the Texas Department of Mental Health and Mental Retardation.

(5) Contract--A written agreement between a business entity and the department that obligates the entity to provide goods or services in exchange for money or other valuable consideration.

(6) Contractor--A business entity that provides good or services pursuant to a contract.

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

(8) Director--The director of Internal Audit.

(9) Facility CEO--The head of a facility.

(10) Facility--Any state hospital, state school, state center, Central Office, or entity that may become part of TDMHMR.

(11) Investigation--The identification and review of allegations of employee misconduct, or other wrong doing involving facilities, contractors, and subcontractors if the alleged activity affects or implicates the integrity of the department's programs, employees, or other functions.

(12) Staff--Persons who are employed by TDMHMR as auditors or investigators.

(13) Subcontract--A written agreement between a business entity and a contractor that obligates the entity to provide goods or services in exchange for money or other valuable consideration. (This term includes a "contract" as defined in Chapter 412, Subchapter B, of this title (relating to contracts management for local authorities).

(14) Subcontractor--A business entity that provides goods or services pursuant to a subcontract. (A "subcontractor" is the same as a "contractor" in Chapter 412, Subchapter B, of this title (relating to contracts management for local authorities.)

§411.254. Office of Internal Audit Authority and Function.

The Office of Internal Audit, which includes the Office of Investigations, is authorized to conduct audits and investigations of alleged fraud, misconduct, or other wrongdoing involving facilities, contractors, and subcontractors. The director:

(1) serves at the pleasure of the TDMHMR Board and reports to members of the TDMHMR Board as specified by board policy;

(2) has access to the commissioner, to whom the TDMHMR Board delegates administrative supervisory responsibilities that do not involve substantive audit issues; and

(3) is appointed by the commissioner subject to the TDMHMR Board's approval.

§411.255. Responsibilities of the Audit Committee Chairman and the TDMHMR Board.

(a) The audit committee chairman is responsible for initiating, controlling, and receiving reports on all audit activities involving the Office of the Commissioner.

(b) The TDMHMR Board is responsible for:

(1) ensuring the independence of the audit function; and

(2) notifying the commissioner prior to executing any personnel actions affecting the director.

§411.256. Responsibilities of the Director.

(a) The director is responsible for recommending to the audit committee chairman audits of the commissioner's office and for providing information that may require an unscheduled audit of the commissioner's office.

(b) At the audit committee chairman's request, the director is responsible for advising the audit committee chairman on matters relating to the qualifications and selection of independent consulting auditors capable of performing audit activities involving the commissioner's office.

(c) The director is responsible for submitting through the commissioner to the audit committee for approval:

(1) the annual audit plan, which is based on risk analyses and identifies the audits to be performed during the year; and

(2) the Office of Internal Audit annual operating budget.

(d) As a part of each committee meeting, or as requested by the audit committee chairman, the director is responsible for reporting to the audit committee chairman on the status of the annual audit plan, including exceptions to the timely completion of the annual audit plan; the status of management's resolution of audit findings; and the status of consultations undertaken pursuant to subsection (d) of §411.260 of this title (relating to Scope of Audit Work) involving the Office of Internal Audit.

(e) The director is responsible for informing the commissioner of any issues that come to his or her attention that may adversely affect the department.

(f) The director, at the request of the audit committee chairman, is responsible for providing logistical support services to independent consulting auditors engaged by the audit committee.

§411.260. Scope of Audit Work.

(a) Facilities or activities are audited as described in the annual audit plan. During an audit, staff may identify issues that result in extending the scope of the audit. While onsite, the senior auditor provides the facility, contractor, and subcontractor's CEO with a completed interim audit finding form for each finding and recommendation and requests a response on each audit finding form for purposes of discussion at the exit conference unless the site auditor has reason to believe that fraud, misconduct, or other wrongdoing is involved. The scope of an audit may include one or more of the following.

(1) Staff may evaluate the efficiency and economy of management operations as described in the department's rules, policies, procedures, and performance contracts, and the systems of internal control and the quality in performing assigned responsibilities at each facility, which includes:

(A) planning the audit, examining and evaluating operations, communicating results, and following up on recommendations within the limits of budgetary constrains, time available, and the significance of the findings;

(B) reviewing the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information;

(C) reviewing the system established to ensure compliance with those policies, plans, procedures, laws, and regulation that could have a significant impact on operations and reports;

(D) reviewing the means for safeguarding assets and, if appropriate, verifying the existence of assets;

(E) appraising the economy and efficiency with which resources are employed;

(F) reviewing operations to ascertain whether results are consistent with established objectives and goals and whether the activities are being implemented as planned;

(G) evaluating the internal management controls of the department's automated systems during the planning, design, installation, and production phases of the system; and

(H) evaluating the internal and management controls of the department's new programs during development, implementation, and operational stages.

(2) Staff cannot exercise direct authority over facility, contractor, or subcontractor employees who are subject to the audit or investigation.

(3) Audit and investigation activities do not relieve employees responsible for the activities subject to the audit or investigation from the responsibilities assigned to them.

(b) Staff independently conclude on the results of the audit, issue a final report to the board and the commissioner identifying significant deficiencies or instances of noncompliance, and recommend corrective action and/or economy and efficiency improvements for the audited facility, contractor, or subcontractor.

(c) If approved by the board or the commissioner, staff investigate alleged fraud, misconduct, or other wrongdoing in accordance with §411.265 of this title (relating to Investigating Alleged Fraud, Misconduct, or Other Wrongdoing).

(d) The director may consult the board, the Office of the Governor, the State Auditor's Office, and other legislative agencies or committees concerning matters affecting audit duties or responsibilities.

§411.261. Exit Conference Procedures for Audits.

At the conclusion of the audit, staff conduct an exit conference that includes the CEO and administrative staff of the audited facility, contractor, or subcontractor to discuss the exceptions and recommendations noted on the interim audit finding forms. An attempt is made to resolve all exceptions at the facility, contractor, or subcontractor level before writing the final audit report. Regardless of whether significant issues are resolved during the exit conference, they may be included in the final audit report.

§411.262. Responses to Audit Findings.

Within 10 working days of the exit conference, the CEO of the audited facility, contractor, or subcontractor or designee (respondent) submits to the deputy commissioner for Community Programs, deputy commissioner for Finance and Administration, director of State Mental Health Facilities, or director of Mental Retardation Facilities, as appropriate, his or her responses to the audit findings. A subcontractor must also submit a copy of the audit responses to the contractor. The respondent to the final audit report must describe the actions to be taken regarding each exception and recommendation noted on the audit finding forms. The deputy commissioner for Community Programs, deputy commissioner for Finance and Administration, director of State Mental Health Facilities, or director of Mental Retardation Facilities must submit to the director the final approved responses to audit findings.

§411.263. Final Audit Report Distribution.

(a) Within 60 calendar days of the exit conference, the director issues the final audit report according to the reporting requirements.

(b) Final audit reports for all audits of facilities, contractors, and subcontractors are forwarded to the commissioner and distributed to the deputy commissioner for Community Programs, deputy commissioner for Finance and Administration, director of State Mental Health Facilities, or director of Mental Retardation Facilities; and other staff, as appropriate. The deputy commissioner or director, as appropriate, is responsible for disseminating the final audit report to appropriate facility employees and contractors, and contractors are responsible for disseminating the final audit report to their employees and subcontractors.

(c) Each member of the TDMHMR Board receives a copy of all final audit reports.

§411.265. Investigating Alleged Fraud, Misconduct, or Other Wrongdoing.

(a) Receiving a complaint or identifying alleged wrongdoing. If staff receive a complaint or identify alleged wrongdoing and report it to the director or designee, the director may request additional information to determine whether an investigation is warranted.

(b) Determining investigative action. If the director or designee determines that an investigation:

(1) is warranted, then the director or designee prepares a written summary of the allegation, including supporting documentation. The summary and the director's investigative recommendation is submitted to the commissioner or the TDMHMR Board for approval.

(2) is not warranted, then the file is documented as closed and remains under intake status to support such action.

(c) Approving an investigation. If the commissioner or TDMHMR Board:

(1) approves the investigation and, if during its course it becomes apparent that the alleged wrongdoing occurred or may be ongoing, the director or designee advises the commissioner or TDMHMR Board who determines whether to refer the matter to the law enforcement authority; or

(2) does not approve the investigation, then the file is documented as closed and remains under intake status to support such action.

(d) TDMHMR employee confidentiality. Staff must ask TDMHMR employees who are interviewed or who are included in briefings concerning investigation activities to sign a confidentiality agreement regarding the information presented or discussed. If a TDMHMR employee signs a confidentiality agreement, the employee is agreeing to maintain such confidentiality to the extent permitted by law. If an employee refuses to sign the confidentiality agreement, then, in accordance with department policy, the employee may be subject to disciplinary action as determined by the facility CEO.

(e) Conducting the investigation.

(1) If the investigation involves the commissioner's office, the director or designee immediately reports any investigative impediments to the TDMHMR Board's audit committee chairman.

(2) If staff conducting the investigation determine that the department may be at risk or liable under the law, the director or designee must be notified as soon as practical.

(3) Staff, as appropriate to the circumstances of the investigation, notify the CEO or governing body of such facility, contractor, or subcontractor, that an investigation is being conducted, including the contractor of a subcontractor under investigation.

(4) If facility, contractor, or subcontractor administration is considering personnel action based upon information obtained during an on going investigation, he or she must contact the director or designee before taking the personal action so the potential impact on the investigation can be evaluated.

(5) If the personnel action is taken, facility, contractor, or subcontractor administration must notify staff conducting the investigation.

(f) Referring to law enforcement authorities. If the matter under investigation:

(1) is referred to law enforcement authorities:

(A) the lead investigator makes the referral.

(B) staff act as the liaison between the department and law enforcement authorities.

(C) staff may assist in the investigation under the direction of law enforcement authorities.

(2) is not referred to law enforcement authorities:

(A) the commissioner or board may direct staff to further investigate.

(B) the case may be closed without further action and filed under intake status to support such action.

(3) is declined by law enforcement authorities:

(A) the commissioner or board may direct staff to further investigate.

(B) the case may be closed without further action and filed under intake status to support action.

(g) Briefing executive staff. The director or designee must offer to brief the commissioner and the TDMHMR Board. As appropriate to the circumstances of the investigation, the director or designee may brief the CEO or governing body of the facility, contractor, or subcontractor verbally on the status of the investigation and, upon completion, provide the final written report. Verbal status reports and final written reports assist executive staff in:

(1) administering personnel action;

(2) referring to law enforcement;

(3) revising rules, policies, and procedures;

(4) implementing performance reviews; and

(5) enforcing contractual obligations.

(h) Documenting investigative results. The lead investigator must prepare the final written report documenting the results of the investigation, including:

(1) a statement of allegations;

(2) a summary of investigation activities;

(3) an analysis of the evidence;

(4) a statement indicating whether fraud, misconduct, or wrongdoing occurred; and

(5) the recommended course of action.

§411.266. References.

Reference is made to the following rules, statutes, and publications:

(1) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, the Comptroller General of the United States;

(2) *Standards for the Professional Practice of Internal Auditing*, The Institute of Internal Auditors, Inc.;

(3) Code of Ethics of the Institute of Internal Auditors, Inc.;

(4) The Statement of Responsibilities of Internal Auditing of the Institute of Internal Auditors, Inc.;

(5) Internal Auditing Act, Texas Government Code, Chapter 2102; and

(6) Standards and Code of Ethics of the Association of Certified Fraud Examiners, Inc.

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 February 5, 2001.

TRD-200100729
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 25, 2001
Proposal publication date: October 20, 2000
For further information, please call: (512) 206-4516

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CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new Chapter 417, Subchapter A, §§417.1-417.6, concerning assignment and use of pooled vehicles, of Chapter 417, governing agency and facility responsibilities. Sections 417.4 and 417.6 are adopted with changes to the text as published in the January 12, 2001, issue of the *Texas Register* (26 TexReg 274-275). Sections 417.1-417.3, and 417.5 are adopted without changes and will not be republished.

The adoption of new §§417.1-417.6 implements Texas Government Code, §§2171.104, 2171.1045, and 2171.105, concerning management of the department's motor vehicle pool.

No public comments were received.

Minor grammatical changes were made throughout the subchapter. Section 417.4 has been revised from the language drafted by the General Services Commission, Office of Vehicle Fleet Management, to reflect TDMHMR's policy regarding assigning vehicles from the motor pool and organizational structure.

DIVISION 1. GENERAL REQUIREMENTS

25 TAC §§417.1 - 417.3

The new sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority and the Texas Government Code, §§2171.104 and 2171.1045, which the requires the department to adopt rules implementing the fleet management plan. The new sections affect the Texas Government Code, §§2171.104, 2171.1045, and 2171.105.

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 February 12, 2001.

TRD-200100867
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: March 4, 2001
Proposal publication date: January 12, 2001
For further information, please call: (512) 206-4516

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DIVISION 2. TRANSPORTATION

25 TAC §417.4

The new section is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority and the Texas Government Code, §§2171.104 and 2171.1045, which the requires the department to adopt rules implementing the fleet management plan. The new sections affect the Texas Government Code, §§2171.104, 2171.1045, and 2171.105.

§417.4. Assignment and Use of Pooled Vehicles.

(a) Except as provided by subsection (b) of this section, state-owned vehicles under the department's control are assigned to the facility's motor vehicle pool and made available for use as needed. Some of the vehicles in the motor vehicle pool may be organized in subpools and assigned to divisions or functions (e.g., building services, security, food services) within the facility. The subpooled vehicles are available only to staff in that division or who perform job duties related to that function.

(b) If a state-owned vehicle under the department's control is assigned to an employee, then the facility CEO or designee must document in writing that the assignment and use of the vehicle is critical to the department's mission. The written documentation must be maintained at the facility, sent to and maintained in the Central Office transportation office, and sent to the General Services Commission, Office of Vehicle Fleet Management.

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 February 12, 2001.

TRD-200100868
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: March 4, 2001
Proposal publication date: January 12, 2001
For further information, please call: (512) 206-4516

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DIVISION 3. REFERENCES AND DISTRIBUTION

25 TAC §417.5, §417.6

The new sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority and the Texas Government Code, §§2171.104 and 2171.1045, which the requires the department to adopt rules implementing the fleet management plan. The new sections affect the Texas Government Code, §§2171.104, 2171.1045, and 2171.105.

§417.6. Distribution.

(a) This subchapter is distributed to members of the TDMHMR Board; medical director; deputy commissioners for Community Programs and Budget and Finance and the directors, State Mental Health Facilities and State Mental Retardation Facilities; and Central Office program and management staff.

(b) This subchapter is distributed to facility CEOs who are responsible for disseminating this subchapter to their staff, as appropriate.

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 February 12, 2001.

TRD-200100869
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: March 4, 2001
Proposal publication date: January 12, 2001
For further information, please call: (512) 206-4516

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PART 11. TEXAS CANCER COUNCIL

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.21

The Texas Cancer Council adopts the new section 701.21 to Chapter 701 concerning historically underutilized businesses (HUBs) without changes to the proposed text as published in the November 24, 2000, issue of the *Texas Register* (25 TexReg 11638). No comments were received.

The amendment was proposed because the new rule conforms to Texas Government Code, § 2161.003, which directs state agencies to adopt the rules of the General Services Commission (GSC) regarding HUBs as the agency's own rules. The GSC rules the Council will adopt by reference provide for a policy and a purpose for the rules, definitions applicable to the HUB rules, annual procurement HUB utilization goals, subcontracting requirements, agency planning responsibilities, state agency reporting requirements, a HUB certification process, protests from denial of HUB applications, a HUB re-certification process, revocation provisions, certification and compliance reviews, compilation of a HUB directory, HUB graduation procedures, review and revision of GSC's HUB program, a memorandum of understanding between GSC and the Texas Department of Economic Development concerning technical assistance and budgeting for the HUB program, HUB Coordinator responsibilities, HUB forum programs for state agencies, and a mentor-protégé program.

The amendment is adopted under the authority of the Texas Health & Safety Code Annotated, sections 102.002 and 102.009 which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, and the Texas Government Code Annotated, Section 2161.003 which requires state governmental bodies to use the rules adopted by the General Services Commission in regarding HUBs.

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 February 9, 2001.

TRD-200100860
Mickey L. Jacobs, M.S.H.P.
Executive Director
Texas Cancer Council
Effective date: March 1, 2001
Proposal publication date: November 24, 2000
For further information, please call: (512) 463-3190

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.70

The Commissioner of Insurance adopts new §7.70 concerning annual statement blanks, other reporting forms, diskettes or electronic filings with the National Association of Insurance Commissioners (NAIC) via the Internet. Section 7.70 is adopted with changes to the proposed text as published in the January 5, 2001, issue of the *Texas Register* (26 TexReg 59).

The section provides instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities during 2000 and the requirement to file such completed statement blanks and other reporting forms, including diskettes or electronic filings with the NAIC via the internet. These annual statement blanks, other reporting forms, and diskettes or electronic filings with the NAIC via the Internet are required by statute for reporting, in 2001, the financial condition and business operations and activities conducted during the 2000 calendar year. The information provided is necessary for the department to monitor the solvency, business activities and statutory compliance of the insurers and other entities regulated by the department. Most of the forms adopted by the section have been promulgated by the NAIC and are used by other state insurance regulators. The use of these forms promotes uniformity and efficiency in the regulation of insurance companies and other entities regulated by the department. In addition to these standard forms, there are other forms adopted by the section that are used only by the department. These forms are reviewed each year to assure that the information required to complete the form is necessary for the department to perform its duties.

The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; adopts by reference the annual blanks, other reporting forms, and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and certain other regulated entities to file such annual statements and other reporting forms with the department and/or the NAIC as directed. The required documents will provide financial information to the public and regulatory agencies, and will be used by the department to monitor the financial condition of insurers and other regulated entities licensed in

Texas to assure financial solvency and compliance with applicable laws and accounting requirements. The adopted section was changed to provide consistency and to correct a typographical error in §7.70(l)(1). Page 130 was changed to page 132.

No comments were received.

The new section is adopted under the Insurance Code Articles 1.11, 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.49, 21.52F, 21.54, 22.06, 23.02 and 23.26, and §§32.041 and 36.001. Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Articles 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.49, 21.54, 22.06, 23.02, and 23.26 require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rule-making authority of the commissioner relating to those insurers and other regulated entities. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 21.52F authorizes the commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under that article. Section 32.041 requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Section 36.001 provides that the commissioner may adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute.

§7.70. Requirements for Filing the 2000 Annual Statements, Other Reporting Forms, and Diskettes or Electronic Filings with the NAIC via the Internet.

(a) Scope. This section provides insurers and other regulated entities with the requirements for the 2000 annual statement, other reporting forms, and diskettes or electronic filings with the National Association of Insurance Commissioners (NAIC) via the Internet necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; Mexican non-life insurers licensed under any article of the Insurance Code other than, or in addition to, Insurance Code Article 8.24, title insurers; fraternal benefit societies; local mutual aid associations; statewide mutual assessment companies; mutual burial associations; exempt associations; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Workers' Compensation Insurance Fund; and the Texas Windstorm Insurance Association. The commissioner adopts by reference the 2000 annual statement blanks, instruction manuals, and other reporting forms specified in this section. The annual statement blanks and other reporting forms are available from the department, Financial Analysis and Examinations, Mail Code 303-1A, P. O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the Texas Department of Insurance (department) and the NAIC by completing the appropriate annual statement blanks, prepared with laser quality print (hand written copies must be prepared legibly using black ink), other reporting forms, and diskettes or electronic filings with NAIC via the Internet following the applicable instructions as outlined in subsections (d) - (m) of this section.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings:

(1) Association edition - Blanks and forms promulgated by the NAIC.

(2) Commissioner - The commissioner of insurance appointed under the Insurance Code.

(3) Insurer - A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance, including health maintenance organizations.

(4) Texas edition - Blanks and forms promulgated by the commissioner.

(c) Conflicts with Other Laws. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, instructions, or any specific requirement of this section and the NAIC manuals or instructions listed in this section, then and in that event, the Insurance Code, the department's promulgated rule, form, instruction, or the specific requirement of subsections (d) - (m) of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, accident, life and health, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital services corporation and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, diskettes or electronic filings with the NAIC via the Internet for the 2000 calendar year as specified in this subsection. The forms and reports identified in paragraphs (1)(A)-(D); (2)(A), (B) and (H); and (3)(A)-(K) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Instructions, Life, Accident and Health, and the NAIC Accounting Practices and Procedures Manual for Life, Accident and Health Companies (January, 1999) except as provided by subsection (b) of this section. The diskettes or electronic filings with the NAIC via the Internet identified in paragraph (3)(L) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Diskette Filing Specifications-Life, Accident and Health, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed both with the department and the NAIC include the following:

(A) Annual Statement (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001);

(B) Annual Statement of the Separate Accounts (association edition) (required of companies maintaining separate accounts), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001);

(C) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2001;

(D) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by paragraph (1)(A) of this subsection.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(B) Supplemental Compensation Exhibit (association edition), the 8 1/2 inch by 14 inch size (required of Texas domestic companies only), to be filed on or before March 1, 2001 (stipulated premium companies, April 1, 2001);

(C) Annual Statement (Texas edition) (required of non-profit prepaid legal companies writing prepaid legal business in 2000 and subject to Chapter 23 of the Insurance Code), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(D) Affidavit in Lieu of Annual Statement (Texas edition) (required of non-profit prepaid legal companies authorized to write prepaid legal business that did not write such business in 2000 and subject to Chapter 23 of the Insurance Code), to be filed on or before March 1, 2001;

(E) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001);

(F) Analysis of Surplus (Texas edition) for life, accident and health insurers, to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001); and

(G) Supplemental Investment Income Exhibit (Texas edition) (shows percent of net investment income by type of investment), as an attachment to page ten of the annual statement as required by paragraph (1)(A) of this subsection, to be filed on or before March 1, 2001 (stipulated premium companies, April 1, 2001).

(H) The Texas Health Insurance Risk Pool shall complete and file the following only:

(i) Annual Statement (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001. However, only pages 1 - 5, 12, and the Notes to Financial Statements (page 31) and Schedule E (page 75) are required to be completed and filed on or before March 1, 2001; and

(ii) The Texas Health Insurance Risk Pool is not required to file reports, diskettes, or electronic filings with the NAIC.

(3) Reports, diskettes, or electronic filings via the Internet filed only with the NAIC:

(A) Trusteed Surplus Statement (association edition), Life, Accident and Health Supplement (required of the U. S. branch of an alien insurer), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(B) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing Medicare supplement business), to be filed on or before March 1, 2001;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001);

(D) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(E) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001);

(F) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(G) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(H) Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(I) Adjustments to the Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(J) Schedule DC (association edition) (for insurers engaged in insurance options and futures), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001);

(K) Schedule DS (association edition) (required only of companies that have included "equity in the undistributed income of unconsolidated subsidiaries" in their "net gain from operations"), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001); and

(L) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2001 (stipulated premium insurance companies, April 1, 2001).

(4) The following provisions shall apply to the filings required in paragraphs (1)-(3) of this subsection.

(A) Texas domestic life, accident and health companies with more than $30 million in direct premiums in 2000 must establish Asset Valuation Reserves (AVR) and Interest Maintenance Reserves (IMR) in their financial statements in accordance with the instructions in the 1999/2000 NAIC Annual Statement Instructions, Life, Accident and Health Companies. Texas domestic companies with $30 million or less in direct premiums and the Texas Health Insurance Risk Pool may establish AVR and IMR in their financial statements in accordance with the instructions in the 1999/2000 NAIC Annual Statement Instructions, Life, Accident and Health Companies or they must value bonds and preferred stocks in compliance with the provisions of §7.16 of this title (relating to NAIC Purposes and Procedures of the Securities Valuation Office Manual), concerning companies not maintaining an AVR or IMR.

(B) Actuarial opinions required by paragraph (1)(D) of this subsection shall be in accordance with the following:

(i) Unless exempted, the statement of actuarial opinion should follow the applicable provisions of §§3.1601-3.1611 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(ii) For those companies exempted from §§3.1601-3.1611 of this title, instructions 1-12, established by the NAIC, must be followed.

(iii) Any stipulated premium company subject to §§3.1601-3.1611 of this title which does not insure or assume risk on contracts with death benefits, cash value, or accumulation values on any one life in excess of $10,000, except as permitted by Insurance Code Article 22.13, §1(b), is exempt from submission of a statement of actuarial opinion in accordance with §3.1608 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis), but must submit an actuarial opinion pursuant to §3.1607 of this title (relating to Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis).

(C) Reporting for "administrative services only" (ASO) plans. Some insurers may act only as administrators of accident and health plans where the plan bears all of the risk of claims. Such plans are commonly referred to as "administrative services only" plans and are also referred to as "uninsured plans." The amounts received for ASO plans shall not be recorded in premiums. Claims paid by the insurer under uninsured accident and health plans should not be reported in the Summary of Operations. Commissions, expenses, and taxes incurred by an insurer for uninsured accident and health plans are to be reported on a gross basis by type of expense. The administration fees and expense reimbursements relating to uninsured business are deducted in the general expense exhibit and general insurance expenses are to be reported in the Summary of Operations net of such fees and reimbursement. Texas domestic insurers subject to this subsection that have reported amounts received for ASO plans as premiums under different reporting standards for at least five years prior to the effective date of this section may continue reporting amounts received for ASO plans as premiums. Under such circumstances, the insurer shall provide a general description of the source and amounts received for ASO plans as an attachment to the Summary of Operations and the Schedule T of the annual statement.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. Branch, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement under paragraph (1)(A) of this subsection for the 1999 calendar year or had gross written premiums in 2000 in excess of $5,000,000, any Mexican non-life insurer licensed under any article of the Insurance Code other than, or in addition to, Insurance Code Article 8.24, domestic joint underwriting association, the Texas Workers' Compensation Insurance Fund and the Texas Windstorm Insurance Association shall complete and file the following blanks, forms, and diskettes or electronic filings with the NAIC via the Internet for the 2000 calendar year. The forms and reports identified in paragraphs (1)(A)-(F); (2)(A), (B) and (J); and (3)(A)-(G) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Instructions, Property and Casualty and the NAIC Accounting Practices and Procedures Manual for Property and Casualty Companies (March 1998), except as provided by paragraph (4) of this subsection. The diskettes or electronic filings with the NAIC via the Internet identified in paragraph (3)(H) and (I) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Diskette Filing Specifications - Property and Casualty.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(B) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2001;

(C) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(D) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(E) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph; and

(F) Combined Property/Casualty Annual Statement (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before May 1, 2001, including the Insurance Expense Exhibit. This form is required only for those affiliated insurers that wrote more than $35 million in direct premiums as a group in 2000, as defined in Schedule T of the Annual Statement.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(B) Supplemental Compensation Exhibit (association edition), the 8 1/2 inch by 14 inch size (required of Texas domestic companies only), to be filed on or before March 1, 2001;

(C) Supplemental Investment Income Exhibit (Texas edition) (shows percent of net investment income by type of investment), as an attachment to page six of the annual statement required by paragraph (1)(A) of this subsection, to be filed on or before March 1, 2001;

(D) Annual Statement (Texas edition) (required of non-profit prepaid legal companies writing prepaid legal business in 2000 and subject to Chapter 23 of the Insurance Code), the 81/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(E) Affidavit in Lieu of Annual Statement (Texas edition) (required of non-profit prepaid legal companies authorized to write prepaid legal business and subject to Chapter 23 of the Insurance Code) that did not write such business in 2000), to be filed on or before March 1, 2001;

(F) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 2001;

(G) Analysis of Surplus (Texas edition) for property and casualty insurers (required of all licensed companies, except Texas domestic county mutual companies), to be filed on or before March 1, 2001;

(H) Supplement for County Mutuals (Texas edition) (required of Texas domestic county mutual companies, as an attachment to page sixteen of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 2001; and

(I) Texas Supplemental A for County Mutuals (Texas edition) (required of Texas domestic county mutual companies, as an attachment to page nine of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 2001.

(J) The Texas Windstorm Insurance Association (Insurance Code Article §21.49) shall complete and file only the following:

(i) Annual Statement (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001, except as provided by paragraph (4) of this subsection;

(ii) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2001.

(3) Reports, diskettes, or electronic filings via the Internet filed only with the NAIC:

(A) Trusteed Surplus Statement (association edition, Property and Casualty Supplement) (required of the U. S. branch of an alien insurer), 8 1/2 inch by 14 inch size to be filed on or before March 1, 2001;

(B) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing Medicare supplement business), to be filed on or before March 1, 2001;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 2001;

(D) Insurance Expense Exhibit (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(E) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit accident and/or health business), 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(F) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(G) Schedule DC (association edition) (for insurers engaged in insurance options and futures), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(H) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2001;

(I) Diskettes or electronic filings via the Internet containing combined annual statement data, to be filed on or before May 1, 2001.

(4) The following provisions shall apply to all filings required by paragraphs (1) - (3) of this subsection.

(A) No loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed. The commissioner shall have the authority to determine the appropriateness of, and may disallow, such discounts.

(B) The commissioner shall have the authority to determine the appropriateness of, and may disallow, anticipated salvage and subrogation.

(C) Texas domestic insurers that write only in Texas may apply for an alternative basis of calculating the excess of statutory reserves over statement reserves, also known as the Schedule P penalty reserve, by submitting a request to the Chief Property and Casualty Actuary of the Financial Program which outlines the reasons and basis for such request. The request should be mailed to the Chief Property and Casualty Actuary, Texas Department of Insurance, Financial Program, MC 302-3A P.O. Box 149104, Austin, Texas 78714-9104. Requests must be submitted to the department on or before January 31, 2001.

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and diskettes or electronic filings for the 2000 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(D); (2)(A) and (D); and (3)(A)-(F), and (H) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Instructions, Fraternal, except as provided by paragraph (4) of this subsection. The diskettes or electronic filings identified in paragraph (3)(G) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Diskette Filing Specifications-Fraternal, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(B) Annual Statement of the Separate Accounts (association edition) (required of companies maintaining separate accounts), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(C) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2001; and

(D) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), the 8 1/2 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 2001;

(B) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 2001;

(C) Analysis of Surplus (Texas edition) for fraternal benefit societies, to be filed on or before March 1, 2001;

(D) Fraternal Benefit Societies Supplement to Valuation Report (Association edition) to be filed on or before June 30, 2001; and

(E) Supplemental Investment Income Exhibit (Texas edition) (shows percent of net investment income by type of investment, as an attachment to page ten of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 2001.

(3) Reports and diskettes or electronic filings via the Internet to be filed only with the NAIC:

(A) Trusteed Surplus Statement (association edition, Fraternal Supplement) (required of the U. S. branch of an alien insurer), 8 1/2 inch by 14 inch size to be filed on or before March 1, 2001;

(B) Medicare Supplement Insurance Exhibit (association edition) (for insurers writing Medicare supplement business) to be filed on or before March 1, 2001;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 2001;

(D) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(E) Schedule DS (association edition) (required only of companies that have included "equity in the undistributed income of the subsidiary" in "net gain from operations"), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(F) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001;

(G) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2001; and

(H) Fraternal Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001.

(4) Texas domestic fraternal companies with more than $30 million in direct premiums in 2000 must establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 1999/2000 NAIC Annual Statement Instructions, Fraternal. Texas domestic fraternal companies with $30 million or less in direct premiums may establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 1999/2000 NAIC Annual Statement Instructions, Fraternal or they must value bonds and preferred stocks in compliance with the provisions of §7.16 of this title (relating to NAIC Purposes and Procedures of the Securities Valuation Office Manual), concerning companies not maintaining an Asset Valuation Reserve or Interest Maintenance Reserve. Since fraternals are not subject to Article 3.28 Section 2A, Texas Insurance Code, the statement of actuarial opinion for fraternals should follow instructions 1 - 12, established by the NAIC.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 2000 calendar year. The reports and forms identified in paragraphs (1)(A)-(C); (2)(A) and (E); and (3)(A) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Instructions, Title, except as otherwise provided by subsection (b) of this section. The diskette or electronic filings via the Internet identified in paragraph (3)(B) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Diskette Filing Specifications, Title.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(B) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2001; and

(C) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), the 8 1/2 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 2001;

(B) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 2001;

(C) Analysis of Surplus (Texas edition) for title insurers to be filed on or before March 1, 2001;

(D) Supplemental Investment Income Exhibit (Texas edition) (shows percent of net investment income by type of investment, as an attachment to page six of the annual statement as required in paragraph (1)(A) of this subsection), to be filed on or before March 1, 2001; and

(E) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001.

(3) Reports to be filed only with the NAIC.

(A) Officers and Directors Information (association edition), to be filed on or before March 1, 2001;

(B) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2001.

(h) Requirements for health maintenance organizations and non-profit health corporations. Each health maintenance organization and non-profit health corporation shall complete and file the following blanks and forms, and diskettes for the 2000 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(D) and (2)(A) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Instructions, Health Maintenance Organizations and the NAIC Accounting and Practices Procedures Manual for Health Maintenance Organizations (June, 1991). The actuarial opinion required to be completed in accordance with the 1999/2000 NAIC Annual Statement Instructions, Health Maintenance Organizations shall include the additional requirements of the department in paragraph (1)(C) of this subsection. The forms, reports, and diskettes identified in paragraphs (1)(A), (2)(B) and (D) of this subsection shall be completed in accordance with instructions provided by the department. The diskettes or electronic filings identified in paragraph (3) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Diskette Filing Specifications, Health Maintenance Organizations.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(B) Management's Discussion and Analysis, (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2001;

(C) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all health maintenance organizations), to be attached to the annual statement required by subparagraph (A) of this paragraph. In addition to the requirements set forth in the 1999/2000 NAIC Annual Statement Instructions, Health Maintenance Organizations, the department requires that the actuarial opinion include the following:

(i) The statement of actuarial opinion must include assurance that an actuarial report and underlying actuarial workpapers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year end for which the opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial workpapers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial workpapers supporting the findings expressed in this Statement of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."

(ii) Under the scope paragraph requirements of section 5 of the instructions relating to the Actuarial Certification in the 1999/2000 NAIC Annual Statement Instructions, Health Maintenance Organizations, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve; and

(D) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing Medicare supplement business) to be filed on or before March 1, 2001.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), the 8 1/2 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 2001;

(B) HMO Supplement (Texas edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(C) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 2001; and

(D) Department formatted diskettes containing annual statement data (diskettes provided by the department for entering of health maintenance organization or non-profit health corporation financial statement data), to be completed according to the instructions provided by the department and filed with the department on or before March 1, 2001.

(3) Reports and diskettes or electronic filings via the Internet to be filed only with the NAIC. The diskettes containing computerized annual statement data must be filed on or before March 1, 2001. If utilizing Internet filing, it is not necessary to submit a diskette to the NAIC.

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section relating to filing requirements for property and casualty insurers. Each farm mutual insurance company shall file the following completed blanks and forms for the 2000 calendar year with the department only:

(1) Annual statement (Texas edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001;

(2) Texas Overhead Assessment Form (Texas edition), to be filed on or before March 1, 2001;

(3) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items), to be attached to the annual statement required by paragraph (1) of this subsection, unless otherwise exempted.

(j) Requirements for statewide mutual assessment companies, local mutual aid and mutual burial associations, and exempt companies. Each statewide mutual assessment company, local mutual aid association, local mutual burial association, and exempt company shall file the following completed blanks and forms for the 2000 calendar year with the department only:

(1) Annual Statement (Texas edition), the 8 1/2 inch by 14 inch size, to be filed on or before April 1, 2001; provided, however, exempt companies are not required to complete lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4, 5, 6, and 7. All other pages are required;

(2) Texas Overhead Assessment Form (Texas edition), to be filed on or before April 1, 2001;

(3) Release of Contributions Form (Texas edition), to be filed on or before April 1, 2001;

(4) 3 1/2 % Chamberlain Reserve Table (Reserve Valuation) (Texas edition), to be filed on or before April 1, 2001;

(5) Reserve Summary (1956 Chamberlain Table 3 1/2 %) (Texas edition), to be filed on or before April 1, 2001;

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas edition), to be filed on or before April 1, 2001; and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas edition), to be filed on or before April 1, 2001.

(k) Requirements for non-profit legal service corporations. Each non-profit legal service corporation subject to Chapter 23 of the Insurance Code shall file the following completed blanks and forms for the 2000 calendar year with the department only:

(1) Annual Statement (Texas edition), the 8 1/2 inch by 14 inch size, to be filed on or before March 1, 2001; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 2001.

(l) Requirements for Mexican casualty companies. Each Mexican casualty company, doing business as authorized by a certificate of authority issued under the Insurance Code Article 8.24, shall complete and file the following blanks and forms for the 2000 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in accordance with the 1999/2000 NAIC Annual Statement Instructions, Property and Casualty, except as provided by this section.

An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The blanks or forms are as follows:

(1) Annual Statement (association edition), the 8 1/2 inch by 14 inch size; provided, however, only pages 1 - 4, 15 - 19 and 132 are required to be completed and filed on or before March 1, 2001;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 2001;

(3) A copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the 2000 annual statement, to be filed on or before June 30, 2001; and

(4) A copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 2001.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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 February 7, 2001.

TRD-200100833
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 27, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 463-6327

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28 TAC §7.71

The Commissioner of Insurance adopts new §7.71 concerning the year 2001 annual and quarterly statement blanks, other reporting forms, diskettes or electronic filings with the National Association of Insurance Commissioners (NAIC) via the Internet. Section 7.71 is adopted with changes to the proposed text as published in the January 5, 2001, issue of the *Texas Register* (26 TexReg 66).

The section provides instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities during 2001 and the requirement to file such completed statement blanks and other reporting forms, including diskettes or electronic filings with the NAIC via the internet. The annual and quarterly statement blanks, other reporting forms, and diskettes or electronic filings with the NAIC via the Internet are required by statute for reporting, in 2001 and 2002, the financial condition and business operations and activities conducted during the 2001 calendar year. The information provided is necessary for the department to monitor the solvency, business activities and statutory compliance of the insurers and other entities regulated by the department. Most of the forms adopted by the section have been promulgated by the NAIC and are used by other state insurance regulators. The use of these forms promotes uniformity and efficiency in the regulation of insurance companies and other entities regulated by the department. In addition to these standard forms, there are other forms that are used only by the department. Some of these forms are not included, but the department intends to have these forms updated later in 2001 and will propose an amendment to this section no later than December 31, 2001 to adopt the forms by reference. These forms are reviewed each year to assure that the information required to complete the form is necessary for the department to perform its duties.

The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; adopts by reference the annual and quarterly statement blanks, other reporting forms, and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the NAIC as directed. The required documents will provide financial information to the public and regulatory agencies, and will be used by the department to monitor the financial condition of insurers and other regulated entities licensed in Texas to assure financial solvency and compliance with applicable laws and accounting requirements. The adopted section was changed to provide consistency and to correct a typographical error in §7.70(l)(1). Page 130 was changed to page 132.

No comments were received.

The new section is adopted under the Insurance Code Articles 1.11, 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.49, 21.52F, 21.54, 22.06, 23.02 and 23.26, and §§32.041 and 36.001. Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Articles 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.49, 21.54, 22.06, 23.02, and 23.26 require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rulemaking authority of the commissioner relating to those insurers and other regulated entities. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 21.52F authorizes the commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under that article. Section 32.041 requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Section 36.001 provides that the commissioner may adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute.

§7.71. Requirements for Filing the 2001 Quarterly and 2001 Annual Statements, Other Reporting Forms, and Diskettes or Electronic Filings with the NAIC via the Internet.

(a) Scope. This section provides insurers and other regulated entities with the requirements for the 2001 quarterly statements, and 2001 annual statement, other reporting forms, and diskettes or electronic filings with the National Association of Insurance Commissioners (NAIC) via the Internet necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. Branch of an alien insurer; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers with gross premiums in excess of $5 million; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Workers' Compensation Insurance Fund; and the Texas Windstorm Insurance Association. The commissioner adopts by reference the 2001 quarterly statement blanks, the 2001 annual statement blanks and the related instruction manuals, and other reporting forms specified in this section. The annual and quarterly statement blanks and other reporting forms are available from the department, Financial Analysis and Examinations Activity, Mail Code 303-1A, P. O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the department and the NAIC by completing the appropriate annual and quarterly statement blanks, prepared with laser quality print (hand written copies must be prepared legibly using black ink), other reporting forms, and diskettes or electronic filings with the NAIC via the Internet following the applicable instructions as outlined in subsections (d) - (j) of this section.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings:

(1) Association edition - Blanks and forms promulgated by the NAIC.

(2) Commissioner - The commissioner of insurance appointed under the Texas Insurance Code.

(3) Department - The Texas Department of Insurance.

(4) Texas edition - Blanks and forms promulgated by the commissioner.

(c) Conflicts with Other Laws. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, then and in that event, the Insurance Code, the department's promulgated rule, form, instruction, or the specific requirement of subsections (d) - (j) of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital services corporation and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, diskettes or electronic filings with the NAIC via the Internet as directed in this subsection. The forms and reports identified in paragraphs (1)(A)-(C); (1)(F) and (G); (2)(A)-(C); and (3)(A)-(I) of this subsection shall be completed in accordance with the 2001 NAIC Annual Statement Instructions, Life, Accident and Health, except as provided by subsection (b) of this section. The forms and reports identified in paragraphs (1)(D)-(G); (2)(A) and (B); (3)(B), (C), (E) and (F) of this subsection shall be completed in accordance with the 2001 NAIC Health Annual Statement Instructions, except as provided by subsection (b) of this section. The diskettes or electronic version of the filings with the NAIC via the Internet identified in paragraph (3)(J) and (K) of this subsection shall be in accordance with the NAIC data specifications and instructions on the NAIC web site. The electronic filings with the NAIC shall include PDF format filing. Life, Accident and Health companies that wrote 100% of their total direct premiums as health premiums for the calendar year ending December 31, 2000 may elect to file on the new health annual statement blank for the three quarters of 2001 and the calendar year 2001 if the insurer meets the definition of writing only "health" premiums in the 2001 NAIC Health Annual Statement Instructions. Those instructions describe health premiums to include hospital, surgical and major medical; Medicare supplement business reportable in the Medicare Supplement Insurance Experience Exhibit of the annual statement; dental and vision only coverage issued as stand alone or as a rider to a medical policy that is not related to the medical policy through deductibles or out of pocket limits; federal employees health benefits plan premiums (FEHBP); Title XVIII - Medicare premiums which result from arrangements with the Health Care Financing Administration (HCFA) on a cost or risk basis, for services to a Medicare beneficiary; Title XIX - Medicaid premiums that result from an arrangement between the company and a Medicaid state agency for services to a Medicaid beneficiary; and other health premiums such as stop loss, disability income, long term care, and prescription drug plans and coverages. If a reporting entity elects to use the health annual statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from its domestic state to change to another type of annual statement. Foreign companies that wrote less than 100% of health premiums in 2000 may elect to file on the health annual statement blank if permitted or required by their domicilary state.

(1) Reports to be filed both with the department and the NAIC include the following:

(A) 2001 Life, Accident and Health Annual Statement (association edition) for the 2001 calendar year to be filed on or before March 1, 2002 (stipulated premium insurance companies, April 1, 2002);

(B) 2001 Life, Accident and Health Annual Statement of the Separate Accounts (association edition) for the 2001 calendar year (required of companies maintaining separate accounts), to be filed on or before March 1, 2002 (stipulated premium insurance companies, April 1, 2002);

(C) 2001 Life, Accident and Health Quarterly Statements (association edition), to be filed on or before May 15, August 15, and November 15, 2001. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(D) 2001 Health Quarterly Statements (association edition), to be filed on or before May 15, August 15, and November 15, 2001 if the company qualifies as described in this subsection;

(E) 2001 Health Annual Statement (association edition) for the 2001 calendar year, to be filed on or before March 1, 2002 (stipulated premium insurance companies, April 1, 2002) if the company qualifies as described in this subsection;

(F) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed with the 2001 Life, Accident and Health Annual Statement on or before April 1, 2002, or if the 2001 Health Annual Statement is required, then filed with the 2001 Health Annual Statement on or before April 1, 2002;

(G) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the Life, Accident and Health Annual Statement or if required, the Health Annual Statement as applicable;

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), to be filed on or before March 1, 2002. This filing is also required if filing a Health Annual Statement, as applicable;

(B) Supplemental Compensation Exhibit (association edition) (required of Texas domestic companies only), to be filed on or before March 1, 2002 (stipulated premium companies, April 1, 2002). This filing is also required if filing a Health Annual Statement, as applicable;

(C) The Texas Health Insurance Risk Pool shall file the 2001 Life, Accident and Health Annual and Quarterly Statements as follows:

(i) 2001 Life, Accident and Health Annual Statement (association edition), blue colored cover, to be filed on or before March 1, 2002. However, only pages 1 - 5, 12, and the Notes to Financial Statements (page 31) and Schedule E (page 75) are required to be completed and filed; and

(ii) 2001 Life, Accident and Health Quarterly Statement (association edition), to be filed on or before May 15, August 15, and November 15, 2001.

(iii) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic filings with the NAIC.

(3) Reports, diskettes, or electronic filings via the Internet filed only with the NAIC:

(A) Trusteed Surplus Statement (association edition), Life, Accident and Health Supplement (required of the U. S. branch of an alien insurer), to be filed on or before May 15, August 15, November 15, 2001 and March 1, 2002 with the annual statement;

(B) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing Medicare supplement business), to be filed on or before March 1, 2002. This filing is also required if filing a Health Annual Statement, as applicable;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 2002 (stipulated premium insurance companies, April 1, 2002). This filing is also required if filing a Health Annual Statement, as applicable;

(D) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), to be filed on or before April 1, 2002;

(E) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), to be filed on or before March 1, 2002 (stipulated premium insurance companies, April 1, 2002). This filing is also required if filing a Health Annual Statement, as applicable;

(F) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), to be filed on or before April 1, 2002. This filing is also required if filing a Health Annual Statement, as applicable;

(G) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), to be filed on or before April 1, 2002;

(H) Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), to be filed on or before April 1, 2002;

(I) Adjustments to the Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), to be filed on or before April 1, 2002;

(J) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2002 (stipulated premium insurance companies, April 1, 2002); and

(K) Diskettes or electronic filings via the Internet containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 2001. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly diskettes or electronic filings via the Internet with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(4) The following provisions shall apply to the filings required in paragraphs (1)-(3) of this subsection.

(A) Texas domestic life, accident and health companies with more than $30 million in direct premiums in 2001 must establish Asset Valuation Reserves (AVR) and Interest Maintenance Reserves (IMR) in their financial statements in accordance with the instructions in the 2001 NAIC Annual Statement Instructions, Life, Accident and Health Companies. Texas domestic companies with $30 million or less in direct premiums and the Texas Health Insurance Risk Pool may establish AVR and IMR in their financial statements in accordance with the instructions in the 2001 NAIC Annual Statement Instructions, Life, Accident and Health Companies or they must value bonds and preferred stocks in compliance with the provisions of the NAIC Purposes and Procedures of the Securities Valuation Office Manual concerning companies not maintaining an AVR or IMR.

(B) Actuarial opinions required by paragraph (1)(G) of this subsection shall be in accordance with the following:

(i) Unless exempted, the statement of actuarial opinion should follow the applicable provisions of §§3.1601-3.1611 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(ii) For those companies exempted from §§3.1601-3.1611 of this title, instructions 1-12, established by the NAIC, must be followed.

(iii) Any stipulated premium company subject to §§3.1601-3.1611 of this title which does not insure or assume risk on contracts with death benefits, cash value, or accumulation values on any one life in excess of $10,000, except as permitted by Insurance Code Article 22.13, §1(b), is exempt from submission of a statement of actuarial opinion in accordance with §3.1608 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis), but must submit an actuarial opinion pursuant to §3.1607 of this title (relating to Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis).

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. Branch of an alien insurer, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement for the 2000 calendar year or had gross written premiums in 2001 in excess of $5,000,000, any Mexican non-life insurer licensed under any article of the Insurance Code other than, or in addition to, Insurance Code Article 8.24, domestic joint underwriting association, the Texas Workers' Compensation Insurance Fund and the Texas Windstorm Insurance Association shall complete and file the following blanks, forms, and diskettes or electronic filings with the NAIC via the Internet as directed by this subsection. The forms and reports identified in paragraphs (1)(A)-(G); (2)(A)-(C); and (3)(A)-(F) of this subsection shall be completed in accordance with the 2001 NAIC Annual Statement Instructions, Property and Casualty, except as provided by paragraph (4) of this subsection. The diskettes or electronic version of the filings with the NAIC via the Internet identified in paragraph (3)(G)-(I) of this subsection shall be in accordance with the NAIC data specifications. The electronic filings with the NAIC shall include PDF format filing.

(1) Reports to be filed both with the department and the NAIC:

(A) 2001 Property and Casualty Annual Statement (association edition), to be filed on or before March 1, 2002;

(B) 2001 Property and Casualty Quarterly Statements (association edition), to be filed on or before May 15, August 15, and November 15, 2001;

(C) 2001 Combined Property/Casualty Annual Statement (association edition), to be filed on or before May 1, 2002, including the Insurance Expense Exhibit. This form is required only for those affiliated insurers that wrote more than $35 million in direct premiums as a group in calendar year 2001, as disclosed in Schedule T of the Annual Statement(s);

(D) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), to be filed on or before March 1, 2002;

(E) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2002;

(F) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement; and

(G) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), to be filed on or before March 1, 2002;

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), to be filed on or before March 1, 2002;

(B) Supplemental Compensation Exhibit (association edition) (required of Texas domestic companies only), to be filed on or before March 1, 2002;

(C) The Texas Windstorm Insurance Association (Insurance Code Article §21.49) shall complete and file the following only:

(i) Annual Statement (association edition), to be filed on or before March 1, 2002, except as provided by paragraph (4) of this subsection;

(ii) Property and Casualty Quarterly Statement (association edition), to be filed on or before May 15, August 15, and November 15, 2001; and

(iii) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2002.

(3) Reports, diskettes, or electronic filings via the Internet filed only with the NAIC:

(A) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing Medicare supplement business), to be filed on or before March 1, 2002;

(B) Trusteed Surplus Statement (association edition) (required of the U. S. branch of an alien insurer), to be filed on or before May 15, August 15, November 15, 2001, and March 1, 2002 with the annual statement;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 2002;

(D) Insurance Expense Exhibit (association edition), to be filed on or before April 1, 2002;

(E) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit accident and/or health business), to be filed on or before April 1, 2002;

(F) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), to be filed on or before April 1, 2002;

(G) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2002;

(H) Diskettes or electronic filings via the Internet containing combined annual statement data, to be filed on or before May 1, 2002; and

(I) Diskettes or electronic filings via the Internet containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 2001.

(4) The following provisions shall apply to all filings required by paragraphs (1) - (3) of this subsection.

(A) No loss reserve discounts, other than fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed. The commissioner shall have the authority to determine the appropriateness of, and may disallow, such discounts.

(B) The commissioner shall have the authority to determine the appropriateness of, and may disallow, anticipated salvage and subrogation.

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and diskettes or electronic filings for the 2001 calendar year and the three quarters for the 2001 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(D), (2)(A)-(C), and (3)(A)-(E) and (G) of this subsection shall be completed in accordance with the 2001 NAIC Annual Statement Instructions, Fraternal, except as provided by paragraph (4) of this subsection. The diskettes or electronic version of the filings with the NAIC via the Internet identified in paragraph (3)(F) of this subsection shall be in accordance with the NAIC data specifications. The electronic filings with the NAIC shall include PDF format filing.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement, Fraternal (association edition), to be filed on or before March 1, 2002;

(B) Annual Statement of the Separate Accounts, Fraternal, (association edition) (required of companies maintaining separate accounts), to be filed on or before March 1, 2002;

(C) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2002; and

(D) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph.

(2) Reports to be filed only with the department:

(A) Fraternal Quarterly statement (association edition), to be filed on or before May 15, August 15, and November 15, 2001;

(B) Supplemental Compensation Exhibit (association edition) (required of Texas domestic companies only), to be filed on or before March 1, 2002;

(C) Fraternal Benefit Societies Supplement to Valuation Report (association edition) to be filed on or before June 30, 2002; and

(3) Reports and diskettes or electronic filings via the Internet to be filed only with the NAIC:

(A) Trusteed Surplus Statement (association edition, Fraternal Supplement) (required of the U. S. branch of an alien insurer), to be filed on or before March 1, 2002 with the annual statement;

(B) Medicare Supplement Insurance Exhibit (association edition) (for insurers writing Medicare supplement business) to be filed on or before March 1, 2002;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 2002;

(D) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), to be filed on or before March 1, 2002;

(E) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), to be filed on or before April 1, 2002;

(F) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2002; and

(G) Fraternal Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), to be filed on or before April 1, 2002.

(4) The following provisions shall apply to the filings required in paragraph (1) - (3) of this subsection. Texas domestic fraternal companies with more than $30 million in direct premiums in 2001 must establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 2001 NAIC Annual Statement Instructions, Fraternal. Texas domestic fraternal companies with $30 million or less in direct premiums may establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 2001 NAIC Annual Statement Instructions, Fraternal or they must value bonds and preferred stocks in compliance with the provisions of the NAIC Purposes and Procedures of the Securities Valuation Office Manual concerning companies not maintaining an Asset Valuation Reserve or Interest Maintenance Reserve. Since fraternals are not subject to Insurance Code Article 3.28 Section 2A, the statement of actuarial opinion for fraternals should follow instructions 1 - 12, established by the NAIC.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 2001 calendar year and the three quarters of the 2001 calendar year. The reports and forms identified in paragraphs (1)(A)-(C), (2)(A)-(C), and (3)(A) of this subsection shall be completed in accordance with the 2001 NAIC Annual Statement Instructions, Title, except as otherwise provided by subsection (b) of this section. The diskettes or electronic version of the filings with the NAIC via the Internet identified in paragraph (3)(B) of this subsection shall be in accordance with the NAIC data specifications. The electronic filings with the NAIC shall include PDF format filing.

(1) Reports to be filed with the department and the NAIC:

(A) Title Annual Statement (association edition), to be filed on or before March 1, 2002;

(B) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2002; and

(C) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph.

(2) Reports to be filed only with the department:

(A) Title Quarterly Statement (association edition), to be filed on or before May 15, August 15, and November 15, 2001;

(B) Supplemental Compensation Exhibit (association edition), (required of Texas domestic companies only), to be filed on or before March 1, 2002; and

(C) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), to be filed on or before March 1, 2002.

(3) Reports to be filed only with the NAIC:

(A) Officers and Directors Information (association edition), to be filed on or before March 1, 2002; and

(B) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2002.

(h) Requirements for health maintenance organizations and non-profit health corporation. The HMO annual and quarterly blank used for the year ending December 31, 2000 and prior periods is no longer available and will no longer be used. Therefore, HMOs must use the new NAIC Health Annual Statement beginning with the reporting quarter ending March 31, 2001. Each health maintenance organization and non-profit health corporation shall complete and file the following blanks and forms, and diskettes for the 2001 calendar year and the three quarters of the 2001 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(E) and (2)(A) of this subsection shall be completed in accordance with the 2001 NAIC Annual and Quarterly Statement Instructions, Health. The actuarial opinion shall include the additional requirements of the department set forth in paragraph (1)(D) of this subsection. The forms, reports, and diskettes identified in paragraphs (1)(A) and (B), and (2)(B), (C), and (D) of this subsection shall be completed in accordance with instructions provided by the department. The diskettes or electronic version of the filings with the NAIC via the Internet identified in paragraph (3) of this subsection shall be in accordance with NAIC data specifications and instructions through the NAIC web site. The electronic filings with the NAIC shall include PDF format filing.

(1) Reports to be filed both with the department and the NAIC:

(A) 2001 Health Annual Statement (association edition), to be filed on or before March 1, 2002;

(B) NAIC Health Quarterly Statements (association edition), on or before May 15, August 15, and November 15, 2001. As part of each quarterly filing, include a completed copy of Schedule E - part 2 - Special Deposits, from the 2001 NAIC Health Annual Statement;

(C) Management's Discussion and Analysis, (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 2002;

(D) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all health maintenance organizations), to be attached to the annual statement. In addition to the requirements set forth in the 2001 NAIC Annual Statement Instructions, Health, the department requires that the actuarial opinion include the following:

(i) The statement of actuarial opinion must include assurance that an actuarial report and underlying actuarial workpapers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year end for which the opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial workpapers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial workpapers supporting the findings expressed in this Statement of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."

(ii) Under the scope paragraph requirements of section 5 of the instructions relating to the Actuarial Certification in the 2001 NAIC Annual Statement Instructions, Health, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve; and

(E) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing Medicare supplement business) to be filed on or before March 1, 2002.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), (required of Texas domestic companies only), to be filed on or before March 1, 2002;

(B) HMO Supplement (Texas edition), to be filed quarterly on or May 15, August 15, November 15, 2001;

(C) Department formatted diskettes containing annual statement data (diskettes provided by the department for entering of health maintenance organization or non-profit health corporation financial statement data), to be completed according to the instructions provided by the department and filed with the department on or before March 1, 2002; and

(D) Department formatted diskettes containing quarterly statement data (diskettes provided by the department for entering of health maintenance organization or non-profit health corporation financial statement data), to be completed according to the instructions provided by the department and filed with the department on or before May 15, August 15, and November 15, 2001.

(3) Reports and diskettes or electronic filings via the Internet to be filed only with the NAIC.

(A) Diskettes or electronic filings via the Internet containing computerized annual statement data, to be filed on or before March 1, 2002;

(B) Diskettes or electronic filings via the Internet containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 2001.

(i) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a certificate of authority issued under the Insurance Code Article 8.24, shall complete and file the following blanks and forms for the 2001 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States

dollars. The form identified in paragraph (1) of this subsection shall be completed in accordance with the 2001 NAIC Annual Statement Instructions, Property and Casualty, except as provided by this section. An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The blanks or forms are as follows:

(1) Annual Statement (association edition); provided, however, only pages 1 - 4, 15 - 19 and 132 are required to be completed and filed on or before March 1, 2002;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 2002;

(3) A copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the 2001 annual statement, to be filed on or before June 30, 2002; and

(4) A copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 2002.

(j) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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 February 7, 2001.

TRD-200100834
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 27, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER A. PROCEDURES FOR THE ADOPTION OF RULES

31 TAC §§51.1, 51.3, 51.4

The Texas Parks and Wildlife Commission adopts the repeal of §§51.1, 51.3 and 51.4, an amendment to §51.2, and new §51.3, concerning petitions for rulemaking. New §51.3 is adopted with changes to the proposed text as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10119). The repeal of §§51.1, 51.3, and 51.4 and the amendment to §51.2 are adopted without changes and will not be republished. The change to §51.3 adds a provision to require the department to verify that petition materials have been received by commissioners. The amendment, repeals, and new rule would revamp the department's procedures for processing petitions for rulemaking under Government Code, §2001.021, which requires each state agency to establish such procedures by rule.

The department's current regulations governing petitions for rulemaking have proved to be problematic, in that the length of time between commission meetings occasionally causes a conflict with the requirement of Government Code, §2001.021 that the department act upon a petition within 60 days. The repeals, amendment, and new section are necessary for the agency to comply with the provisions of Government Code. To remedy the situation, the department proposes to refer petitions to the appropriate staff for evaluation and response within 60 days, with simultaneous notification of the commission. Should a member of the commission determine that further investigation or action is necessary, a petition would then be placed on the next commission agenda for action.

The amendment and new rule will require the department to refer petitions to the appropriate staff for evaluation and response within 10 days, with simultaneous notification of the commission and placement of the petition on the next commission agenda.

The department received one comment opposing adoption of the rules. The commenter stated that the requirements contained in §51.2(a)(1) constitute prior restriction. The department disagrees with the comment and responds that Government Code, § 2001.021, specifically requires each state agency by rule to prescribe the form for a petition and the procedure for its submission, consideration, and disposition. No changes were made as a result of the comment.

The repeals are adopted under Government Code, §2001.021, which requires each state agency, by rule, to prescribe the form for petitions and the procedure for submission, consideration, and disposition.

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 February 5, 2001.

TRD-200100745
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: February 25, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 389-4775

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31 TAC §51.2, §51.3

The amendment and new rule are adopted under Government Code, §2001.021, which requires each state agency by rule to prescribe the form for petitions and the procedure for submission, consideration, and disposition.

§51.3. Consideration and Disposition.

(a) The executive director, upon receipt of an administratively complete petition, shall refer the petition to the appropriate agency personnel for review and recommended action.

(b) Within 10 days of receiving a petition from the executive director, agency personnel shall make a recommendation to either deny the petition or initiate rulemaking.

(c) The executive director shall forward to each member of the commission a copy of the petition and the staff recommendation and shall verify that each commissioner has received a copy of the petition and the staff recommendation.

(d) If a member of the commission determines that further deliberations are warranted, the executive director shall place the petition on the agenda of the commission and notify the petitioner in writing of the date, time, and place of the commission meeting at which the petition will be deliberated.

(e) If, by the 60th day following the submission of the petition, the staff recommendation has not been placed on the agenda of the commission, the petition is denied and the department shall notify the petitioner in writing of the staff recommendation and final disposition of the petition.

(f) In the event that rulemaking is to be initiated as a result of a petition involving any portion of Chapter 65, Subchapter A, of this title (relating to Statewide Hunting and Fishing Proclamation), the department may defer the rulemaking activity until such time as it initiates other rulemaking activity involving Chapter 65, Subchapter A.

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

Filed with the Office of the Secretary of State on February 5, 2001.

TRD-200100746
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: February 25, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 389-4775

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SUBCHAPTER B. PRACTICE AND PROCEDURE IN CONTESTED CASES

31 TAC §§51.21-51.57

The Texas Parks and Wildlife Commission adopts the repeal of §§51.21-51.57, concerning Practice and Procedure in Contested Cases, without changes to the proposal as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10120).

The repeals are necessary to eliminate regulations that are redundant of existing statutory law.

The repeals will function to eliminate provisions in Title 31, Part 2 of the Texas Administrative Code that are effectively identical to provisions contained in Government Code, Chapter 2003.

The department received no comments concerning adoption of the proposed repeals.

The repeals are adopted under Government Code, Chapter 2001.

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 February 5, 2001.

TRD-200100747
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: February 25, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 389-4775

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SUBCHAPTER D. DEPARTMENT LITIGATION

31 TAC §51.131

The Texas Parks and Wildlife Commission adopts an amendment to §51.131, concerning Litigation and Other Legal Action, without changes to the proposed text as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10121).

The amendment is necessary to provide a mechanism for the agency, if necessary, to respond to multiple demands for litigation assistance.

The amendment would allow the executive director of the department to name a designee to act on his or her behalf with regard to the provisions of the rules.

The department received no comments concerning adoption of the proposed rule.

The amendment is adopted under Government Code, Chapter 2001.

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 February 5, 2001.

TRD-200100748
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: February 25, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 389-4775

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SUBCHAPTER G. NONPROFIT ORGANIZATIONS

31 TAC §51.162

The Texas Parks and Wildlife Commission adopts an amendment to §51.162, concerning Closely Related Nonprofit Organizations, without changes to the proposed text as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10122).

The amendment is necessary for the agency to acknowledge and cooperate with nonprofit entities without engaging in unwarranted rulemaking.

The amendment would eliminate the regulatory list of entities designated by the department as being closely related. The department would still maintain the list, amend it from time to time, and make it available to the public; however, the list would not fall within the ambit of the agency's regulatory activities, where it is not required by function or statute.

The department received one comment concerning adoption of the rule. The commenter stated that the elimination of the list of closely-related nonprofit organizations would prevent the public from knowing about the department's relationship with the National Rifle Association. The department disagrees with the comment and responds that the purpose of the amendment is to eliminate the need to engage in unnecessary rulemaking. A list of closely-related nonprofit organizations will still be maintained, and will be readily available to the public. No changes were made as a result of the comment.

The amendment is adopted under Government Code, Chapter 2001.

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 February 5, 2001.

TRD-200100749
Gene McCarty
Chief of Staff
Texas Park and Wildlife Department
Effective date: February 25, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 389-4775

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CHAPTER 61. DESIGN AND CONSTRUCTION SUBCHAPTER A. CONTRACTS FOR PUBLIC WORKS

31 TAC §61.22

The Texas Parks and Wildlife Commission adopts an amendment to §61.22, concerning Soliciting Bids, without change to the proposed text as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10122). The amendment would eliminate the requirement that the agency advertise construction projects of $100,000 or more in at least one newspaper of general circulation in the state, and replace it with a requirement to solicit through a more widely disseminated Invitation for Bids. The current regulation was promulgated through a mistaken interpretation of Government Code, §2166.253.

The amendment is necessary for the agency to avoid the unproductive pursuit of solicitations through a mechanism that is unused, and in any event, applies only to the General Services Commission.

The amendment will function by requiring the agency to advertise construction projects of $100,000 or more by publishing Invitations for Bids.

The department received one comment opposing adoption of the amendment. The commenter stated that the department was contravening Senate Bill 874 , which according to the commenter, 'is for professional services only, it's not for construction,' and Government Code, Chapter 2254, which according to the commenter, requires that the rule 'must be consistent with applicable state procurement practices for the soliciting and awarding the contract under this section' and that 'applicable law is that you advertise as a minimum in the *Texas Register*.' The department disagrees with the comment and responds the department is simply implementing a process for wider dissemination of notices concerning the availability of bid opportunities, which in no way conflicts any provision of existing law, and, further, that nothing contemplated in the rulemaking has the intent or the effect of lessening or altering the agency's duties and obligations under existing state law. No changes were made as a result of the comment.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.0171.

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 February 5, 2001.

TRD-200100750
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: February 25, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 4. TEXAS COMMISSION FOR THE BLIND

CHAPTER 166. BLINDNESS EDUCATION, SCREENING AND TREATMENT PROGRAM

40 TAC §166.4

The Texas Commission for the Blind adopts new §166.4 pertaining to the Blindness Education, Screening, and Treatment Program without changes to the text proposed in the November 24, 2000, issue of the *Texas Register* (25 TexReg 11641). This rule is adopted to implement the treatment portion of the program, which is financed with public donations. The rule prescribes eligibility criteria for receiving assistance with payment for treatment services to prevent blindness and includes how an individual may be referred to the program and how payments will be made under the program.

No comments were received on the proposal.

The rules are adopted under the authority of Human Resources Code, Title 5, Chapter 91, §91.027, which authorizes the commission to develop the program and adopt rules prescribing eligibility requirements

The rules also affect Transportation Code, §521.421.

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 February 6, 2001.

TRD-200100753
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Effective date: February 26, 2001
Proposal publication date: November 24, 2000
For further information, please call: (512) 377-0611

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.7

The Texas Workforce Commission (Commission) adopts new §800.7 relating to Agency Vehicles, without changes to the proposed rules as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12924). The text will not be republished.

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.

No comments were received on the proposed new rules.

For information regarding the Texas Workforce Commission please visit our web page at www.texasworkforce.org.

The new section is adopted under Texas Labor Code §§301.061 and 302.002, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of 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.

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 February 6, 2001.

TRD-200100764
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: February 26, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 463-2573

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

The Commissioner of Insurance, at a public hearing under Docket No. 2482 on March 29, 2001, at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks adoption of a revised "Consumer Bill of Rights for Personal Automobile Insurance" and a revised "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance." Staff's petition (Ref. No. AP-0201-02-I), was filed on February 13, 2001. The Consumer Bills of Rights set forth a summation of consumers' most important rights with regard to each line of insurance, including consumers' rights to receive information from the Department of Insurance and their insurers, rights relating to buying insurance, rights regarding cancellation and refusal to renew policies, rights regarding claims made under policies, rights regarding non-discrimination, and enforcement rights. On December 7, 2000, the Office of Public Insurance Counsel (OPIC) filed a petition, which was subsequently amended on February 2, 2001, bearing file number A-1200-32 to adopt a revised "Consumer Bill of Rights for Personal Automobile Insurance" and a petition, also subsequently amended on February 2, 2001, bearing file number P-1200-33 to adopt a revised "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance." The department supports the revisions as filed by OPIC containing modifications as suggested by the department.

Staff proposes adoption of revisions to the "Consumer Bill of Rights for Personal Automobile Insurance" and to the "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance." The proposed revisions: (1) implement Insurance Code Article 1.35A, Sec. 5(b)(8), which provides that the Public Counsel for OPIC "shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed upon the issuance of a policy by insurers to each policyholder under rules adopted by the department;" (2) update the current bills of rights to reflect the changes brought about by legislative acts and departmental actions that affect both policyholders and insurers; (3) incorporate these changes so that insurers will be distributing to current and future policyholders updated information informing them of their rights; and (4) update the bills of rights in general to provide simplified language and to clarify various provisions.

The "Consumer Bill of Rights for Personal Automobile Insurance" is required to be distributed with each new policy and with renewal notices to current policyholders pursuant to the Texas Automobile Rules and Rating Manual, Section I, General Rules, 16. Staff proposes editorial revisions to rule 16 and further proposes revisions to the Texas Standard Provisions for Automobile Policies, Special Instructions for the Texas Personal Auto Policy to reflect the requirement of providing a "Consumer Bill of Rights for Personal Automobile Insurance" in accord with rule 16 of the Texas Automobile Rules and Rating Manual.

The "Consumer Bill of Rights for Homeowners and Renters Insurance" is required to be distributed with each new policy and with renewal notices to current policyholders pursuant to the Texas Personal Lines Manual, Homeowners Section V. General Requirements, F. Staff proposes updated and editorial revisions to item F and further proposes revisions to the Texas Personal Lines Manual, Dwelling Section V. General Requirements, by adding new item I, to require insurers writing dwelling policies to distribute the revised "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance" with each new policy and with renewal notices to current policyholders pursuant to this new provision in the Dwelling Section.

Copies of staff's petition, including exhibits with the full text of the proposed revisions to the "Consumer Bill of Rights for Personal Automobile Insurance;" the "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance;" the Texas Automobile Rules and Rating Manual, Section I, General Rules, 16; the Texas Standard Provisions for Automobile Policies, Special Instructions for the Texas Personal Auto Policy, new number 12; the Texas Personal Lines Manual, Homeowners Section V. General Requirements, F; the Texas Personal Lines Manual, Dwelling Section V. General Requirements, new item I; and the Spanish translations of the proposed Bills of Rights, as well as copies of the amended petitions filed by OPIC, are all available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of any of the petitions, please contact Sylvia Gutierrez at (512) 463-6327; refer to Ref. No. AP-0201-02-I for the staff's petition and to Ref. No. A-1200-32 for the OPIC Personal Automobile amended petition and to Ref. No. P-1200-33 for the OPIC Homeowners, Dwelling and Renters amended petition.

To be considered, written comments on the proposed changes must be submitted no later than 5 p.m. on March 26, 2001, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code Article 5.96, which exempts it from the requirements of the Government Code Chapter 2001 (Administrative Procedure Act).

TRD-200100923
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 13, 2001

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Texas Department of Insurance

Final Action on Rules

The Commissioner of Insurance has adopted new mandatory endorsements to the Texas Dwelling Policies (TDP) and Texas Homeowners Policies (HO); new optional endorsements for use with the TDP and HO policies; and amendments to the Texas Personal Lines Manual (Manual) relating to coverage for the increased cost of construction when an ordinance, law, or the building specifications of the Texas Windstorm Insurance Association's (TWIA) plan of operation imposes specific requirements on the repair or replacement of insured, damaged property. The endorsements, manual rules, and rates were requested by the Insurance Council of Texas (ICT) in a petition filed with the Department on May 12, 2000. Supplements to the May 12, 2000 petition were filed on October 17, 2000, and November 22, 2000. Notice of this petition (Reference No. P-0500-11) was published in the December 8, 2000, issue of the Texas Register (25 TexReg 12189). The endorsements and Manual rules were considered at a public hearing held January 9, 2001 at 9:00 a.m. under Docket No. 2479 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

The Commissioner has adopted, without changes to the proposal as noticed in the Texas Register, three amendatory mandatory endorsements for use as applicable to the TDP and HO policies. Insurers must attach the amendatory mandatory endorsements to the TDP and HO policies as follows: Endorsement No. TDP-024 Dwelling Amendatory Mandatory Endorsement for Increased Cost of Construction - Building Laws is applicable to Forms TDP-1 and TDP-2; Endorsement No. TDP-025 Dwelling Amendatory Mandatory Endorsement for Increased Cost of Construction - Building Laws is applicable to Form TDP-3; and Endorsement No. HO-134 Homeowners Amendatory Mandatory Endorsement for Increased Cost of Construction - Building Laws is applicable to Forms HO-A, HO-B, and HO-C.

The attachment of one of the amendatory mandatory endorsements (TPD-024, TPD-025, or HO-134) to the appropriate dwelling or homeowners policy modifies the general policy exclusion regarding Building Laws to provide coverage to the extent described under Perils Insured Against. These endorsements provide $5,000 of coverage (at no additional premium) for the increased construction costs that the insured incurs due to the enforcement of any ordinance, law, or building specifications of the TWIA plan of operation. Additionally, the coverage provides that the insured may use all or part of the $5,000 in increased coverage for the increased costs incurred to remove debris resulting from the construction, repair, or replacement of damaged, covered property. These endorsements specify that the coverage is additional insurance and does not reduce the dwelling limit of liability. These endorsements include limitations on the building ordinance or law coverage that are as follows: the insurer will not pay the increased cost of construction (1) if the building is not rebuilt or repaired, (2) if the rebuilt or repaired building is not intended for similar occupancy, (3) until the building is repaired or rebuilt at the same premises, or (4) unless the rebuilding or repairs are made as soon as is reasonably possible after the loss not to exceed 365 days after the loss, except, that the insured may request in writing an extension of an additional 180 days. These endorsements exclude the loss in value to any covered building due to the requirements of any ordinance or law, and the cost to comply with any ordinance or law, that involves the effects of pollutants on any covered building. These endorsements expressly provide that for property located in an area which is eligible for coverage through TWIA, the additional coverage applies to the increased costs incurred that are required for the repair or replacement of the dwelling to comply with building specifications of the TWIA plan of operation.

The Commissioner has adopted, without changes to the proposal as noticed in the Texas Register, three optional endorsements for use with the TDP and HO policies, as follows: Endorsement No. TDP-026 Increased Cost of Construction - Building Laws may be attached to Forms TDP-1 and TDP-2; Endorsement No. TDP-027 Increased Cost of Construction - Building Laws may be attached to Form TDP-3; and Endorsement No. HO-135 Increased Cost of Construction - Building Laws may be attached to Forms HO-A, HO-B, and HO-C.

The attachment of one of the optional endorsements (TPD-026, TPD-027, or HO-135) to the appropriate dwelling or homeowners policy amends the general policy exclusion regarding Building Laws to provide additional optional coverage in the amounts of 10%, 15%, or 25% of the limit of liability that applies to Coverage A -- Dwelling. These endorsements specify that an additional premium is to be paid for the percentage of coverage that is selected by the insured and that this coverage is additional insurance above the $5,000 that is included in the policy and the limit of liability that applies to Coverage A -- Dwelling.

The Commissioner has adopted, without changes to the proposal as noticed in the Texas Register, two new Manual rules, two new premium charts, and three new policy rating examples. The two new Manual rules are: (1) Subsection O, entitled "Increased Cost of Construction - Building Laws" is added to Section IV, entitled "Optional Endorsements" in the Dwelling Section of the Manual and (2) Subsection 20, entitled "Increased Cost of Construction - Building Laws" is added to Section IV, entitled "Optional Additional Coverages & Endorsements", and to subpart A, entitled "Section I Endorsements" in the Homeowners Section of the Manual. These rules provide that an optional endorsement may be attached to a residential property policy to provide a selected percentage (10%, 15%, or 25% of the dwelling limit of liability above the $5,000 included in the policy) for the increased cost of construction an insured may incur to repair or rebuild an insured structure in accordance with any ordinance, law, or TWIA code. The rules also reference the appropriate premium chart for determining the applicable premium. The two new premium charts are: (1) Premium Chart 19, added to the Dwelling Section of the Manual and (2) Premium Chart 40, added to the Homeowners Section of the Manual. These premium charts will be used to calculate the additional premium to be charged when optional endorsements TDP-026, TDP-027, or HO-135 are attached to the appropriate residential property policy. Three new policy rating examples were added to the Homeowners and Dwelling Sections of the Manual. These new policy rating examples will assist with the calculation of the premium that will be charged for the increased cost of construction that an insured incurs due to the enforcement of any ordinance, law, or building specifications of the TWIA plan of operation.

The Commissioner has determined that these endorsements and Manual rules are necessary to provide consumers with $5,000 in new building ordinance or law coverage at no additional charge and with the option of purchasing an additional amount of building ordinance or law coverage, which is a coverage that is currently excluded in residential property policies. Many cities, towns, and counties have building laws or ordinances requiring minimum building standards for new construction, reconstruction, or repair of dwellings within their jurisdiction. Currently, in standard residential property policies, the "Building Laws" exclusion places the risk upon the insured for any additional costs of repairing or rebuilding a covered structure that are the result of building laws or ordinances. The adopted new coverage will benefit insureds by providing a minimum of $5,000 coverage. Further, insureds will have the option to purchase an additional amount of coverage if they desire to transfer an additional portion of the risk to the insurer.

In commenting on the proposal, one insurer that currently has an approved endorsement for building law or ordinance coverage expressed concern that the department would require all insurers to use the new coverage forms and not allow insurers to continue to use their approved building ordinance or law endorsements currently in use. The department believes that insurers who currently have approved endorsements for building law or ordinance coverage may continue to use their approved endorsements so long as those endorsements conform with the endorsement approval requirements of Article 5.35. The same insurer expressed concern that approval of the new coverage would create statistical reporting problems if the department wants statistical reporting at the 10% coverage level because the insurer does not code any premium at the 10% level since under its approved endorsement the first 10% of coverage is offered at no additional charge. The department believes that this will not create a statistical reporting problem. Since the insurer's coverage provides 10% coverage built into the homeowners policy subject to the base premium, it will need to report this as a variance to the homeowners statistical plan. This will eliminate the need for the insurer to report any data at the optional 10% level adopted in the new coverage. These new endorsements and Manual changes also require an amendment to the residential statistical plan to capture data so that future rates can be based on actual data. These changes to the statistical plan will be addressed in a separate proceeding. An insurer expressed concern that the wording of the pollution exclusion in the new endorsements is confusing because it is unclear whether it is intended to exclude pollution cleanup as a covered loss or whether it is intended to exclude coverage for building ordinance or law claims which result from the enforcement of pollution standards. The department believes that the intent of the pollution exclusion in the new endorsement is clear because the exclusion specifies that the endorsement will not cover "the costs to comply with any ordinance or law which requires any insured or others to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants on any covered building or other structure." The new endorsement also specifies that all other terms of the policy apply. Therefore, the department believes that the pollution exclusion clearly applies only to increased costs to comply with any ordinance or law and has no other effect on the covered loss.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.35, 5.96, 5.98, and 5.101.

The endorsements and Manual rules as adopted by the Commissioner of Insurance are on file in the Chief Clerk's Office of the Texas Department of Insurance and are incorporated by reference in the Manual by Commissioner's Order No. 01-0108.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under Article 5.96 from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act). Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that three amendatory mandatory endorsements to be attached to certain residential property insurance policies, Endorsement No. TDP-024 Dwelling Amendatory Mandatory Endorsement for Increased Cost of Construction - Building Laws which is applicable to Forms TDP-1 and TDP-2; Endorsement No. TDP-025 Dwelling Amendatory Mandatory Endorsement for Increased Cost of Construction - Building Laws which is applicable to Form TDP-3; and Endorsement No. HO-134 Homeowners Amendatory Mandatory Endorsement for Increased Cost of Construction - Building Laws which is applicable to Forms HO-A, HO-B, and HO-C, as specified herein and which are attached to this Order and incorporated into this Order by reference, are adopted to be effective on and after April 1, 2001.

IT IS FURTHER ORDERED that three optional endorsements to be attached to certain residential property insurance policies, Endorsement No. TDP-026 Increased Cost of Construction - Building Laws which may be attached to Forms TDP-1 and TDP-2; Endorsement No. TDP-027 Increased Cost of Construction - Building Laws which may be attached to Form TDP-3; and Endorsement No. HO-135 Increased Cost of Construction - Building Laws which may be attached to Forms HO-A, HO-B, and HO-C, as specified herein and which are attached to this Order and incorporated into this Order by reference, are adopted to be effective on and after April 1, 2001.

IT IS FURTHER ORDERED that two Texas Personal Lines Manual Rules, Rule IV-A-20 in the Homeowners Section and Rule IV-O in the Dwelling Section, as specified herein and which are attached to this Order and incorporated into this Order by reference, are adopted to be effective on and after April 1, 2001.

IT IS FURTHER ORDERED that two premium charts, Premium Chart 19 in the Homeowners Section of the Manual and Premium Chart 40 in the Dwelling Section of the Manual, as specified herein and which are attached to this Order and incorporated into this Order by reference, are adopted to be effective on and after April 1, 2001.

IT IS FURTHER ORDERED that three policy rating examples that were added to the Homeowners and Dwelling Sections of the Manual, as specified herein and which are attached to this Order and incorporated into this Order by reference, are adopted to be effective on and after April 1, 2001.

TRD-200100838
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 8, 2001

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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 Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter C, High School, §§111.31, 111.32, 111.33, 111.34, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter C, High School, §§111.31, 111.32, 111.33, 111.34, continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Accountability Reporting and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tea.state.tx.us.

TRD-200100876
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: February 12, 2001

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Department of Information Resources

Title 1, Part 10

The Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision or repeal Title 1, Texas Administrative Code, Chapter 201, §201.1, "Definitions." The review and consideration are being conducted in accordance with the General Appropriations Act, House Bill 1, 76th Legislature, Article IX, § 9-10.13. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be readopted.

Any questions or written comments pertaining to this rule review may be submitted to Renee Mauzy, General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail at renee.mauzy@dir.state.tx.us. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Chapter 2001, Texas Government Code.

1 TAC §201.1, Definitions.

TRD-200100842
Renee Mauzy
General Counsel
Department of Information Resources
Filed: February 8, 2001

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Texas Parks and Wildlife Department

Title 31, Part 2

NOTICE OF INTENT TO REVIEW

The Texas Parks and Wildlife Department files this notice of intention to review Texas Administrative Code Title 31, Part 2, as follows:

Chapter 57. FISHERIES

Subchapter A. Harmful or Potentially Harmful Exotic Fish, Shellfish, and Aquatic Plants

§57.111. Definitions.

§57.112. General Rules.

§57.113. Exceptions.

§57.114. Health Certification of Exotic Shellfish.

§57.115. Transportation of Live Exotic Species.

§57.116. Exotic Species Transport Invoice.

§57.117. Exotic Species Permit: Fee and Application Requirements.

§57.118. Exotic Species Permit Issuance.

§57.119. Exotic Species Permit: Requirements for Permits.

§57.120. Exotic Species Permit: Expiration and Renewal.

§57.121. Exotic Species Permit--Amendment.

§57.122. Appeal.

§57.123. Exotic Species Permit Reports.

§57.124. Triploid Grass Carp; Sale, Purchase.

§57.125. Triploid Grass Carp Permit; Application, Fee.

§57.126. Triploid Grass Carp Permit; Terms of Issuance.

§57.127. Triploid Grass Carp Permit; Denial.

§57.128. Exotic Species Permits, Triploid Grass Carp Permits; Revocation.

§57.129. Exotic Species Permit: Private Facility Criteria.

§57.130. Exotic Species Interstate Transport Permit.

§57.131. Exotic Species Interstate Transport Permit: Application and Issuance.

§57.132. Exotic Species Interstate Transport Permit: Permittee Requirements.

§57.133. Exotic Species Interstate Transport Permit: Expiration and Renewal.

§57.134. Wastewater Discharge Authority.

§57.135. Memorandum of Understanding between the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission.

§57.136. Penalties.

Subchapter B. Mussels and Clams

§57.156. Definitions.

§57.157. Mussels and Clams.

§57.158. Penalties.

Subchapter C. Introduction of Fish, Shellfish, and Aquatic Plants

§57.251. Definitions.

§57.252. Prohibited Acts.

§57.253. Permit Exemptions.

§57.254. Permit Application; Validity.

§57.255. Permit Denial.

§57.256. Appeal.

§57.257. Penalties.

Subchapter D. Commercially Protected Finfish

§57.372. Packaging Requirements.

§57.373. Package Labels.

§57.374. Delegation of Authority.

§57.375. Exclusive Economic Zone Regulations.

Subchapter E. Permits to Sell Nongame Fish Taken from Public Fresh Water

§57.377. Definitions.

§57.378. Nongame Fishes Covered by These Rules.

§57.379. Prohibited Acts.

§57.380. Permit Application.

§57.381. Permit Specifications and Requirements.

§57.382. Harvest and Sales Reports.

§57.383. Permit Fee.

§57.384. Permit Denial.

§57.385. Appeal.

§57.386. Penalties.

Subchapter F. Collection of Broodfish from Texas Waters

§57.391. Definitions.

§57.392. General Rules

§57.394. Broodfish Collection; Notification.

§57.395. Broodfish Permits; Fees, Terms of Issuance.

§57.396. Broodfish Permit; Expiration.

§57.397. Broodfish Permit; Revocation.

§57.398. Permit Denial.

§57.399. Appeal.

§57.400. Reports.

§57.401. Restitution for Broodfish.

Subchapter G. Marking of Vehicles

§57.500. Marking of Vehicles.

Subchapter H. Fishery Management Areas

§57.691. Fishery Management Plans.

Subchapter I. Consistency with Federal Regulations in the Exclusive Economic Zone

§57.801. Powers of the Executive Director.

Subchapter J. Fish Pass Proclamation

§57.901. Prohibited Acts.

Subchapter K. Scientific Areas

§57.920. Nine-Mile Hole State Scientific Area.

§57.921. Redfish Bay State Scientific Area.

This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

The Commission will accept comments for 30 days following the publication of this notice in the Texas Register as to whether the reasons for adopting the sections under review continue to exist and to determine whether the rules reflect current legal, policy, and procedural considerations. Final consideration of this rules review is scheduled for the Parks and Wildlife Commission on April 6, 2001.

Any questions or written comments pertaining to this notice of intention to review should be directed to Gene McCarty, Chief of Staff, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX , 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the Texas Register and will be open for an additional 30-day public comment period prior to final adoption or repeal of the Commission.

TRD-200100881

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: February 12, 2001

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NOTICE OF INTENT TO REVIEW

The Texas Parks and Wildlife Department files this notice of intention to review Texas Administrative Code Title 31, Part 2, as follows:

CHAPTER 65. WILDLIFE

Subchapter A. Statewide Hunting and Fishing Proclamation

Division 1. General Provisions

§65.1. Application.

§65.3. Definitions.

§65.5. Importation of Wildlife.

§65.10. Possession of Wildlife Resources.

§65.11. Lawful Means.

§65.19. Hunting Deer with Dogs.

§65.24. Permits.

§65.25. Wildlife Management Plan (WMP).

§65.26. Managed Lands Deer (MLD) Permits.

§65.27. Antlerless and Spike-Buck Deer Control Permits (control permits).

§65.28. Landowner Assisted Management Permit System (LAMPS).

§65.29. Pronghorn Antelope Permits.

§65.30. Desert Bighorn Sheep Permits.

§65.31. Antlerless Mule Deer Permits.

§65.32. Mandatory Check Stations.

Note: The contents of §§65.3, 65.10, 65.11, 65.24, 65.26, 65.27 and 65.29-65.33 are proposed for rule action elsewhere in this issue.

Division 2. Open Seasons and Bag Limits - Hunting Provisions

§65.38. Game Animals: Open Seasons and Bag Limits.

§65.40. Pronghorn Antelope: Open Seasons and Bag Limits.

§65.42. Deer.

§65.44. Javelina: Open Seasons and Annual Bag Limits.

§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.

§65.48. Desert Bighorn Sheep: Open Seasons and Annual Bag Limits.

§65.54. Game Birds: Open Seasons and Bag Limits.

§65.56. Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits.

§65.60. Pheasant: Open Seasons, Bag, and Possession Limits.

§65.62. Quail: Open Seasons, Bag, and Possession Limits.

§65.64. Turkey.

§65.66. Chachalacas.

NOTE: The contents of §§65.42, 65.44, 65.62, and 65.64 are proposed for rule action elsewhere in this issue.

Division 3. Seasons and Bag Limits - Fishing Provisions

§65.71. Reservoir Boundaries.

§65.72. Fish.

§65.78. Crabs and Ghost Shrimp. §65.82. Other Aquatic Life.

§65.91. Penalty for Violation.

NOTE: The contents of §65.72 and §65.78 are proposed for rule action elsewhere in this issue.

Subchapter C. Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds

§65.101. Definitions.

§65.103. Trap, Transport, and Transplant Permit.

§65.105. Urban White-Tailed Deer Removal Permit.

§65.107. Permit Applications and Fees.

§65.109. Issuance of Permit.

§65.111. Permit Conditions and Period of Validity.

§65.113. Marking of Game Animals and Game Birds.

§65.115. Notification, Recordkeeping, and Reporting Requirements.

§65.116. Nuisance Squirrels.

§65.117. Prohibited Acts.

§65.119. Penalties.

Subchapter D. Deer Management Permit

§65.131. Deer Management Permit (DMP).

§65.132. Permit Application and Fees.

§65.133. General Provisions.

§65.134. Facility Standards.

§65.135. Detention and Marking of Deer.

§65.136. Release.

§65.137. Disposition of Mortalities.

§65.138. Violations and Penalties.

Subchapter G. Threatened and Endangered Nongame Species

§65.171. General Provisions.

§65.172. Exceptions.

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§65.174. Permanent Identification.

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§65.176. Violations and Penalties.

Subchapter H. Public Lands Proclamation

§65.190. Application.

§65.191. Definitions.

§65.192. Powers of the Executive Director.

§65.193. Access Permit Required and Fees.

§65.194. Competitive Hunting Dog Event (Field Trial) Permits and Fees.

§65.195. Permit Revocation.

§65.603. Application and Permit Issuance.

§65.605. Holding Facility Standards and Care of Deer.

§65.607. Marking of Deer.

§65.608. Annual Reports and Records.

§65.609. Purchase of Deer and Purchase Permit.

§65.610. Transport of Deer and Transport Permit.

§65.611. Prohibited Acts.

§65.612. Disposition of Deer.

§65.613. Penalties.

Subchapter V. Wildlife Management Association Area Hunting Lease License

§65.801. Definitions.

This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session. The Commission will accept comments for 30 days following the publication of this notice in the Texas Register as to whether the reasons for adopting the sections under review continue to exist and to determine whether the rules reflect current legal, policy, and procedural considerations. Final consideration of this rules review is scheduled for the Parks and Wildlife Commission on April 6, 2001.

Any questions or written comments pertaining to this notice of intention to review should be directed to Gene McCarty, Chief of Staff, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX , 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the Texas Register and will be open for an additional 30-day public comment period prior to final adoption or repeal of the Commission.

TRD-200100882
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: February 12, 2001

♦ ♦ ♦

Adopted Rule Reviews

General Land Office

Title 31, Part 1

The General Land Office (GLO) adopts the review of the rules found in 31 TAC, Part 1, Chapter 7 relating to Surveying pursuant to the Texas Government Code, §2001.039.

The GLO finds that the reasons for adopting all the rules in the chapter continue to exist and received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg11675).

TRD-200100880
Larry Soward
Chief Clerk
General Land Office
Filed: February 12, 2001

♦ ♦ ♦

The General Land Office (GLO) adopts the review of the rules found in 31 TAC, Part 1, Chapter 15 relating to Coastal Area Planning pursuant to the Texas Government Code, §2001.039.

The GLO finds that the reasons for adopting all the rules in the chapter continue to exist and received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg11676).

TRD-200100879
Larry Soward
Chief Clerk
General Land Office
Filed: February 12, 2001

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Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts without changes, the rule review of Chapter 5, Program Development, in accordance with Section 2001.039 Texas Government Code. The proposed rule review was filed on December 8, 2000 and published in the December 22, 2000, edition of the *Texas Register* (25 TexReg 12817).

The agency's reason for adopting the rules contained within this chapter continues to exist.

No comments were received regarding the adoption of this chapter.

TRD-200100909
Gary Prevost
Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: February 13, 2001

♦ ♦ ♦

The Texas Higher Education Coordinating Board adopts without changes, the rule review of Chapter 21, Student Services, in accordance with Section 2001.039 Texas Government Code. The proposed rule review was filed on December 8, 2000 and published in the December 22, 2000, edition of the *Texas Register* (25 TexReg 12817).

The agency's reason for adopting the rules contained within this chapter continues to exist.

No comments were received regarding the adoption of this chapter.

TRD-200100910
Gary Prevost
Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: February 13, 2001

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Department of Information Resources

Title 1, Part 10

The Department of Information Resources (department) readopts without changes the provisions of 1 TAC §201.9, "Board Policies." The readoption is in accordance with the General Appropriations Act, House Bill 1, 76th Legislature, Article IX, § 9-10.13. The notice of intention to review was published in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11297). The department has determined that the reason for the initial adoption of the rule relating to board policies continues to exist and that the rule should be readopted. No comments were received concerning readoption of §201.9.

TRD-200100843

Renee Mauzy
General Counsel
Department of Information Resources
Filed: February 8, 2001

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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.

Figure : 31 TAC §65.72(b)(2)(B)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	32	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30
Drum, red.	3*	20	28*
*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
*Special Regulation: The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 60 flounder, except on board a licensed commercial shrimp boat.			
Jewfish.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Marlin, blue.	No limit	131	No limit
Marlin, white.	No limit	86	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish	No limit	84	No limit
Saugeye	3	18	No limit
Seatrout, spotted.	10	15	No limit
Shark: all species, their hybrids, and subspecies.	1	24	No limit
Sheepshead.	5	12	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	4	15	No limit
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28
Tarpon.	0		Catch and release only*.
*Special Regulation: One tarpon 80 inches in length or larger may be retained during a license year when affixed with a properly executed Tarpon Tag.			
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Walleye.	5*	No limit	No limit
*Special regulation: Two walleye of less than 16 inches may be retained per day.			

Figure : 31 TAC §65.72(b)(2)(C)(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson)	5 (in any combination)	14	
In all waters in the Lost Maples State Natural Area (Bandera)	0	No Limit	Catch and release only.
Bass: largemouth and smallmouth			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination)	14	Possession Limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Lost Creek (Jack), and Ratcliff (Houston).	5	16	
Lakes Fairfield (Freestone), Jacksonville (Cherokee), Cleburne State Park (Johnson), Meridian State Park (Bosque), San Augustine City (San Augustine), Calaveras (Bexar), Bright (Williamson), Cooper (Delta and Hopkins), Alan Henry (Garza), Aquilla (Hill), Bellwood (Smith), Casa Blanca (Webb), Old Mount Pleasant City (Titus), Rusk State Park (Cherokee), Welsh (Titus), Braunig (Bexar), Bryan (Brazos), and Gilmer (Upshur).	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No Limit	Catch and release and only.
O.H. Ivie (Coleman, Concho, and Runnels).	5	No Limit	It is unlawful to retain more than two bass of less than 18 inches in length.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Purtis Creek State Park Lake (Henderson and Van Zandt), Gibbons Creek Reservoir (Grimes), and Raven (Walker).	0	No Limit	Catch and release only except that any bass 21 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.
Lakes Waxahachie (Ellis), Bridgeport (Jack and Wise), Georgetown (Williamson), Caddo (Marion and Harrison), Burke-Crenshaw (Harris), Grapevine (Denton and Tarrant), Davy Crockett (Fannin) , Sweetwater (Nolan), and Madisonville (Madison).	5	14-18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Bastrop (Bastrop), Buescher State Park (Bastrop), Town (Travis) Houston County (Houston), Nacogdoches (Nacogdoches), Mill Creek (Van Zandt), Joe Pool (Dallas, Ellis, and Tarrant), Walter E. Long (Travis), Timpson (Shelby), and Athens (Henderson), Murvaul (Panola), and Pinkston (Shelby).	5	14-21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).	5	14-24 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Fork (Wood, Rains and Hopkins)	5	16-24 Inch Slot Limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12-15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted			
Lake Alan Henry (Garza)	3	18	
Lake Toledo Bend (Newton, Sabine and Shelby).	8	12	Possession Limit is 10.
Bass: striped, its hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No Limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No Limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 10.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No Limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Pat Mayse (Lamar) and Lake O'the Pines (Camp, Marion, Morris, and Upshur)	25 (in any combination)	10	No more than 5 striped, white, or hybrid striped bass 18 inches or greater in length may be retained each day.
Bass: white			
Lakes Conroe, Livingston, Limestone, Palestine, Somerville, Buchanan, Canyon, Georgetown, Inks, Lyndon B. Johnson, Marble Falls, and Travis.	25	12	
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No Limit	
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	
Community fishing lakes, Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			
Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Shad: gizzard and threadfin shad.			

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No Limit	Possession Limit 1,000 in any combination.
Sunfish: Bluegill, redear, green, warmouth, and longear sunfish, their hybrids and subspecies.			
Purtis Creek State Park Lake (Henderson and Van Zandt).	25 (in any combination)	7	
Trout: Rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

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 Board of Architectural Examiners

Feasibility Study Request for Proposal

Pursuant to the 1999 General Appropriations Act, Article VIII-8, the Texas Board of Architectural Examiners announces the issuance of a Request for Proposal from individuals and firms with demonstrated competence and qualifications and documented expertise in the area of professional licensing examination development to submit proposals to conduct a feasibility study and submit a written report addressing the development of a Texas state licensing examination for applicants for architectural registration in Texas. The purpose of the study is to determine whether significant cost savings might be realized through the development and implementation of a Texas state examination as an alternative to the national standardized licensing examination offered by the National Council of Architectural Registration Boards (NCARB). The consultant selected will be expected to conduct a comprehensive study focused on a cost-benefit analysis of the development and implementation of a Texas state architectural licensing examination. The consultant will be responsible for addressing all aspects of the development and implementation of a Texas state exam. The study shall include a thorough assessment of the costs of developing and administering a Texas state exam and shall include a time schedule for the development and implementation of a Texas state exam. The study also shall include a thorough assessment of the impact of a Texas state exam on opportunities for reciprocal registration in other jurisdictions for individuals who are licensed through the Texas state exam. All other significant benefits and consequences associated with a Texas state exam shall be addressed. The consultant selected will be responsible for submitting a thorough written report sufficiently detailed to allow decision makers to determine whether it is desirable to proceed with the development of a Texas state exam. Proposals must include a description of the planned strategy for conducting a thorough study of the development of a Texas state exam. Proposals also must include a detailed time schedule for conducting the study and preparing the written report of the study and must include a detailed schedule of all costs related to the study.

Each proposal must include descriptions of the proposer's qualifications, experience, personnel, and existing commitments and must include a list of references. A complete set of the work papers used to conduct the study and prepare the written report must be maintained by the consultant selected and must be provided to the Texas Board of Architectural Examiners (TBAE). All proposals must be specific and must be responsive to the criteria set forth in the RFP.

Contact: Copies of the RFP may be obtained from TBAE by contacting Carolyn Lewis at 512/305-8525; Carolyn.lewis@tbae.state.tx.us. Interested parties are invited to submit proposals as more fully described in the Request For Proposals (RFP) available from TBAE at 333 Guadalupe, Suite 2-350, Austin, TX 78701.

Closing Date: All proposals must be received in the Austin office of the Texas Board of Architectural Examiners no later than 5:00 p.m. on March 26, 2001. The feasibility study must be completed and the final written report must be received by TBAE no later than July 16, 2001. Submit five (5) copies of your proposal to Texas Board of Architectural Examiners, RFP Responses, P.O. Box 12337, Austin, Texas 78711-2337 no later than 5:00 p.m. on March 26, 2001. Proposals may be modified or withdrawn prior to the established due date.

Evaluation and Award Procedure: The Texas Board of Architectural Examiners reserves the right to conduct discussions with any and all proposers or to award a contract without such discussions based only on evaluation of the written proposals. All timely proposals shall be reviewed by a review committee according to the criteria listed in the RFP. The committee shall begin reviewing the timely proposals no later than March 27, 2001. TBAE plans to select a consultant and enter into an agreement for consulting services no later than April 16, 2001, but reserves the right enter into an agreement for consulting services after April 16, 2001, or to reject any and all proposals. If a consultant is selected and an agreement for consulting services is entered, TBAE shall submit information regarding the consultant and the agreement to the Secretary of State for publication in the Texas Register not later than the 20th day after the date the agreement is entered. Each proposal will be evaluated according to the demonstrated competence and qualifications and documented expertise of the person or entity submitting the proposal. The consultant selected must demonstrate a present ability to complete the study and submit the written report prior to the stated deadline. Costs associated with the study also will be considered. Consideration also will be given to proposal content and to the proposer's writing skills and the apparent effectiveness of the planned strategy for conducting the feasibility study.

The following specific areas will be evaluated: Knowledge of the psychometric principles routinely employed by professional licensing examinations to ensure examination validity, reliability, and defensibility; Knowledge of the methods routinely employed to write multiple-choice questions for professional licensing examinations; Knowledge of the grading procedures routinely employed to score multiple-choice questions for professional licensing examinations; Knowledge of the methods employed to produce graphic vignettes for licensing examinations for design professionals; Knowledge of the grading procedures employed to score graphic vignettes for licensing examinations for design professionals; Knowledge of various test delivery methods that may be used to deliver professional licensing examinations, including both paper-and-pencil and computerized formats; Knowledge of the costs associated with the development and implementation of licensing examinations for design professionals; Knowledge of the technical skills generally necessary to competent architectural practice; Knowledge of the profession of architecture as it pertains to the educational system, the internship process, and licensure requirements; Knowledge of the standardized professional licensing examination employed by the National Council of Architectural Registration Boards (NCARB); Experience in the development of professional licensing examinations for architectural candidates; and Knowledge of standards for reciprocal registration implemented by architectural licensing boards throughout the United States.

Costs and time schedules associated with the study will be considered. Proposals should include a detailed breakdown of all costs related to the feasibility study. The total of all costs associated with the study may not exceed $25,000.00.

Proposals must state that the proposed terms will remain in effect for at least forty-five (45) days after the scheduled due date.

The RFP in no manner obligates the State of Texas to the eventual purchase of any services described in the RFP. The Texas Board of Architectural Examiners reserves the right to reject any and all proposals. The State of Texas assumes no responsibility for expenses incurred in preparing responses to the RFP.

TRD-200100932
Carolyn Lewis
Deputy Director
Texas Board of Architectural Examiners
Filed: February 14, 2001

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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 January 4, 2001, through January 25, 2001. The public comment period for these projects will close at 5:00 p.m. on February 26, 2001.

FEDERAL AGENCY ACTIONS

Applicant: U.S. Coast Guard and Texas Natural Resources Conservation Commission; Location: The project site is located in Laguna Made, 6.0 miles above the mouth at Corpus Christi Bay at Corpus Christi, Nueces County, Texas. The Humble Channel bridge is the westernmost bridge of the John F. Kennedy Causeway between Corpus Christi and Padre Island, Texas. CCC Project No.: 01-0031-F1; Description of Proposed Action: The Humble Channel Bridge is one of two bridges approved under a Coast Guard Bridge permit for the waterway known as Laguna Madre. The proposed bridge will necessitate the construction of a new structure across the Humble Channel, adjacent to the existing structure. The width of the existing bridge will be reduced by 37 feet. The existing bridge will be left in place and modified to provide eastbound vehicular traffic access to the south side of the causeway for recreational purposes. The new structure will serve to carry east and westbound lanes of traffic across Laguna Madre. Type of Application: This application is for a bridge permit amendment.

Applicant: Richard Hobrecht; Location: The project site is located at 1024 Bayshore Drive, Ingleside on the Bay, San Patricio and Nueces Counties, Texas. The U.S.G.S. quad map in Port Ingleside, Texas. Approximate UTM Coordinates: Zone: 14; Easting: 675200; Northing: 3078950. CCC Project No.: 01-0032-F1; Description of Proposed Action: The applicant proposes to amend permit 21372 to change the terminal structure of a pier and the location of two boatlifts. The original permit, issued on August 13, 1998, authorized the addition of a 4-foot-wide by 320-foot-T-head, and two 10- by 20-foot uncovered boatlifts, to an existing 4-by 40-foot pier in Corpus Christi Bay. The applicant now proposes a 10- by 30-foot L-head. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Dan A. Hughes Company; Location: The project site is located in Aransas Bay, Aransas County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled: St. Charles Bay SW, Texas. Approximate UTM Coordinates: Zone 14; Easting: (POB) 699,900; Northing: (POB) 3,103,800/(POE) 3,102,250. CCC Project No.: 01-0034-F1; Description of Proposed Action: The applicant proposes to install 3,799 feet of 2-1/2 inch pipeline from the existing Dan A. Hughes Company No. 1 Well in State Tract 157, to an existing pipeline in State Tract 161. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act.

Applicant: Trinity Field Services; Location: The project site is located within Sulfur Cut, a tributary of the Trinity River approximately 4.5 miles north of the I-10 bridge over the Trinity River. The location can be accessed from a county road located 3.7 miles north from the intersection of FM 563 and I-10. The project can be located on the U.S.G.S. quadrangle map entitled: Sulfur Cut, Texas. Approximate UTM Coordinates: Zone 15; Easting: 332140; Northing: 3307180. CCC Project No.: 01-0037-F1; Description of Proposed Action: The applicant requests authorization to perform maintenance dredging to remove sediment that has accumulated in Sulfur Cut, and to repair and install a bulkhead in the dock area to accommodate a new barge transportation facility. The cut is approximately 5,500 feed long and 200 feet wide. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Sandbar Properties, Inc.; Location: The project site is located in the Laguna Madre, 1.2 miles north of "Beach Access No. 5" Park Road 100 on South Padre Island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabell NW, Texas. Approximate UTM Coordinates: Zone 14; Easting: 681000; Northing: 2897000. CCC Project No.: 01-0038-F1; Description of Proposed Action: The applicant proposes to construct one boat

channel along the front of the applicant's property and then a second boat channel perpendicular to the first, into the Laguna Madre for approximately 2,200 feet. The purpose is to provide boat access from the applicant's property to Laguna Madre for small boats with a "draft" of 2.5 feet or less. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: U.S. Fish and Wildlife Service; Location: The project site is located along the southern shoreline of the Gulf Intracoastal Waterway (GIWW), between Channel Mile Marker 295 and 300, from Port Arthur to High Island, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Big Hill Bayou, Texas. Approximate UTM Coordinates: Zone 15; Easting: 398000; Northing: 3293000. CCC Project No.: 01-0040-F1; Description of Proposed Action: The applicant requests authorization to perform shoreline stabilization activities along an approximately 5-mile stretch of the Gulf Intracoastal Waterway within the McFaddin National Wildlife Refuge. These activities involve shoreline protection, levee construction and rehabilitation, the installation of a new intake structure, and the construction of a new access/maintenance road. A total of 37 acres of wetlands and open water habitat will be impacted by the proposed activity. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899. 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-200100925
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: February 14, 2001

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Comptroller of Public Accounts

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP) for the purpose of obtaining investment manager services in connection with the administration of a prepaid higher education tuition program. The funds to be managed are funds from contracts and investments of the program known as the Texas Tomorrow Fund (Program). The Comptroller and Board request proposals for domestic small capitalization core equity investment management services for the Program's portfolio. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager(s). The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about September 1, 2001.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, February 23, 2001, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, February 23, 2001, 2:00 p.m. CZT. The website address is www.marketplace.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, April 2, 2001. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, 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. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Wednesday, April 4, 2001, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Wednesday, April 11, 2001. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s).

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - February 23, 2001, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - April 2, 2001, 2:00 p.m. CZT; Official Responses to Questions posted - April 4, 2001; Proposals Due - April 11, 2001, 2:00 p.m. CZT; Contract Execution - June 1, 2001, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2001.

TRD-200100935
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 14, 2001

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP) for the purpose of obtaining investment manager services in connection with the administration of

a prepaid higher education tuition program. The funds to be managed are funds from contracts and investments of the program known as the Texas Tomorrow Fund (Program). The Comptroller and Board request proposals for international equity investment management services for the Program's portfolio. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager(s). The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about September 1, 2001.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, February 23, 2001, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, February 23, 2001, 2:00 p.m. CZT. The website address is www.marketplace.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Wednesday, March 28, 2001. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, 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. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Friday, March 30, 2001, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, April 6, 2001. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s).

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - February 23, 2001, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - March 28, 2001, 2:00 p.m. CZT; Official Responses to Questions posted - March 30, 2001; Proposals Due - April 6, 2001, 2:00 p.m. CZT; Contract Execution - June 1, 2001, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2001.

TRD-200100936
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 14, 2001

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP) for the purpose of obtaining investment manager services in connection with the administration of a prepaid higher education tuition program. The funds to be managed are funds from contracts and investments of the program known as the Texas Tomorrow Fund (Program). The Comptroller and Board request proposals for domestic large capitalization growth and core/growth equity investment management services for the Program's portfolio. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager(s). The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about June 1, 2001.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, February 23, 2001, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, February 23, 2001, 2:00 p.m. CZT. The website address is www.marketplace.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, March 16, 2001. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, 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. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Tuesday, March 20, 2001, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Tuesday, March 27, 2001. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s).

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - February 23, 2001, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - March 16, 2001, 2:00 p.m. CZT; Official Responses to Questions posted - March 20, 2001; Proposals Due - March 27, 2001, 2:00 p.m. CZT; Contract Execution - May 1, 2001, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2001.

TRD-200100937
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 14, 2001

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP) for the purpose of obtaining investment manager services in connection with the administration of a prepaid higher education tuition program. The funds to be managed are funds from contracts and investments of the program known as the Texas Tomorrow Fund (Program). The Comptroller and Board request proposals for domestic large capitalization value equity investment management services for the Program's portfolio. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager(s). The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about September 1, 2001.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, February 23, 2001, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, February 23, 2001, 2:00 p.m. CZT. The website address is www.marketplace.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, April 2, 2001. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, 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. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Wednesday, April 4, 2001, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Wednesday, April 11, 2001. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s).

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - February 23, 2001, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - April 2, 2001, 2:00 p.m. CZT; Official Responses to Questions posted - April 4, 2001; Proposals Due - April 11, 2001, 2:00 p.m. CZT; Contract Execution - June 1, 2001, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2001.

TRD-200100938
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 14, 2001

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 - 618 and 54.635, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP) for master trust custodian services in connection with the administration of a prepaid higher education tuition program. The funds to be managed are funds from contracts and investments of the program known as the Texas Tomorrow Fund (Program). The Comptroller and Board request proposals for master trust custodian services for the Program. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about September 1, 2001.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, February 23, 2001, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, February 23, 2001, 2:00 p.m. CZT. The website address is www.marketplace.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Wednesday, March 21, 2001. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, 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. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered.

On or before Friday, March 23, 2001, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Monday, April 2, 2001. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s).

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - February 23, 2001, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - March 21, 2001, 2:00 p.m. CZT; Official Responses to Questions posted - March 23, 2001; Proposals Due - April 2, 2001, 2:00 p.m. CZT; Contract Execution - June 1, 2001, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2001.

TRD-200100939
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 14, 2001

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602 and 54.611 - 618, Texas Education Code, the Comptroller of Public Accounts (Comptroller), as the chair and executive director of the Texas Prepaid Higher Education Tuition Board (Board) and on behalf of the Board, announces the issuance of its Request for Proposals (RFP) from qualified, independent firms to provide records administration and management services to the Board for the Texas Tomorrow Fund (Program). The successful respondent will be required to provide all records administration and related services for the Program. The successful respondent will be expected to begin planning implementation of services no later than May 1, 2001, with transition to a new contractor, if any, completing no later than September 1, 2001.

Contact: Parties interested in submitting a proposal should contact John C. Wright, 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 will be available for pick-up at the above-referenced address on Friday, February 23, 2001, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the complete RFP available electronically on the Texas Marketplace after Friday, February 23, 2001, 2:00 p.m. (CZT). The address of the Texas Marketplace is http://www.marketplace.state.tx.us.

Questions and Mandatory Letters of Intent: All written inquiries, questions, and mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Wednesday, March 21, 2001. Prospective proposers 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 John C. Wright, 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. On or before Friday, March 23, 2001, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP. Proposals will not be accepted from respondents who do not submit a mandatory Letter of Intent by the March 21, 2001 deadline.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, March 30, 2001. Proposals received in ROOM G24 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 Board will make the final award decision.

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - February 23, 2001, 2:00 p.m. CZT; Mandatory Letter of Intent to propose and Questions Due - March 21, 2001, 2:00 p.m. CZT; Official Responses to Questions posted - March 23, 2001; Proposals Due - March 30, 2001, 2:00 p.m. CZT; Contract Execution - May 1, 2001, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2001.

TRD-200100940
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 14, 2001

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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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 02/19/01 - 02/25/01 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 02/19/01 - 02/25/01 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200100897

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 13, 2001

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Credit Union Department

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 City Employees Credit Union, Dallas, Texas. The proposed new name is City Credit Union.

An application for a name change was received for Vought Heritage Credit Union, Grand Prairie, Texas. The proposed new name is Vought Heritage Community 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-200100926
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 14, 2001

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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 First Central Credit Union, Waco, Texas to expand its field of membership. The proposal would permit persons residing or working within McLennan County, Texas to be eligible for membership in the credit union.

An application was received from County & Municipal Employees Credit Union, Edinburg, Texas to expand its field of membership. The proposal would permit the employees of the McAllen Economic Development Corporation, McAllen, Texas to be eligible for membership in the credit union.

An application was received from Federal Employees Credit Union, Texarkana, Texas to expand its field of membership. The proposal would permit the contract employees for federal government agencies who work in the Texarkana Federal Courthouse and Post Office Building, Texarkana, Texas; to be eligible for membership in the credit union.

An application was received from Federal Employees Credit Union, Texarkana, Texas to expand its field of membership. The proposal would permit retired federal employees who live in the areas serviced by U.S. Postal Service Zip Codes 718, 754, and 755 that do not have a primary employee credit union in these areas.

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-200100927
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 14, 2001

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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

The Education Credit Union, Amarillo, Texas - See *Texas Register* issue dated October 27, 2000

Educational Employees Credit Union, Fort Worth, Texas - See *Texas Register* issue dated November 24, 2000

Dallas Treasury Credit Union, Dallas, Texas - See *Texas Register* issue dated November 24, 2000

Cabot & IRI Employees Credit Union, Pampa, Texas - See *Texas Register* issue dated December 29, 2000

Austin Metropolitan Financial Credit Union, Austin, Texas - See *Texas Register* issue dated December 29, 2000

Temple Santa Fe Credit Union, Pampa, Texas (Bell County) - See *Texas Register* issue dated December 29, 2000

Application(s) for a Merger or Consolidation - Approved

Texas Associates Federal Credit Union and Resource One Credit Union - See *Texas Register* issue dated December 29, 2000

TRD-200100928
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 14, 2001

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Texas Department of Criminal Justice

Amended Notice to Bidders

The following Notice to Bidders is an amended version to the Notice that was published in the February 16, 2001, issue of the Texas Register.

The Texas Department of Criminal Justice invites bids for the construction of road and parking lot Improvements at Marlin, Texas. The project consists of reconstruction of existing pavements including the main and truck entrance roads, the perimeter road, the dog kennel road, the Warden's residence driveway and the main parking lot along with associated drainage and grading improvements at the existing William P. Hobby Unit, Route 2 Box 600, Marlin, Texas. The work includes civil, mechanical, plumbing, structural and concrete as further shown

in the Contract Documents prepared by: Everett Griffith, Jr. & Associates, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

(A) Contractor must have worked in his trade for five consecutive years and have completed at least three projects of a dollar value and complexity equal to or greater than the proposed project.

(B) Contractor must be bondable and insurable at the levels required.

(C) Must provide references from at least three similar projects.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $30 (Thirty Dollars and no cent, non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Everett Griffith, Jr. & Associates, Inc., 408 North Third Street, P. O. Box 1746 , Attn: Rick Freeman, Lufkin, Texas 75902-1746; Phone: 936-634-5528, Fax: 936-634-7989.

A Pre-Bid conference will be held at 9:30 AM on March 06, 2001 at the Hobby Unit, Marlin Texas, followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2:00 PM on March 22, 2001, in the Blue Conference Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (formally Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2 % of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200100924
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: February 14, 2001

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Texas Department of Health

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Carlos Fernandez, M.D. dba Magnolia Imaging Center

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Carlos Fernandez, M.D., doing business as Magnolia Imaging Center (registrant-R24790, revoked) of Houston. A total penalty of $16,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code §289.226.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200100896
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 13, 2001

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Notice of Request for Proposals for the Texas Department of Health Innovation Grants (Permanent Fund for Children and Public Health)

BACKGROUND

These grants were created by the 76th Texas Legislature through House Bill (HB) 1676 which established the Permanent Fund for Children and Public Health out of tobacco settlement funds. The intent of the grants is to improve public health outcomes at the community level, using innovations that can be replicated in many places in Texas, and, to the maximum extent possible, bring about improvements in health status that are demonstrable or measurable. No funds from the grants will be authorized to pay for direct health care services.

CATEGORIES OF GRANTS AND ELIGIBLE APPLICANTS

Part I: Grants for developing and demonstrating cost-effective prevention and intervention strategies for improving public health outcomes. Eligible applicants include any person or other entity, public or private, except the Texas Department of Health (department).

Part II: Grants to local communities to address disparities in health in minority populations. Eligible applicants include any county, municipality, public health district, or other political subdivision, including hospital districts, or local nonprofit organization in Texas.

Part III: Grants to local communities for essential public health services as outline in HB1444. Eligible applicants include any county, municipality, public health district, or other political subdivision, including hospital districts, in Texas.

FUNDS AVAILABLE

Approximately $7,400,000 is expected to be available to fund projects in all three Parts. In order to encourage creativity and innovation in proposals, the department has left the majority of the grant funds available for uncategorized projects. However, the department has designated topics relating to the department's priority initiatives and will award preference points if the application relates to one of these initiatives. In addition, some funds will be available for one categorized project under Part I.

Approximately $1,000,000 is available for FY 2000 grantees for completion of their projects.

PROJECT AND BUDGET PERIOD

The department expects that the grants will begin on or about September 1, 2001, for a 24-month period; that is, through the end of the State biennium year ending on August 31, 2003. Funding for this Request for Proposals (RFP) is contingent on appropriation to the department of interest from the Permanent Fund for Children and Public Health. At the time of release of this RFP, the Texas Legislature is still in session and has not yet voted on the appropriation for this budget period.

TIMELINE

The RFP will be issued by the department on March 2, 2001. The RFP is posted on the department's website at www.tdh.state.tx.us/innovation, and copies of the RFP will be mailed to identified stakeholders. (The RFP on the website prior to March 2, 2001, is only a draft and should not be used as the basis for any application). The physical address for overnight and personal deliveries is: Bureau of Regional/Local Health Operations; Texas Department of Health; 1100 West 49th Street, Room T-405; Austin, Texas 78756-3199. Deadline for submission of proposals will be 5:00 P.M., Central Daylight Saving Time, May 2, 2001. The original application and five copies must be submitted. An optional applicant conference will be held in Austin on March 9, 2001.

REVIEW AND AWARD CRITERIA

Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Eligible, complete applications will be reviewed by a panel of reviewers using a standardized evaluation tool and scored according to the quality of the application. No late applications will be accepted for review.

PROGRAM CONTACT

Copies of this RFP must be requested in writing to: Sundee McKnight, Bureau of Regional/Local Health Operations, Texas Department of Health; 1100 West 49th Street; Austin, Texas 78756-3199; FAX (512) 458-7407; Email: sundee.mcknight@tdh.state.tx.us.

TRD-200100894
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 13, 2001

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Notice of Request for Proposals for the Community Hospital Capital Improvement Program

The due date for the Request for Proposals (RFP) for the Community Hospital Capital Improvement Program has been extended from March 31, 2001, to April 30, 2001. Notice of the RFP was published in the December 8, 2000, issue of the *Texas Register* (25 TexReg 12239), TRD-200008290.

Purpose

The Texas Department of Health (department), Office of Policy and Planning, is requesting proposals from small urban hospitals for grants for capital improvements. The grants are designed to increase the capacity of these hospitals as vital links in the health care safety net by providing them with funds to make capital improvements directed toward increasing availability of services in their communities.

Eligible Applicants

Eligible applicants include a public or private nonprofit community hospital licensed for 125 beds or fewer located in an urban area. An urban area is defined as a county that has a population in the most recent decennial United States census over 150,000. A hospital applying for a grant must be licensed as a general hospital under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241.

Limitations

Funding for the selected proposal will depend upon available state appropriations. The department reserves the right to reject any and all offers received in response to the RFP and to cancel the RFP if it is deemed in the best interest of the department.

To Obtain RFP

The RFP document may be obtained from Kellie Cowan, Office of Policy and Planning, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7261. No copies of the RFP will be released prior to January 16, 2001.

Deadlines

Applicants will be given a minimum of 60 calendar days to file proposals after the RFP is published. Proposals must be received by the department on or before the new closing date of April 30, 2001.

TRD-200100895
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 13, 2001

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Texas Health and Human Services Commission

Request for Proposals

This notice announces the availability of funds to be awarded on behalf of the Health and Human Services Commission (HHSC) by the Guardianship Alliance of Texas.

The purpose of this Request for Proposals (RFP) is twofold. The first purpose is to solicit proposals for new local guardianship programs to provide guardianship, less restrictive guardianship alternative services, and legal assistance for incapacitated persons who (1) do not have family members who are willing or able to be appointed as guardians and/or (2) have family members who are unable to afford the costs associated with obtaining a guardianship. The second purpose is to solicit proposals from existing guardianship programs that will expand to serve additional counties or to serve additional populations of incapacitated persons.

The review panel will choose at least four sites. The review panel will score the proposals on demonstrated need (with preference and additional points given if there is no existing local guardianship program in the county), comprehensive proposals, creative collaborative efforts, professional expertise and continued viability.

Applications must be received by HHSC, Guardianship Alliance of Texas, 4900 N. Lamar, 4th Floor, Austin, TX 78751, no later than 5:00 p.m., April 20, 2001. Applications submitted after the deadline will not be considered. Proposals must be typewritten or word-processed and not exceed 20 single-sided, 8.5 by 11 inch pages. An original and three (3) copies (a total of four (4) copies) are required when submitting a proposal. Faxed copies of proposals will not be accepted.

Copies of the RFP will be available on February 23, 2001, and may be obtained by (1) contacting Kathleen Anderson, Director of the Guardianship Alliance of Texas at Texas Health and Human Services Commission, 4900 North Lamar, Blvd., 4th Floor, Austin, Texas, 78751, 512-424-6599, via facsimile 512-424-6589, via E-mail at kathleen.anderson@hhsc.state.tx.us; or (2) on the HHSC website at www.hhsc.state.tx.us for a complete RFP. All questions relating to the RFP must to be submitted in writing by 5:00 p.m. on March 23, 2001. Submitted questions pertaining to the RFP will be answered on or before April 6, 2001.

TRD-200100943
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: February 14, 2001

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Texas Higher Education Coordinating Board

Request for Proposals

The Community and Technical Colleges Division (CTCD) of the Texas Higher Education Coordinating Board (Coordinating Board) is releasing a Request for Proposals (RFP) for the award of federal funds. These funds are provided to the State of Texas through the Carl D. Perkins Vocational and Technical Education Act of 1998 [P.L. 105-332] for the advancement of career and technical education in Texas.

The Coordinating Board seeks to fund projects in three competitive areas using State Leadership funds: Professional Development, Curriculum Development, and Special Populations. The Coordinating Board will also fund Tech-Prep Implementation Consortia and will award technical support grants related to the Tech-Prep initiative. Applicants will be asked to respond to specific topics in each of the areas listed above.

Detailed specifications concerning the State Leadership and Tech-Prep areas will be made available in the RFP, which will be available through the Coordinating Board web-site at the following address: http://www.thecb.state.tx.us/divisions/ctc/we/we.htm. In general, applicants will submit an on-line Notification of Intent in order to receive a password and proposal number. The password will give applicants access to the on-line, web application. Both the Notification of Intent and the application will be available at the above web address.

Proposals must be submitted using the on-line web application and will contain an application cover page, a project summary, project criteria, goals and objectives, an evaluation plan, a list of project staff, coordination and linkages, a statement of commitment to continue the project, seven budget cost category schedules, a budget summary page, and contract provisions. The RFP contains specific details regarding submission requirements and applicants should review the RFP carefully prior to submitting proposal(s). The Notification of Intent is due Thursday, March 15, 2001 by 5:00 p.m. and all proposals are due on Monday, April 16, 2001 by 5:00 p.m.

New proposals in the State Leadership and Tech-Prep Technical Support categories will be reviewed and ranked by an expert panel from outside Texas and by members of the Coordinating Board staff. The recommendations of the reviewers will be presented to the Commissioner of Higher Education or his designee who will give final approval for the award of funds. The Coordinating Board will base selection on, among other things, specific criteria that includes statewide impact, plan for dissemination, identification of relevant outcomes, cost-effectiveness, technology driven, and relationship to the job market. Additional criteria may apply based on the category of the submission. All contract negotiations with Perkins-funded projects will be between the Coordinating Board staff and the contractor. The award of funds is contingent on the availability and approval of the expenditure of these funds by the appropriate Board(s).

Contingent upon negotiation of a contract, the period of the contract is anticipated to be September 1, 2001 -- August 31, 2002. The projects selected for funding will be required to submit quarterly progress and expenditure reports, final progress and expenditure reports, and a final product (if applicable). Funding ranges are dependent upon the submission category, but may range from $60,000 -- $100,000. Tech-Prep Implementation Consortia will receive a base amount and an additional amount based on number of students served. The anticipated award date of the contract is September 1, 2001.

The Coordinating Board reserves the right to accept or reject any or all proposals submitted. The Coordinating Board is not obligated to execute a resulting contract, provide funds, or endorse any proposal that is submitted in response to this RFP. The RFP does not commit the Coordinating Board to award a contract or pay any cost incurred in the preparation of a response.

TRD-200100839
Gary Prevost
Acting Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: February 8, 2001

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Reed Road South Apartments) Series 2001

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the Johnson Branch Library, 3517 Reed Road, Houston, Texas 77051 at 7 p.m. on, March 15, 2001 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $11,250,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Reed Road South Apartments Limited Partnership (or a related person or affiliate thereof) (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 264 unit multifamily residential rental development to be constructed on approximately 16 acres of land located on the southeast corner of the intersection of Reed Road and the South Freeway, Houston, Harris County, Texas 77051. The Project will be initially owned and operated by Reed Road South Apartments Limited Partnership (or a related person or affiliate thereof). The Project will be initially managed by South Central RS, 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 requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200100902
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 13, 2001

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Notice of Administrative Hearing (MHD1999000786UI, MHD2000000203UI and MHD2000000269UI)

Manufactured Housing Division

Wednesday, February 28, 2001, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Frank Anderson Hynum dba American Eagle Movers to hear alleged violations of Sections 4(f) (amended September 1999) (current version at Section 4(d)) and 7(d) of the Act and Sections 80.54(a) and 80.125(e) (amended 1998) (current version at Section 80.123(e)) of the Rules regarding installation of manufactured homes without obtaining, maintaining or possessing a valid installer's license and improper installation of manufactured homes. SOAH 332-01-1592. Department MHD1999000786UI, MHD2000000203UI and MHD2000000269UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-200100941
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 14, 2001

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Request for Proposals to Provide Appraisal Review Services

I. PURPOSE OF THE REQUEST

The Texas Department of Housing and Community Affairs (the Department or TDHCA) is requesting proposals from qualified appraisal firms (the firm) to provide occasional review services relating to various real estate transactions in Texas, which are subject to underwriting by TDHCA. The Department's Real Estate Market Analysis and Appraisal Policy provides more information on the review process and required qualifications. This policy may be accessed through the TDHCA website at

http://www.tdhca.state.tx.us/underwrite.html

The Department reserves the right to choose from a list of approved firms for the review of any particular appraisal report with any combination or number of participants.

II. RESPONSE TIME FRAME AND OTHER INFORMATION

Response Due: March 5, 2001, 4:30 p.m. CST

It is the express policy of the Department that parties receiving this request refrain from initiating any direct contact or communication with members of the Board of Directors with regard to selection of firms relative to this Request for Proposal while the selection process is occurring. Any violation of this policy will be considered a basis for disqualification.

Also, releasing this Request for Proposals, TDHCA shall not be obligated to proceed with any action on the Request for Proposals and may decide it is in the Department's best interest to refrain from pursuing any selection process. TDHCA reserves the right to negotiate individual elements of any proposal.

Two copies of the proposal should be delivered to the following address:

Texas Department of Housing and Community Affairs

Attn: Tom Gouris, Director of Credit Underwriting

507 Sabine Street, Suite 400

PO Box 13941

Austin, TX 78711-3941

(512) 475-1470

III. RESPONSE FORMAT

A. Each item in Section IV of this Request for Proposals should be specifically addressed, or an explanation should be provided as to why no response is given.

B. Identify the item to be addressed in the introduction to each response.

C. Please limit your response to relevant material and your proposal to 25 pages in length; additional information may be submitted in the form of an attachment or appendix.

IV. PROPOSAL CONTENT

A. General Information

Provide information regarding the organization and structure of the firm including, but not limited to:

1. Number of offices located in Texas

2. Location of office(s) to serve TDHCA and brief description of support staff

3. Number of registered representatives located in Texas

4. List of housing clients currently served by or proposed to be served by the firm

5. Areas of Texas the firm is willing to serve

B. Firm

Provide information regarding the experience of the firm including, but not limited to:

1. Number of appraisals of multifamily and single family residential properties; attach a descriptive list of assignments performed since 1998

2. Number of appraisal reviews of multifamily and single family residential properties; attach a descriptive list of assignments performed since 1998

3. Description of familiarity with transactions involving federal and/or state housing programs

4. Any other unique qualifications

C. Personnel

Provide information about the professionals employed by the firm including, but not limited to:

1. Names, office location and brief resumes, including licensing and certification, of persons to be assigned to this account

2. List of housing clients served by or proposed to be served by the personnel assigned to this account

D. Services Provided

Provide a description of the services to be provided by the firm and the proposed cost to be charged for each distinct service. The services to be preformed may include, but are not limited to the following:

1. Desktop market study review only

2. Desktop appraisal review only

3. Exterior inspection of property

4. Interior inspection of subject property

5. Inspection of comparable sales and rentals

6. Review of plans, specifications, and cost breakdown

7. Appraiser interview

8. Complete reconciliation with original appraiser

V. FINANCIAL CONDITION

Provide a copy of the firm's most recent audited financial statement and most recent focus report. (This should be included as an attachment or appendix and will not be considered part of the page limitation of proposals.)

VI. DEPARTMENTAL INFORMATION

Additional information regarding TDHCA may be obtained from Tom Gouris at TDHCA. All requests must be in writing and faxed to (512) 475-4420. All questions and responses will be made available to all applicants and will be subject to disclosure under the Open Records Act.

VII. OPEN RECORDS

All proposals shall be deemed, once submitted, to be the property of TDHCA and subject to the Open Records Act, Tex. Rev. Civ. Stat. Ann., Art. 6252-17a.

Proprietary information: if a firm does not desire proprietary information in the proposal to be disclosed under the Texas Open Records Act or otherwise, it is required to identify clearly (and segregate, if possible) all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If such information is requested under the Texas Open Records Act, the firm will be notified and given the opportunity to present its position to the Texas Attorney General, who shall make the final determination. If the firm fails to clearly identify proprietary information, it agrees, by the submission of the proposal, that those sections shall be deemed non-proprietary and made available upon public request after the contract is awarded.

VIII. COST INCURRED IN RESPONDING

All costs directly or indirectly related to the preparation of a response to this RFP shall be the sole responsibility of and shall be borne by the firm.

TRD-200100917
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 13, 2001

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Request for Qualifications to Provide Market Study/Analysis

I. PURPOSE OF THE REQUEST

The Texas Department of Housing and Community Affairs (the Department or TDHCA) is requesting submission of qualifications to provide market studies and market analysis relating to various real estate transactions in Texas, which are subject to underwriting by TDHCA. The Department's Real Estate Market Analysis and Appraisal Policy provides more information on the market study guidelines and required qualifications. This policy may be accessed through the TDHCA website at

http://www.tdhca.state.tx.us/underwrite.html

The Department reserves the right to compile a list of approved firms, based on submitted qualifications, for use by Applicants of various housing programs administered through TDHCA. Firms may be added to the list upon submission review and acceptance of qualifications.

II. RESPONSE TIME FRAME AND OTHER INFORMATION

Response Due: Open

It is the express policy of the Department that parties receiving this request refrain from initiating any direct contact or communication with members of the Board of Directors with regard to selection of firms relative to this Request for Qualifications while the selection process is occurring. Any violation of this policy will be considered a basis for disqualification.

Also, releasing this Request for Qualifications, TDHCA shall not be obligated to proceed with any action on the Request for Qualifications and may decide it is in the Department's best interest to refrain from pursuing any selection process.

Two copies of the qualifications should be delivered to the following address:

Texas Department of Housing and Community Affairs

Attn: Tom Gouris, Director of Credit Underwriting

507 Sabine Street, Suite 400

PO Box 13941

Austin, TX 78711-3941

(512) 475-1470

III. RESPONSE FORMAT

A. Each item in Section IV of this Request for Qualifications should be specifically addressed, or an explanation should be provided as to why no response is given.

B. Identify the item to be addressed in the introduction to each response.

C. Please limit your response to relevant material and your qualifications to 10 pages in length; additional information may be submitted in the form of an attachment or appendix.

IV. PROPOSAL CONTENT

A. General Information

Provide information regarding the organization and structure of the firm including, but not limited to:

1. Number of offices located in Texas

2. Location of office(s) and brief description of support staff

3. Number of registered representatives located in Texas

4. List of housing clients currently served by or proposed to be served by the firm

5. Areas of Texas the firm is willing to serve

B. Firm

Provide information regarding the experience of the firm including, but not limited to:

1. Number of market studies for multifamily and single family residential properties; attach a descriptive list of assignments performed since 1998

2. Description of familiarity with transactions involving federal and/or state housing programs

3. Any other unique qualifications

C. Personnel

Provide information about the professionals employed by the firm including, but not limited to:

1. Names, office location and brief resumes, including licensing and certification

2. List of housing clients served by or proposed to be served by the personnel assigned to this account

D. Services Provided

Provide certification that the services to be provided will conform to the Department's Real Estate Market Analysis and Appraisal Policy.

V. FINANCIAL CONDITION

Provide a copy of the firm's most recent audited financial statement and most recent focus report. (This should be included as an attachment or appendix and will not be considered part of the page limitation of proposals.)

VI. DEPARTMENTAL INFORMATION

Additional information regarding TDHCA may be obtained from Tom Gouris at TDHCA. All requests must be in writing and faxed to (512) 475-4420. All questions and responses will be made available to all applicants and will be subject to disclosure under the Open Records Act.

VII. OPEN RECORDS

All proposals shall be deemed, once submitted, to be the property of TDHCA and subject to the Open Records Act, Tex. Rev. Civ. Stat. Ann., Art. 6252-17a.

Proprietary information: if a firm does not desire proprietary information in the proposal to be disclosed under the Texas Open Records Act or otherwise, it is required to identify clearly (and segregate, if possible) all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If such information is requested under the Texas Open Records Act, the firm will be notified and given the opportunity to present its position to the Texas Attorney General, who shall make the final determination. If the firm fails to clearly identify proprietary information, it agrees, by the submission of the proposal, that those sections shall be deemed non-proprietary and made available upon public request after the contract is awarded.

VIII. COST INCURRED IN RESPONDING

All costs directly or indirectly related to the preparation of a response to this RFP shall be the sole responsibility of and shall be borne by the firm.

TRD-200100920
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 13, 2001

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Section 8 Program Five-Year Plan and 2000-2001 Annual Plan

Notice of Public Hearing on Agency Plans

Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P.L. 205-276) and regulation 24 CFR 90.17 require the Texas Department of Housing and Community Affairs (the Department) to prepare a Five-Year Plan and a 2000-2001 Annual Plan covering operations of the Section 8 Program. On Tuesday, April 3, 2001 at 1:00 P.M., the Department will hold a public hearing to receive comments on the Department's Five-Year Plan and 2000-2001 Annual Plan. The hearing will take place at the Velasco Community House, 110 Skinner Street, Freeport, Texas.

The Plans and all supporting documentation are available to the public for viewing at the Department administration office, 507 Sabine, Suite 400, attn: Section 8 Program, Austin, Texas on weekdays during the hours of 8:00 A.M. until 4:30 P.M. and on the Department's website at www.tdhca.state.tx.us/sec8.htm.

Questions or requests for additional information may be directed to Willie Faye Hurd, Manager of Section 8 Program at whurd@tdhca.state.tx.us or by mail at P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3892. Comments must be received by 5:00 P.M. Friday, April 6, 2001.

Individuals who require auxiliary aids or services for this hearing should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled hearing.

TRD-200100942
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 14, 2001

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Houston-Galveston Area Council

Request for Proposal

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or firms to provide financial monitoring services for its Gulf Coast Workforce system contracts. The successful bidder or bidders will be offered an initial contract for one year, ending in February, 2002, with two possible annual renewals through August 31, 2004. Prospective proposers may request that the proposal package be sent in hard copy or may access the package for download at http://www.gulfcoastcareers.org. The proposal package contains detailed information and instructions on preparing a response. Prospective proposers may contact Carol Kimmick to request a package by writing her at H-GAC, Human Services-Workforce, P.O. Box 2777, Houston, Texas, 77227-2777, by calling her at (713) 627-3200 or by sending e-mail to ckimmick@hgac.cog.tx.us. Proposals are due at the H-GAC offices, 3555 Timmons Lane, Suite 500, Houston, Texas 77027 no later than 12:00 p.m. (noon) Central Standard Time on Friday, March 2, 2001. Late proposals will not be accepted. There will be no exceptions.

TRD-200100836
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: February 8, 2001

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Texas Department of Insurance

Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2482 on March 29, 2001, at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks adoption of a revised "Consumer Bill of Rights for Personal Automobile Insurance" and a revised "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance." Staff's petition (Ref. No. AP-0201-02-I), was filed on February 13, 2001. The Consumer Bills of Rights set forth a summation of consumers' most important rights

with regard to each line of insurance, including consumers' rights to receive information from the Department of Insurance and their insurers, rights relating to buying insurance, rights regarding cancellation and refusal to renew policies, rights regarding claims made under policies, rights regarding non-discrimination, and enforcement rights. On December 7, 2000, the Office of Public Insurance Counsel (OPIC) filed a petition, which was subsequently amended on February 2, 2001, bearing file number A-1200-32 to adopt a revised "Consumer Bill of Rights for Personal Automobile Insurance" and a petition, also subsequently amended on February 2, 2001, bearing file number P-1200-33 to adopt a revised "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance." The department supports the revisions as filed by OPIC containing modifications as suggested by the department.

Staff proposes adoption of revisions to the "Consumer Bill of Rights for Personal Automobile Insurance" and to the "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance." The proposed revisions: (1) implement Insurance Code Article 1.35A, Sec. 5(b)(8), which provides that the Public Counsel for OPIC "shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed upon the issuance of a policy by insurers to each policyholder under rules adopted by the department;" (2) update the current bills of rights to reflect the changes brought about by legislative acts and departmental actions that affect both policyholders and insurers; (3) incorporate these changes so that insurers will be distributing to current and future policyholders updated information informing them of their rights; and (4) update the bills of rights in general to provide simplified language and to clarify various provisions.

The "Consumer Bill of Rights for Personal Automobile Insurance" is required to be distributed with each new policy and with renewal notices to current policyholders pursuant to the Texas Automobile Rules and Rating Manual, Section I, General Rules, 16. Staff proposes editorial revisions to rule 16 and further proposes revisions to the Texas Standard Provisions for Automobile Policies, Special Instructions for the Texas Personal Auto Policy to reflect the requirement of providing a "Consumer Bill of Rights for Personal Automobile Insurance" in accord with rule 16 of the Texas Automobile Rules and Rating Manual.

The "Consumer Bill of Rights for Homeowners and Renters Insurance" is required to be distributed with each new policy and with renewal notices to current policyholders pursuant to the Texas Personal Lines Manual, Homeowners Section V. General Requirements, F. Staff proposes updated and editorial revisions to item F and further proposes revisions to the Texas Personal Lines Manual, Dwelling Section V. General Requirements, by adding new item I, to require insurers writing dwelling policies to distribute the revised "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance" with each new policy and with renewal notices to current policyholders pursuant to this new provision in the Dwelling Section.

Copies of staff's petition, including exhibits with the full text of the proposed revisions to the "Consumer Bill of Rights for Personal Automobile Insurance;" the "Consumer Bill of Rights for Homeowners, Dwelling and Renters Insurance;" the Texas Automobile Rules and Rating Manual, Section I, General Rules, 16; the Texas Standard Provisions for Automobile Policies, Special Instructions for the Texas Personal Auto Policy, new number 12; the Texas Personal Lines Manual, Homeowners Section V. General Requirements, F; the Texas Personal Lines Manual, Dwelling Section V. General Requirements, new item I; and the Spanish translations of the proposed Bills of Rights, as well as copies of the amended petitions filed by OPIC, are all available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of any of the petitions, please contact Sylvia Gutierrez at (512) 463-6327; refer to Ref. No. AP-0201-02-I for the staff's petition and to Ref. No. A-1200-32 for the OPIC Personal Automobile amended petition and to Ref. No. P-1200-33 for the OPIC Homeowners, Dwelling and Renters amended petition.

To be considered, written comments on the proposed changes must be submitted no later than 5 p.m. on March 26, 2001, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code Article 5.96, which exempts it from the requirements of the Government Code Chapter 2001 (Administrative Procedure Act).

TRD-200100922
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 13, 2001

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Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for incorporation in Texas of Medtech Data Services, LLC, a domestic third party administrator. The home office is Abilene, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200100921
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 13, 2001

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Texas Natural Resource Conservation Commission

Invitation to Comment on the Notice of Availability of the Draft January 2001 Update to the Water Quality Management Plan for the State of Texas

The Texas Natural Resource Conservation Commission (TNRCC or commission) announces the availability of the draft January 2001 Update to the Water Quality Management Plan for the State of Texas.

The Water Quality Management Plan (WQMP) is developed and promulgated pursuant to the requirements of the Federal Clean Water Act (CWA), §208. The draft January 2001 WQMP Update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

A copy of the draft January 2001 Update may be found on the commission's web page, the web address is *http://www.tnrcc.state.tx.us/water/quality/wqmp*. A copy of the draft may also be viewed at the TNRCC Library located at the Texas Natural Resource Conservation Commission, Building A, 12100 Park 35 Circle, North Interstate 35, Austin, Texas.

Comments on the draft January 2001 Update to the Water Quality Management Plan shall be submitted to Ms. Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Permits & Resource Management Division, MC-150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Comments must be submitted no later than 5:00 p.m. on March 26, 2001. For further information or questions, please contact Ms. Vargas at (512) 239-4619 or by email at svargas@tnrcc.state.tx.us.

TRD-200100905
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 13, 2001

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 23, 2001**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed DOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 23, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Carl Birdsong Inc. dba Birdsong Freeway America; DOCKET NUMBER: 2000-0339-PST-E; TNRCC ID NUMBER: 0049072; LOCATION: 860 South Interstate Highway 10, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: retail propane and auto repair business; RULES VIOLATED: 30 TAC §115.246, TNRCC Agreed Order No. 1998-1142-PST-E, and Ordering Provision IV.2.b., and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a record of daily and monthly inspections for the Stage I and II vapor recovery system; 30 Tex. Admin. Code (TAC) §115.245(2) and THSC, §382.085(b), by failing to conduct pressure decay testing for Stage II vapor recovery equipment annually; 30 TAC §115.242(3)(D) and THSC, §382.085(b) by failing to repair nozzle boot face plates on Nos. 1, 3, 4, and 5 pumps on the Stage II vapor recovery system; PENALTY: $6,250; STAFF ATTORNEY: Laurencia N. Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Don Benedict; DOCKET NUMBER: 1999-0617-AIR-E; TNRCC ID NUMBER: 13745; LOCATION: 9220 State Highway 56 East, Sherman, Grayson County, Texas; TYPE OF FACILITY: private residence; RULES VIOLATED: 30 TAC §111.201 and §330.4(a) and THSC, §382.085(b) by burning construction waste, residential waste, and commercial waste without obtaining authorization; PENALTY: $3,125; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3) COMPANY: Nam Phoung Chu dba L & P Louis Grocery; DOCKET NUMBER: 1999-0512- PST-E; TNRCC ID NUMBER: 0032805; LOCATION: 2620 NW 22nd Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §115.241 and §70.104(a) by dispensing fuel without using a Stage II vapor recovery system; PENALTY: $2,250; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588- 5878; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200100904
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 13, 2001

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

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 23, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 23, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Be Van Pham dba Aldine Mail Route Mobile Home Park; DOCKET NUMBER: 2000-0366-PWS-E; TNRCC ID NUMBER: 1013048; LOCATION: 814 Aldine Mail Route, Harris County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 Tex. Admin. Code (TAC) §290.120(c) is alleged to have failed to collect and submit samples for lead and copper analysis for the two semi-annual monitoring periods in calendar year 1999; PENALTY: $625; STAFF ATTORNEY: Becky Petty, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: City of Kilgore; DOCKET NUMBER: 1999-0709-MWD-E; TNRCC ID NUMBER: 10201-001; LOCATION: approximately 1/4 mile east and 1/2 mile north of the intersection of United States Highway 259 and Farm-to-Market Road 2204, Kilgore, Gregg County, Texas; TYPE OF FACILITY: public wastewater treatment facility; RULES VIOLATED: TWC, §26.121, by failing to comply with the Flow and CBOD5 effluent limits of Water Quality Permit No. 10201-001, and the CBOD5 and NH3-N effluent limits of Water Quality Permit No. TX0026557; PENALTY: $7,500; STAFF ATTORNEY: Victor Simonds, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Friede Goldman Offshore Texas L. P.; DOCKET NUMBER: 1999-0980- MLM-E; TNRCC ID NUMBER: 12776; LOCATION: 2500 Martin Luther King Boulevard, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: floating dry dock; RULES VIOLATED: TWC, §26.121 by discharging effluent from outfall No. 001 that was in excess of the criteria authorized by permit; §26.121 by discharging effluent from outfall No. 002 that was in excess of the criteria authorized by permit; §26.121 by discharging effluent from outfall No. 003 that was in excess of the criteria authorized by permit; §26.121 by discharging effluent from outfall No. 004 that was in excess of the criteria authorized by permit; §26.121 by discharging effluent from outfall No. 005 that was in excess of the criteria authorized by permit; §26.121 by discharging effluent from outfall No. 006 that was in excess of the criteria authorized by permit; and §26.121 by discharging effluent from outfall No. 007 that was in excess of the criteria authorized by permit, and 30 TAC §305.125(1) by failing to ensure that the facility was operated in accordance with requirements set by permit, §305.125(1)by failing to route domestic sewage to an authorized and adequately designed septic tank/drainfield system, and §305.125(9)(A) by failing to report to the executive director noncompliance of the permit; PENALTY: $20,000; STAFF ATTORNEY: Rich O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Greig Automotive Enterprises, Inc.; DOCKET NUMBER: 2000-0690-AIR-E; TNRCC ID NUMBER: TA-2604-N; LOCATION: 9502 Highway 80 West, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: used car lot; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) by failing to maintain records to demonstrate inspection and repair of the emission control systems or devices of all incoming vehicles; PENALTY: $1,250; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R4, (817) 588-5877; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5) COMPANY: Javaid Malik dba Quick Stop; DOCKET NUMBER: 1999-0869-PST-E; TNRCC ID NUMBER: 48526; LOCATION: 1530 Clinton Drive, Galena Park, Harris County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §115.241 and THSC, §382.085(b), by failing to install a Stage II vapor recovery system which is certified to reduce the emissions of volatile organic compounds; 30 TAC §334.10(b)(1)(B), by failing to maintain legible copies of all required records pertaining to the UST systems in a secure location on the premises available for inspection upon request; §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; §334.49(a), and TWC, §26.3475, by failing to install corrosion protection for UST systems; 30 TAC §334.50(b), and TWC, §26.3475, by failing to monitor the USTs for releases at a frequency of at least once a month and by failing to conduct a piping tightness test at least once every three years for suction or gravity flow piping; 30 TAC §334.51(b)(2), and TWC, §26.3475, by failing to equip the UST systems with spill and overfill prevention equipment; PENALTY: $32,500; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486; (713) 767- 3500.

(6) COMPANY: Phillips Petroleum Company, Sweeny Refinery and Petrochemical Complex; DOCKET NUMBER: 1994-0137-SWR-E; TNRCC ID NUMBER: 30048; LOCATION: at the junction of State Highway 35 and Farm-to-Market Road 524 in Brazoria County, Texas and a 48 acre land treatment unit located three miles southwest of the refinery in Matagorda County, Texas (collectively know as the "Complex"); TYPE OF FACILITY: petrochemical refinery complex; RULES VIOLATED: Order terminating an Agreed Order effective April 1994 in the matter of Phillips-Sweeny under the authority of the Solid Waste Disposal Act, Chapter 361 and TWC, Chapter 26, and the rules of the TNRCC; PENALTY: $0; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200100903
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 13, 2001

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Notice of Water District Applications

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a hearing on a petition for dissolution of Northeast Medina County Municipal Utility District No. 1 (District) signed by Frost National Bank, Trustee for the City Public Service of San Antonio, Texas, Employees' Pension Trust (Petitioner) joined by Land Systems Company and Martex Corporation (Buyers). The TNRCC will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The TNRCC will conduct the hearing at: 9:30 a.m., Wednesday, March 21, 2001, Building E, Room 201S, 12100 Park

35 Circle, Austin, Texas. On February 18, 2000, the Texas Natural Resources Conservation Commission (Commission) declared the application administratively complete. The application requests the District be dissolved. On April 27, 1989, the Commission created the District which operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition states the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition, (2) is financially dormant, and (3) has no outstanding bonded indebtedness, or assets and liabilities. Certified copies of the Annual Financial Dormancy and Filing Affidavits for the years 1995 through 1999 are on file. An affidavit of the State Comptroller of Public Accounts has been included in the petition, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74, Property Code.

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a hearing on a petition for dissolution of Northeast Medina County Municipal Utility District No. 2 (District) signed by Frost National Bank, Trustee for the City Public Service of San Antonio, Texas, Employees' Pension Trust (Petitioner) joined by Land Systems Company and Martex Corporation (Buyers). The TNRCC will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The TNRCC will conduct the hearing at: 9:30 a.m., Wednesday, March 21, 2001, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. On February 18, 2000, the Texas Natural Resources Conservation Commission (Commission) declared the application administratively complete. The application requests the District be dissolved. On April 27, 1989, the Commission created the District which operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition states the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition, (2) is financially dormant, and (3) has no outstanding bonded indebtedness, or assets and liabilities. Certified copies of the Annual Financial Dormancy and Filing Affidavits for the years 1995 through 1999 are on file. An affidavit of the State Comptroller of Public Accounts has been included in the petition, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74, Property Code.

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a hearing on a petition for dissolution of Northeast Medina County Municipal Utility District No. 3 (District) signed by Frost National Bank, Trustee for the City Public Service of San Antonio, Texas, Employees' Pension Trust (Petitioner) joined by Land Systems Company and Martex Corporation (Buyers). The TNRCC will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The TNRCC will conduct the hearing at: 9:30 a.m., Wednesday, March 21, 2001, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. On February 18, 2000, the Texas Natural Resources Conservation Commission (Commission) declared the application administratively complete. The application requests the District be dissolved. On April 27, 1989, the Commission created the District which operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition states the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition, (2) is financially dormant, and (3) has no outstanding bonded indebtedness, or assets and liabilities. Certified copies of the Annual Financial Dormancy and Filing Affidavits for the years 1995 through 1999 are on file. An affidavit of the State Comptroller of Public Accounts has been included in the petition, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74, Property Code.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. The TNRCC may approve the petition unless a written request for a contested case hearing is filed within 30 days after the 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) the name of the petitioner and the TNRCC Docket Number; (3) the statement "I/we request a contested case hearing"; and (4) a brief description of how you would be affected by the request in a way uncommon to the general public. You may also submit your proposed adjustments to the petition 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 contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us. Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the Office of Public Assistance at 1-800-687-4040 or 1- 800-RELAY-TX (TDD), at least one week prior to the hearing.

TRD-200100931
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 14, 2001

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Notice of Water Rights Applications

JIMMY A. MUMME, P.O. Box 238, Hondo, Texas 78861, applicant, seeks a permit pursuant to Texas Water Code (TWC) §11.121, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks to divert and use not to exceed 70 acre-feet of water per annum from Hondo Creek, tributary of the Frio River, tributary of the Nueces River, Nueces River Basin at a point located on the right bank of Hondo Creek approximately 3 miles north of Hondo and 14 miles west of Castroville, Medina County. Said point bearing S 16° W, 4,700 feet from the northeast corner of the Galan Hodges Original Survey No. 422, Abstract No. 523, also being 29.393 N Latitude and 99.157° W Longitude, with a maximum rate of 1.1 cfs (500 gpm). Water diverted will be carried through the applicant's gravel plant for sand and gravel washing operations. Water will be discharged for reuse into to a 2 acre-foot capacity off-channel reservoir, adjacent to the creek, with a surface area of 0.2 acres located approximately 3 miles north of Hondo and 14 miles west of Castroville, Medina County, bearing S 16° W, 4,000 feet from the northeast corner of the aforementioned survey, also being

29.395° N Latitude and 99.157° W Longitude. Applicant indicates that the requested diversion will be primarily water taken from natural depressions in Hondo Creek, with a surface area of approximately 2 acres, where water has settled and, this segment of Hondo Creek only flows during high rain/flood events of approximately 10-15 inches with flow lasting approximately 3 days. Water diverted but not consumed will be returned to Hondo Creek by natural seepage through the aforementioned reservoir. The estimated annual amount of return flow will be 63 acre-feet.

LSR DEVELOPMENT, INC., 5580 Peterson Lane, Suite 160, Dallas, Texas 75240, applicant, seeks a Water Use Permit pursuant to §§11.121, 11.143, and 11.042, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §295.1, et seq. To authorize the maintenance and use of an existing on-channel dam and reservoir (currently exempt as maintained for domestic and livestock purposes), referred to as Lake No. 1 (downstream lake), for both recreation and irrigation purposes and authorization to constructed and maintain an on-channel reservoir, referred to as Lake No. 2 (upstream lake), for recreation purposes. Both the existing and proposed reservoirs are/will be located approximately 16 miles southeast of Denton on an unnamed tributary of Stewart Creek, tributary of the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin in Denton County. Midpoint of the dam for Lake No. 1 is located N 54° 9' W, 2,970 feet from the southeast corner of the David Lawhorn Original Survey, Abstract No. 727, Latitude 33.1206° N, Longitude 96.8828° W. Lake No. 1 has a surface area of 3.5 acres and impounds 22 acre-feet of water. Midpoint on the centerline of the streambed for Lake No. 2 is to be located N 30.0794° W, 4,360 feet from the southeast corner of the aforementioned survey, also being Latitude 33.1247° N, Longitude 96.8333° W. Lake No. 2, has a proposed surface area of 0.73 acres and will impound 3.7 acre-feet of water. Applicant also seeks authorization to use the bed and banks of the aforementioned unnamed tributary of Stewart Creek to convey groundwater stored in Lake No. 2 (upstream lake) to Lake No. 1 (downstream lake) for both subsequent irrigation and re-circulation purposes. The applicant, if authorized to do so, will divert irrigation water at an amount not to exceed 161 acre-feet of water per annum from Lake No. 1 at a point on the perimeter located N 54° 9' W, 2,970 feet from the southeast corner of the aforementioned survey, also being Latitude 33.1206° N, Longitude 96.8828° W, at a maximum diversion rate of 3.1cfs (1,400 gpm) for irrigation of 69 acres of land out of a 161.446 acre-tract located in the aforementioned survey. The applicant has not requested an appropriation of water from the unnamed tributary of Stewart Creek. The applicant has indicated that groundwater is available and will be provided for the initial fill of the proposed reservoir (Lake No. 2), to maintain both lakes full at all times, for irrigation use, and to supplement any evaporative or carriage losses. If granted, the permit will contain special conditions requiring that ground water be utilized to maintain the aforesaid reservoirs full at all times - allowing all in-flows from the unnamed tributary of Stewart Creek to pass through, to replenish water employed for irrigation purposes, and also to make-up any water lost due to evaporation or carriage losses. Applicant will discharge the groundwater from Lake No. 2 at a point located N 54° 9' W, 2970 feet from the southeast corner of the aforementioned survey, also being Latitude 33.1208° N, Longitude 96.8828° W. Applicant has indicated that the discharge volume and rate will always exceed the diversion volume and rate from the diversion point located at Lake No. 1.

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, Texas 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-200100832
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 7, 2001

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Notice of Water Rights Applications

WILLIAMS TERMINALS HOLDINGS, LLC, 12901 American Petroleum Road, Galena Park, Texas 77547, applicant, seeks a Water Use Permit pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. The applicant seeks authorization to divert not to exceed 1540 acre-feet of water per annum from the Houston Ship Channel at a point (Barge Dock 2) located Latitude 29.74° N, Longitude 95.20° W; also being S 75.36° W, 7,680 feet northwest from the southeast corner of the Harris & Wilson Survey, Abstract No. 31; and at point (Ship Dock 2) located Latitude 29.74° N, Longitude 95.12° W; also being S 77.71° W, 12,960 feet northwest from the southeast corner of the aforementioned survey; approximately 10 miles in an easterly direction from Houston, Texas. The water will be diverted at a maximum combined rate of 3.8 cfs (1700 gpm) and will be used for non-consumptive industrial purposes which consist of hydrostatic testing equipment of product storage tanks and pipelines, tank cleaning, and testing of fire protection equipment. Water diverted will be returned to the Houston Ship Channel from a permitted on-site wastewater treatment plant. The return point is at a point on the Houston Ship Channel that is S 43.25°E, 11, 600 feet north of the southeast corner of the Harris & Wilson Survey, Abstract No. 31; also being Latitude 29.74° N, Longitude 95.20° W. Accounting for evaporative and transmission losses, the estimated annual amount of return flow to this point is 1460 acre-feet of water.

CURTIS W. HOLCOMBE, ET. AL., P.O. Box 906, Floresville, TX, 78114, applicant, seeks a permit pursuant to Texas Water Code (TWC) §11.121, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. The applicant seeks to divert and use not to exceed 200 acre-feet of water per annum from the San Antonio River, San Antonio River Basin for irrigation of 100 acres out three tracts of land totaling 159.06 acres of land located in the Heirs of Simon & Juan de Arocha Original Grant, Abstract No. 1, Wilson County, approximately 3 miles northwest of Floresville, Texas, evidenced by a Gift Deed recorded in Volume 896, Page 67, in the Official Records of Wilson County. The water will be diverted from the east bank of the San Antonio River at a maximum rate of 2.674 cfs (1200 gpm) at a point S43°E, 29,500 feet from the northwest corner of the aforesaid survey, also being Latitude 29.163°N and Longitude 98.194°W. Ownership of the land to be irrigated is held undivided among Curtis W. Holcombe, Phyllis Holcombe Sweeny, Philip L. Holcombe, and Russell L. Holcombe.

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.

SAND SUPPLY/A DIVISION OF CAMPBELL CONCRETE AND MATERIALS, L. P., has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a temporary water use permit to divert and use 250 acre-feet per annum during a period of three years for a total of 750 acre-feet from the Colorado River, Colorado River Basin for mining (sand and gravel washing) purposes. Water will be diverted from a point on the north bank of the Colorado River, Colorado County located approximately 11 river miles upstream of the intersection of State Highway 71 and the Colorado River, approximately 9.2 miles northwest of Columbus, Texas, and 8.8 miles northeast of Weimar, Texas. Water will be diverted at a maximum rate of 2.23 cubic feet per second (cfs) / 1000 gallons per minute (gpm) to two off-channel impoundments, and subsequently diverted to the applicant's plant for sand and gravel washing. Should the permit be granted, applicant will not be authorized to divert water from the Colorado River when the flow is at or less than the following amounts: January-300 cfs, February-340 cfs, March cfs-500 cfs, April-500 cfs, May-820 cfs, June-660 cfs, July-300 cfs, August-200 cfs, September-320 cfs, October-380 cfs, November-290 cfs, December-270 cfs. There are five downstream appropriators that may be affected by the granting of the requested permit. These water right holders will receive copies of this notice. The temporary permit, if issued, will be junior in priority to all senior and superior water rights in the Colorado River Basin.

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, by March 5, 2001. 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 by March 5, 2001. The Executive Director may approve the application unless a written request for a contested case hearing is filed. 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/permit 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 in 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-200100930
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 14, 2001

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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 January 31,2001. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Salem Ali, et al.; Respondent; SOAH Docket No.582-00-1284; TNRCC Docket No.1998-1405-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-200100929
Doug Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: February 14, 2001

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Public Utility Commission of Texas

Notice of Application for Waiver of Requirements in P.U.C. Substantive Rule §25.211

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 7, 2001, for waiver of requirements in P.U.C. Substantive Rule §25.211, Interconnection of On-Site Distributed Generation.

Docket Title and Number: Application of TXU SESCO Company (TXU SESCO) for Good Cause Waiver of Certain Requirements in P.U.C. Substantive Rule §25.211(d)(7). Docket Number 23662.

The Application:. TXU SESCO seeks a good cause waiver to the requirement that it file tariffs for scheduling services and banking services. TXU SESCO states: (1) that it is not a control area utility, but instead obtains control area services pursuant to a contract with the Lower Colorado River Authority; and (2) TXU SESCO has no generation of its own, but purchases full requirements power and energy under a contract with Dynegy. For these reasons, TXU SESCO asserts that it cannot provide scheduling or banking service for a distributed generator connecting to TXU SESCO's facilities. TXU SESCO believes that the remainder of the tariff requirements of P.U.C. Substantive Rule §25.211 are satisfied by TXU SESCO's previously filed tariff, which is pending in Tariff Control Number 22142 and is currently abated.

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 23662.

TRD-200100911
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 13, 2001

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Notice of Application for Waiver of Requirements in P.U.C. Substantive Rule §26.34

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 8, 2001, for waiver of requirements in P.U.C. Substantive Rule §26.34, Telephone Prepaid Calling Services.

Docket Title and Number: Application of WorldCom, Inc. (WorldCom) for Good Cause Waiver of Certain Requirements in P.U.C. Substantive Rule §26.34. Docket Number 23665.

The Application: WorldCom seeks waiver of certain written disclosure requirements for prepaid calling services. Specifically, WorldCom requests that the commission exempt the company from strict compliance with the following provisions: (1) disclosure of the cost for a one minute call, if higher than the maximum rate per minute; (2) the requirement that packaging disclosures be in a minimum 8-point font; (3) a global waiver that the requirements contained in the rule do not apply to cards issued prior to February 15, 2001; and (4) the commission consider making additional accommodations in any future WorldCom request for waivers as WorldCom is required to comply with other states' prepaid calling care regulations and federal de-tariff obligations.

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 23665.

TRD-200100912
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 13, 2001

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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 February 6, 2001, for good cause waiver of the requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of AT&T Communications of Texas, L.P. (AT&T) for Good Cause Waiver of Certain Aspects of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23658.

The Application: AT&T requests a good cause waiver to extend to June 18, 2001 the February 15, 2001 deadline for compliance with P.U.C. Substantive Rule §26.25, in order to complete the bill format changes that will bring AT&T's bills into compliance. AT&T states that customers provided service through AT&T's broadband facilities are billed by AT&T using a separate billing system than is used for other AT&T local services. This separate billing system handles a much smaller volume of customers and AT&T anticipates, for broadband-provided services, that the bill format produced by this system will meet the requirements of §26.25 after February 15, 2001. However, the majority of AT&T's local customers in Texas receive local service through the same billing system that AT&T uses for its consumer long distance customers nationwide. AT&T is unable to complete the necessary changes to the national billing system within the timeframe specified in the rule.

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 23658.

TRD-200100835
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 8, 2001

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Public Notice of Amendment to Interconnection Agreement

On February 9, 2001, Business Telecom, Inc. doing business as BTI 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 23668. 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 23668. 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 March 9, 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 23668.

TRD-200100914

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 13, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Verizon Southwest's Application for Approval of LRIC Study for Emergency Reroute Service Pursuant to P.U.C. Substantive Rule §26.215 on or about February 17, 2001.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 23660. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at 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.

TRD-200100847
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 8, 2001

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Public Notice of Interconnection Agreement

On February 9, 2001, Reflex Communications, 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 23669. 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 23669. 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 March 9, 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 23669.

TRD-200100915
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 13, 2001

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Public Notice of Interconnection Agreement

On February 9, 2001, CenturyTel of Lake Dallas, Inc., CenturyTel of San Marcos, Inc., CenturyTel of Port Aransas, Inc., and 1-800 Reconex, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23670. 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 23670. 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 March 7, 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 23670.

TRD-200100916
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 13, 2001

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Public Notice of Interconnection Agreement

On February 9, 2001, TXU Communications Telephone Company and Houston Cellular, LP, 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 23667. 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 23667. 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 March 9, 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 23667.

TRD-200100913
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 13, 2001

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Sam Houston State University

Consultant Proposal Request

This request for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. Sam Houston State University (SHSU) seeks written proposals from qualified consulting firms based in Washington, D.C. to represent and assist the University in developing a project, the Criminal Research Information Management Evaluation System (CRIMES), deemed important to the University. Important considerations in the award of the proposed contract will be the years of experience in securing funding assistance for university programs and facilities, considerable experience working with Federal Executive Agencies, and a record of substantial success in dealing with Executive Agencies. Experience in the development of strategies for corporate participation in university-sponsored development projects, especially those relating to information systems and telecommunications, is also important. Interested parties are invited to express their interest and describe their capabilities on or before March 26, 2001. The consulting services desired are a continuation of a service previously performed by a private consultant. This contract represents a renewal and will be awarded to the previous consultant unless a better offer is received. The term of the contract is to be from date of award for a twelve (12) month period with options to renew. Further technical information can be obtained from Dr. Richard H. Payne at (409) 294-3621. Deadline for receipt of proposals is 4:00 p.m. March 26, 2001. Date and time will be stamped on the proposals by the Office of Research and Sponsored Programs. Proposals received later than this date and time will not be considered. All proposals must be specific and must be responsive to the criteria set forth in this request.

I. GENERAL INSTRUCTIONS

Submit one (1) copy of your proposal in a sealed envelope to: Office of Research and Sponsored Programs, P.O. Box 2448, Sam Houston State University, Huntsville, Texas, 77341-2448 before 4:00 p.m., March 26, 2001. Proposals may be modified or withdrawn prior to the established due date.

II. DISCUSSIONS WITH OFFERERS AND AWARD

The University reserves the right to conduct discussions with any or all bidders, or to make an award of a contract without such discussions based only on evaluation of the written proposals. The University also reserves the right to designate a review committee in evaluating the proposals according to the criteria set forth under Section III entitled "Scope of Work." The Associate Vice President for Research and Graduate Studies shall make a written determination showing the basis upon which the award was made and such determination shall be kept on file.

III. SCOPE OF WORK

The services to be rendered by the Consultant for Sam Houston State University shall consist of: The Consultant will assist the University in following a strategic plan for its Criminal Research Information Management Evaluation System (CRIMES) law enforcement information system project . This includes helping the University shape the future development of CRIMES so it remains consistent with the identified needs of the law enforcement community with an emphasis upon interoperability; identify linkages between CRIMES and other information technologies; explore the special needs of small and rural law enforcement agencies, and; to assist in obtaining support to provide for the future development and functioning of the CRIMES program. This will include meeting with appropriate persons and advising the University on development opportunities and linkages with complementary endeavors across the nation, and delivery of periodic reports providing a synopsis of activities.

IV. EVALUATION

A. Criteria for Evaluation of Proposals: Firms will be evaluated on time and quality of experience in representing and assisting universities in developing projects. Equal consideration will be given to past performance, writing skills, and the effectiveness of the firm's strategies.

B. Cost: The University anticipates a fixed fee contract for these services, budgeted at $1,500.00 per month for twelve months ($18,000.00). Proposals outside this parameter will be accepted, but should include justification for deviation.

V. TERMINATION

This Request for Proposal (RFP) in no manner obligates SHSU to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written contract. Progress towards this end is solely at the discretion of SHSU and may be terminated without penalty or obligation at any time prior to the signing of a contract. SHSU reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals. SHSU requires that the responses to this RFP must state that the proposed terms will remain in effect for at least forty-five (45) days after the scheduled response opening.

TRD-200100898
Dr. B.K. Marks
President
Sam Houston State University
Filed: February 13, 2001

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Texas Department of Transportation

Availability of Draft Environmental Impact Statement

Pursuant to Title 43, Texas Administrative Code, §2.43(e)(4)(B), the Texas Department of Transportation is advising the public of the availability of the approved Draft Environmental Impact Statement (DEIS) for the proposed reconstruction and expansion of Interstate Highway 10 (the Katy Freeway) in Harris, Fort Bend, and Waller Counties, Texas. Comments regarding the DEIS should be submitted to James G. Darden, P.E. at the Texas Department of Transportation's Houston District Office, located at 7721 Washington Avenue, Houston, Texas. The mailing address is P.O. Box 1386, Houston, Texas, 77251-1386. The deadline for the receipt of comments is 5:00 p.m. on Monday, April 9, 2001.

The proposed project consists of the reconstruction and expansion of IH 10, a controlled access highway, from Taylor Street in the City of Houston to FM 1489 in Waller County, a distance of approximately 38 miles. The proposed reconstruction and expansion of the IH 10 facility would add single occupancy vehicle lanes and managed lanes between IH 610 and Katy, Texas, and would reconstruct interchanges along the corridor. The proposed project is in accordance with the recommendations of a major investment study that were adopted by the Transportation Policy Council of the Houston-Galveston Area Council, the regional Metropolitan Planning Organization, on October 10, 1997. A total of three alignment alternatives, in addition to the no-build alternative, have been presented in the DEIS for this project. The All South Alternative is the alternative that would take additional right-of-way (ROW) exclusively to the south side of IH 10. The All North Alternative is the alternative that would take additional ROW exclusively to the north of IH 10. The Combined Alternative is the alternative that would take ROW to the north and south of IH 10 as needed.

The proposed reconstruction and expansion of IH 10 is intended to relieve congestion and increase mobility on local and regional transportation facilities. The social, economic, and environmental impacts of the IH 10 project have been analyzed in the DEIS.

Copies of the DEIS and other information about the project may be obtained at the Texas Department of Transportation's Houston District Office at the previously mentioned address. For further information, please contact James G. Darden, P.E. at (713) 802-5241. Copies of the DEIS may also be reviewed at the Houston Public Library in the Texas Room, 500 McKinney, Houston, Texas; the Heights Branch Library, 1302 Heights Boulevard, Houston, Texas; the Kendall Library, 14330 Memorial, Houston, Texas; and the Spring Branch Memorial Library, 930 Corbindale, Houston, Texas.

TRD-200100900
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 13, 2001

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Availability of Final Environmental Impact Statement

In accordance with Title 43, Texas Administrative Code, §2.43(e)(5)(F), the Texas Department of Transportation is giving public notice of the availability of the Final Environmental Impact Statement (FEIS) covering the proposed construction of the U.S. 190 reliever route on new location from FM 2657 to the East City Limits of Copperas Cove in Coryell and Lampasas Counties. The public and interested organizations will have 30 days following publication of this notice to submit comments.

The proposed reliever route is a four-lane controlled access facility with a 48-foot wide median and is approximately 7.0 miles long. The purpose of the new location project is to alleviate traffic congestion and improve mobility on existing U.S. 190 in Copperas Cove. Three build alternatives referred to as the Blue, Green, and Yellow Alternatives and the no-build alternative were evaluated in the FEIS.

The Green Alternative, also referred as Alternative G, was identified as the preferred alternative. This alternative would result in the fewest environmental impacts, the least number of relocations as compared to the other alternatives, reduced impacts to vegetative areas and would be the most cost effective solution to traffic congestion and mobility problems.

Copies of the FEIS and other information about the project may be obtained at the Texas Department of Transportation, Waco District Office, located at 100 South Loop Drive, Waco, Texas 76704-2858 or by writing to Henry R. Richardson, Jr., P.E., Director of Transportation Planning and Development, at the same address; or phone number (254) 867-2730.

TRD-200100899
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 13, 2001

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Notice of Intent to Prepare an Environmental Impact Statement

The Texas Department of Transportation (TxDOT) published in the *Texas Register* on July 2, 1999 (24 TexReg 5076) a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Trinity Parkway reliever route. The proposed project is being jointly developed with the Federal Highway Administration and the North Texas Tollway Authority. Pursuant to 43 TAC §2.43(e)(3), TxDOT is publishing this supplementary Notice of Intent to include in the EIS an evaluation of a proposed City of Dallas Lake Plan located within the Trinity River Dallas Floodway in Dallas County, Texas. This proposed Lake Plan potentially affects the project corridor for the transportation project and several of the route alternatives under consideration. Supplementary analysis is needed to fully address the impacts of joint development of these actions.

An EIS is being prepared for the Trinity Parkway reliever route and associated improvements in the project corridor. Associated improvements include one or more proposed lakes, recreation amenities, and possible wetlands, which are located within the Dallas Floodway, as identified in the City of Dallas Trinity River Corridor Master Implementation Plan Lake Design and Recreational Amenities Report.

Impacts caused by construction and operation of the Trinity Parkway and the Dallas Lake Plan will vary according to the alternatives being evaluated. Generally, these projects may impact floodplains, water quality, air quality, socioeconomic conditions, historic and other man-made structures.

The Draft EIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Agency Contact: Comments or questions concerning the proposed action and the EIS should be directed to Tim Nesbitt, P. E., Project Manager, P. O. Box 133067, Dallas, Texas 75313-3067 or by telephone at (214) 320-6245.

TRD-200100901
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 13, 2001

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Texas Turnpike Authority Division of the Texas Department of Transportation

Notice of Intent to Issue a Request For Qualifications for Underwriting Services #86-1RFP2002

Pursuant to the authority granted under Chapter 361 of the Texas Transportation Code, the Texas Turnpike Authority, a division of the Texas Department of Transportation ("TTA") is issuing this notice of intent to issue a request for qualifications ("RFQ") from qualified firms interested in providing underwriting services for the TTA. The underwriting services the TTA seeks will relate to potential revenue bond issuances for the financing of potential turnpike projects throughout the State of Texas.

Through this notice the TTA is seeking letters of request ("LOR") from firms interested in receiving a RFQ response package. The TTA anticipates issuing the RFQ, receiving and analyzing the RFQ responses, possibly conducting interviews with a short-listed group of proposers, and selecting a pool of qualified underwriters to provide the services through a contractual arrangement with the TTA.

Note that the TTA previously conducted a procurement for the services of underwriters for potential revenue bond issuances for the Loop 1, SH 45 and US 183-A turnpike projects. By resolution of the TTA board of directors, the following firms were selected as the underwriting team: Salomon Smith Barney, Goldman Sachs & Company, Lehman Brothers, Siebert Branford Shank & Co., LLC, Estrada Hinojosa Company, Inc., Samual A. Ramirez & Co., Morgan Keegan & Company, Inc., and Southwest Securities. These firms will automatically become part of the pool of underwriters being procured in response to this RFQ, and those firms need not take any further action in response to this notice.

Release of RFQ and Response Deadline. The TTA currently anticipates that the RFQ will be available on or about February 12, 2001. Copies of the RFQ will be mailed or provided to those parties which have submitted a LOR by the deadline stated herein. Responses to the RFQ will be due on March 29, 2001. Additional details concerning this process will be contained within the RFQ.

Deadline for Letters of Request. A LOR notifying the TTA of a firm's request for a copy of the RFQ will be accepted by fax at (512) 936-0970 (Attention: Crystal L. Hansen) or by mail, hand-delivery, or overnight courier at: Texas Turnpike Authority, a division of the Texas Department of Transportation, 125 E. 11th Street, 5th Floor, Austin, Texas 78701, Attention: Crystal L. Hansen. LORs must identify contact person and an address to which the RFQ should be sent. LORs will be received until 4:45 p.m. C.S.T. on March 12, 2001.

TRD-200100855
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: February 9, 2001

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Texas Veterans Land Board

Notice of Contract Award

In the July 7, 2000, edition of the *Texas Register* (25 TexReg 6618) the Texas Veterans Land Board (VLB) published a Request for Proposals seeking proposals from entities desiring to participate in the management and operation of Texas State Veterans Homes in selected sites in four different cities - Temple, Floresville, Bonham and Big Spring. The homes are long-term care facilities for Texas veterans needing skilled nursing care. A management agreement for the new Lamun-Lusk-Sanchez Texas State Veterans Home in Big Spring, Texas and the Clyde W. Cosper Texas State Veterans Home in Bonham, Texas have been awarded to Care Inns of Texas, LTD. Previous awards for for the Frank M. Tejeda Texas State Veterans Home located in Floresville, Texas and the William R. Courtney Texas State Veterans Home in Temple, Texas were previously published in the *Texas Register*in the November 3, 2000, and November 24, 2000, editions respectively.

TRD-200100878
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Filed: February 12, 2001

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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