TEXAS REGISTER

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This month's front cover artwork:

Artist: *Cindy Armstrong*
11th grade
Tatum High School

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

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

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RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Texas Department of Protective and Regulatory Services

Public Utility Commission of Texas

Texas Department of Transportation

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-0342

The Honorable Florence Shapiro, Chair, State Affairs Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether the Texas State Board of Medical Examiners is authorized to adopt rules that prohibit all physician advertising containing testimonials (RQ-0265-JC)

S U M M A R Y

The Texas Legislature has authorized the Texas State Board of Medical Examiners to adopt rules that prohibit use of all testimonials in physician advertising by deeming any health profession advertising containing a testimonial to be false, deceptive, or misleading advertising in section 101.201(b)(4) of the Occupations Code. Such a legislative ban, however, will only withstand constitutional challenge if the state provides evidence supporting the assertion that testimonials are inherently misleading or otherwise deserving of being banned. This office cannot predict whether a court would find section 101.201(b)(4) constitutional under this test.

Opinion No. JC-0343

The Honorable Clyde Alexander, Chairman, Committee on Transportation, Texas House of Representatives, P.O. Box 2910 Austin, Texas 78768-2910

Re: Applicability of the weight limits in chapters 621 and 622 of the Transportation Code to ready-mixed concrete trucks (RQ-0285-JC)

S U M M A R Y

Pursuant to section 622.012 of the Transportation Code, properly bonded ready-mixed concrete trucks with a gross load not heavier than 69,000 pounds may be operated on public highways unless the particular highway or bridge in question is subject to a lower maximum weight set by order of the Texas Transportation Commission in accordance with section 621.102 of the Transportation Code.

Opinion No. JC-0344

Mr. John P. Maline, Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942

Re: Whether an applicant for a physical therapist license or a physical therapist assistant license may submit the examination fee directly to the exam provider (RQ-0287-JC)

S U M M A R Y

Under section 453.202 of the Occupations Code, an applicant for a physical therapist license or physical therapist assistant license must submit the required examination fee directly to the Board of Physical Therapy Examiners along with the written application for a license. See Tex. Occ. Code Ann. § 453.202 (Vernon 2001). An applicant may not submit the examination fee directly to the entity that administers the examination which is not the Board with the registration to take the examination. See id.

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

TRD-200101066
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 21, 2001

♦ ♦ ♦

Withdrawal of Open Records Request

NOTICE: The following request for decision has been withdrawn by the Dallas County District Attorney's Office, the requesting governmental body. Therefore, no formal open records decision will be rendered on the following request:

ORQ-13 (ID# 039829) Re: Whether a criminal justice agency may release criminal history record information to a criminal court judge or a criminal defense attorney under subchapter F of chapter 411 of the Government Code, and related questions.

For more information, please contact Michael Garbarino at (512) 936-6736.

TRD-200101045
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 20, 2001

♦ ♦ ♦

Withdrawal of Open Records Request

NOTICE: The following request for decision has been withdrawn by the Potter County Attorney's Office, the requesting governmental body. Therefore, no formal open records decision will be rendered on the following request:

ORQ-21 (ID# 104307) Re: Whether a public employee commits an offense under section 552.351 of the Government Code by consciously updating computer records, and related questions.

For more information, please contact Michael Garbarino at (512) 936-6736.

TRD-200101046
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 20, 2001

♦ ♦ ♦

Withdrawal of Open Records Request

NOTICE: The following request for decision has been withdrawn by the Texas Comptroller of Public Accounts, the requesting governmental body. Therefore, no formal open records decision will be rendered on the following request:

ORQ-27 (ID# 114181) Re: Whether section 552.101 or 552.110 of the Government Code excepts from disclosure information required to be filed with the Comptroller by entities subject to certain fees under section 161.123(a) of the Health and Safety Code for placing outdoor advertisements for cigarettes and tobacco products.

For more information, please contact Michael Garbarino at (512) 936-6736.

TRD-200101047
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 20, 2001

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statues: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-477

The Ethics Commission has been asked to consider whether the mayor of a city may use political contributions to pay the annual fee for a civil engineer's license.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200101037
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: February 20, 2000

♦ ♦ ♦

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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.13

The Department of Information Resources (department) proposes deleting subsection (a) of §201.13 concerning geographic information system standards. This amendment is proposed so that the rule relating to geographic information standards is a separate rule rather than a part of §201.13, which is already a lengthy rule dealing with information resource standards. Due to extensive revisions to the content of subsection (a), the department will propose new rule §201.6 concerning geographic information standards for comment in a separate proposed rulemaking.

The remaining amendment to §201.13 is not substantive. It merely renumbers existing subsections (b), (c) and (d) as subsections (a),(b) and (c), respectively.

The proposed amendment to delete §201.13(a) 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 amended rule will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed amendment to delete subsection (a) of §201.13. 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 amended rule will be in effect, the benefit to the public will be clarification of §201.13 through the shortening of the rule. 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 the proposed amendment to §201.13 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 proposed amendment to delete subsection a of §201.13 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.

§201.13. Information Resource Standards.

~~[(a) Geographic information systems standards.]~~

~~[(1) Applicability.]~~

~~[(A) All digital spatial data users and developers of new geographic information systems in state agencies and universities must comply with the technical standards specified in the Standards and Guidelines for Geographic Information Systems in the State of Texas.]~~

~~[(B) An institution of higher education, as defined by the Education Code, §61.003, will be exempted from these standards when geographic information systems are acquired solely for instructional purposes.]~~

~~[(C) Currently operating systems which are structurally unable to comply are not required to retrofit to these standards.]~~

~~[(2) Waivers.]~~

~~[(A) A waiver shall be granted to any state agency due to any order of a court of competent jurisdiction when the ordered period~~

~~of compliance is less than 90 days; or any act of exemption by the Texas Legislature.]~~

~~[(B) Letter applications for waivers will be made in writing to the department by the agency information resources manager (IRM). Within 10 days after initial receipt of the waiver request, the department will notify the submitting state agency of all supporting information the department requires to conduct its review. The date of receipt of the waiver application is either the initial date of arrival of the request, or the date that any supporting or other information if requested, is received. Review shall commence on the date of receipt. The department will conduct its review within 30 days after the date of its receipt, evaluate the applications, and grant or deny these waiver requests based on an analysis of the particular circumstances or environment. Consultation with the Geographic Information Systems Standards Committee will be included in the waiver process on an as needed basis, and the committee will review all waivers at their semiannual meetings.]~~

~~[(C) The acquisition of software which cannot support these standards will not be grounds for a waiver.]~~

~~[(3) Adoption by reference. The Standards and Guidelines for Geographic Information Systems in the State of Texas, herein adopted by reference, may be obtained from the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711.]~~

~~[(4) Submittal procedures. The agency Information Resource Manager (IRM) will certify that geographic information systems development in the agency adheres to the "Standards and Guidelines for Geographic Information Systems in the State of Texas."]~~

~~[(5) Review procedures.]~~

~~[(A) The certification will be reviewed by the department and the Geographic Information Systems Standards Committee to determine compliance and agency comprehension of the standards. Review procedures and any subsequent on-site assessment will be consistent with §7 of the Standards and Guidelines for Geographic Information Systems in the State of Texas.]~~

~~[(B) The agencies may also request a peer review be performed at any time during the year. Upon receiving such a request, the department will schedule a review as soon as possible.]~~

(a) [~~(b)~~] Information Security Standards.

(1) Applicability. The following rule constitutes required minimum security standards for the protection of information resources for agencies of the State of Texas. All agencies are required to have an information resources security program consistent with these standards. Copies of this standard may be obtained from the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, or from the Department's Internet web page at http://www.dir.state.tx.us.

(2) Definitions. The following words and terms, when used with this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Access--To approach, view, instruct, communicate with, store data in, retrieve data from, or otherwise make use of information resources.

(B) Confidential Information--Information that is excepted from disclosure requirements under the provisions of the Texas Public Information Act or other applicable state or federal law.

(C) Control--A protective action, device, policy, procedure, technique, or other measure that reduces exposure.

(D) Custodian of an Information Resource--A person responsible for implementing owner-defined controls and access to an information resource.

(E) Information Security Function--The elements, structure, objectives, and resources that establish an agency-level information resources security program.

(F) Mission Critical Information--Information that is defined by the agency to be essential to the agency's function(s).

(G) Owner of an Information Resource--A person responsible:

(i) for a business function; and

(ii) for determining controls and access to information resources supporting that business function.

(H) Security Risk Analysis--The process of identifying and documenting vulnerabilities and applicable threats to information resources.

(I) Security Risk Assessment--The process of evaluating the results of the risk analysis by projecting losses, assigning levels of risk, and recommending appropriate measures to protect information resources.

(J) Security Risk Management--Decisions to accept exposures or to reduce vulnerabilities by either mitigating risks or applying cost effective controls.

(K) Security Incident or Breach--An event which results in unauthorized access, loss, disclosure, modification, or destruction of information resources whether accidental or deliberate.

(L) User of an Information Resource--An individual or automated application authorized to access an information resource in accordance with the owner-defined controls and access rules.

(3) Policy. It is the policy of the State of Texas that:

(A) Information resources residing in the various agencies of state government are strategic and vital assets belonging to the people of Texas. These assets must be available and protected commensurate with the value of the assets. Measures shall be taken to protect these assets against accidental or unauthorized access, disclosure, modification or destruction, as well as to assure the availability, integrity, utility, authenticity and confidentiality of information. Access to state information resources must be appropriately managed.

(B) The agency head is responsible for the protection of information resources.

(C) All individuals are accountable for their actions relating to information resources. Information resources shall be used only for intended purposes as defined by the agency and consistent with applicable laws.

(D) Risks to information resources must be managed. The expense of security safeguards must be commensurate with the value of the assets being protected.

(E) The integrity of data, its source, its destination, and processes applied to it must be assured. Changes to data must be made only in authorized and acceptable ways.

(F) Information resources must be available when needed. Continuity of information resources supporting critical governmental services must be ensured in the event of a disaster or business disruption.

(G) Security requirements shall be identified, documented and addressed in all phases of development or acquisition of information resources.

(H) Agencies must ensure adequate controls and separation of duties for tasks that are susceptible to fraudulent or other unauthorized activity.

(4) Classification of Information. Owners, with the agency head's concurrence, are responsible for classifying program information. Agencies are responsible for defining all information classification categories except the Confidential Information category, which is defined in paragraph (2) of this subsection, and establishing the appropriate controls for each.

(5) Management and Staff Responsibilities. The agency head or his or her designated representative(s) shall review and approve ownership and the attendant responsibilities.

(A) Owners, custodians, and users of information resources. Owners, custodians and users of information resources shall be identified, and their responsibilities defined and documented by the agency. In cases where information resources are used by more than one major program, the owners shall reach consensus and advise the information security function as to the designated primary owner. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(i) Owner Responsibilities. Owners are responsible and authorized to: approve access and formally assign custody of an asset; judge the asset's value; specify data control requirements and convey them to users and custodians; and ensure compliance with applicable controls. Owners must specify appropriate controls, based on risk assessment, to protect the state's information resources from unauthorized modification, deletion or disclosure. Controls extend to outsourced contracts. Owners must confirm that controls are in place to ensure the accuracy and completeness of data. Owners shall assign custody of assets and provide appropriate authority to implement security controls and procedures. Owners are the authority on appropriate level of controls and the timing of their implementation.

(ii) Custodian responsibilities. Custodians of information resources, including entities providing outsourced services to state agencies must:

(I) implement the controls specified by the owner(s);

(II) provide physical and procedural safeguards for the information resources;

(III) assist owners in evaluating the cost-effectiveness of controls and monitoring; and

(IV) implement the monitoring techniques and procedures for detecting, reporting and investigating breaches in information security.

(iii) User responsibilities. Users of information resources shall use the resource only for its defined purposes and comply with established controls.

(B) The information security function. Each agency head or his or her designated representative shall institute an information security function to administer the agency information security program.

(i) It shall be the duty and responsibility of this function to recommend policies and establish procedures and practices, in cooperation with owners and custodians, necessary to ensure the security of information assets against unauthorized or accidental modification, destruction or disclosure.

(ii) The information security function shall document and maintain an up-to-date information security program. The security program shall include written descriptions of information resources security responsibilities, assigned personnel resources, policies, guidelines, data security classification schemes, standards and procedures for the protection of information resources. The information security program must be approved by the agency head.

(iii) The security function is responsible for monitoring the effectiveness of defined controls for critical information.

(iv) The security function shall report, at least biennially, to the agency head or his or her designated representative the status and effectiveness of information resources security controls.

(C) A review of the agency's information security program for compliance with these standards will be performed at least biennially by individual(s) independent of the information security function and designated by the agency head or the information resources manager.

(6) Managing Risks.

(A) A security risk analysis shall be performed and documented. The security risk analysis shall be updated at least biennially. Security risk assessment results shall be presented to the agency head or his or her designated representative. The agency head shall make the final security risk management decisions to accept exposures. The agency head must approve the security risk management plan.

(B) Each agency shall maintain a disaster recovery plan for information resources. The disaster recovery plan will:

(i) contain measures which address the impact and magnitude of loss or harm that will result from an interruption;

(ii) identify recovery resources and establish a source for each;

(iii) contain step-by-step instructions for implementing the plan;

(iv) be maintained to ensure currency; and

(v) be tested at least annually.

(C) Mission critical data shall be backed up on a scheduled basis and stored off site.

(7) Personnel and Contractor Practices.

(A) All agency personnel, and employees of independent contractors who may be deemed to be custodians or users, shall formally acknowledge that they will comply with the security policies and procedures of the agency. Information resource users who do not complete a formal acknowledgment shall not be granted access to information resources. The agency head or their designated representative will determine the method of acknowledgement and how often this acknowledgment must be renewed.

(B) Agencies shall use non-disclosure agreements to document the acceptance by agency and contractor employees of special agency information security requirements.

(C) Agencies shall provide an ongoing information resources security awareness education program for users whose duties bring them into contact with mission critical information resources. Scheduled training shall also be provided by the agency.

(D) State agencies shall use new employee orientation to introduce information resource security awareness and inform new employees of information security policies and procedures. If an employee leaves or changes employment, security privileges shall be appropriately modified to protect information resources.

(8) Physical Security.

(A) Physical access to mission critical information resource facilities shall be managed and documented.

(B) Reviews of physical security measures for compliance with these standards shall be conducted periodically by the agency head or designated representatives.

(C) Information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.

(D) Emergency procedures shall be developed and regularly tested.

(9) Information Safeguards.

(A) Access. Access shall be managed to ensure authorized use of information resources. Security risk assessment shall be the basis of decisions and policies regarding managed access to information resources.

(B) Confidentiality of data and systems.

(i) Confidential information shall be accessible only to authorized users. Information containing any confidential data shall be identified, documented, and protected in its entirety.

(ii) Information resources assigned from one agency to another shall be protected in accordance with the conditions imposed by the providing agency.

(C) Identification/Authentication.

(i) Each user of information resources shall be assigned a unique personal identifier or user identification except for situations where risk analysis demonstrates no need for individual accountability of users. User identification shall be authenticated before the system may grant that user access.

(ii) A user's access authorization shall be removed or appropriately modified when the user's employment or role status changes.

(iii) Systems shall contain authentication functions that comply with documented security risk management decisions.

(iv) Systems which use passwords shall be based on the existing federal standard on password usage.

(v) For written electronic communications sent to a state agency where the identity of a sender or the contents of a message must be authenticated, the use of digital signatures is also encouraged. Agencies should refer to Texas Government Code, §2054.060, §201.14 of this title (relating to Digital Signatures), and guidelines issued by the Department for further information.

(D) Encryption. Encryption techniques for storage and transmission of information shall be used based on documented agency security risk management decisions.

(E) Ability to Audit.

(i) Automated systems must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, modification of, or effect the release of confidential information.

(ii) Appropriate audit trails shall be maintained to provide accountability for updates to mission critical information, hardware and software and for all changes to automated security or access rules.

(iii) Appropriate audit trails shall be maintained for all changes to automated security or access rules.

(iv) Based on risk assessment, a sufficiently complete history of transactions shall be maintained to permit an audit of the system by tracing the activities of individuals through the system.

(F) Security breaches.

(i) Security breaches shall be investigated promptly and documented.

(ii) If criminal action is suspected, the agency must contact the appropriate law enforcement and investigative authorities immediately.

(iii) Each state agency shall provide summary reports to the department that contain information concerning violations of security policy of which the agency has become aware. A state agency shall not be required to report security violations unless the state agency reasonably believes such violations may involve criminal activity under Texas Penal Code Chapters 33 (Computer Crimes) or 33A (Telecommunications Crimes), and there is a substantial likelihood that such violations could be propagated to other systems beyond the control of the state agency. Reports should include:

(I) Type of activity, including but not limited to:

(-a-) Unwanted disruption or denial of service;

(-b-) Unauthorized use of a system for the processing or storage of data; and

(-c-) Changes made to system hardware, firmware, or software without the agency's effective consent.

(II) Time elapsed between initial detection of incident and containment of the security breach or full restoration of adversely affected functions, whichever is later;

(III) Description of the state agency's response to the incident; and

(IV) Estimated total cost incurred by the state agency in containing the security breach or restoring adversely affected functions.

(iv) Reports must be sent to the department on a monthly basis no later than the fifth (5th) working day after the end of the month. Upon request of the department, each state agency shall provide to the department any additional information regarding security violations. Information shall be reported in the form and manner specified by the department at the following address: http://www.dir.state.tx.us/IRAPC.

(v) The Department shall establish internal security procedures regarding the receipt of and maintenance of information pertaining to security breaches. The Department shall instruct state agencies as to the manner in which they must report such information. The instructions will specify that reports must not contain any information which would itself compromise the security of the reporting agency. The instructions shall be made available via the world wide web at the following address: http://www.dir.state.tx.us/IRAPC

(vi) The monthly reporting requirements established under this subparagraph will automatically expire on August 31, 2001.

(G) Systems development and testing.

(i) Test functions shall be kept either physically or logically separate from production functions. Copies of production data shall not be used for testing unless the data has been declassified or unless all state and contractor employees involved in testing are otherwise authorized access to the data.

(ii) Appropriate information security and audit controls shall be incorporated into new systems. Each phase of systems acquisition shall incorporate and document corresponding development or assurances of security and auditable controls.

(iii) All security-related information resource changes shall be approved by the owner through a quality assurance process before implementation.

(10) Data Communication Systems.

(A) Network resource controls shall be implemented commensurate with the security risk analysis.

(B) System identification screens shall include warning statements unless documented security risk analysis indicates otherwise. Warning statements shall address the following topics:

(i) unauthorized use is prohibited;

(ii) usage may be subject to security testing and monitoring; and

(iii) misuse is subject to criminal prosecution.

(b) [~~(c)~~] Standard for data transport networks for computers.

(1) Definitions.

(A) For purposes of this section the word "network" will refer to all data transport networks used primarily to interconnect computers and networks of computers for the purpose of transporting data, allowing interoperation of computer applications on more than one computer system, and providing access to data.

(B) For purposes of this section the phrase "substantial change" is defined to mean any change that requires the replacement of physical transport media, replacement of data transport protocol, or any change in the major computer systems on the network.

(C) For purposes of this section "non-adjacent buildings" are defined as those that are physically separated by property not owned by the state and where there is no state owned right-of-way connecting the buildings.

(2) Standard. All networks that span more than one non-adjacent building, or interconnect more than one agency must adhere to the following.

(A) If the network is in existence at the time this rule is adopted, the network must become compliant with subparagraph (B) of this paragraph by August 31, 2001.

(B) All new networks, all extensions to existing networks and all networks undergoing substantial change must adhere to the TCP/IP standards as listed in the most recent Request for Comments(RFC) as international standards promulgated by the Internet Society.

(C) Agencies may not install new networks or extensions to existing networks where such installation or extension duplicates existing state owned network routing that complies with subparagraph (B) of this paragraph. Agencies must cooperate to share existing facilities; expanding them if necessary. Where this paragraph conflicts with current or future rules concerning telecommunications from the General Services Commission, the General Services Commission rule will prevail.

(c) [~~(d)~~]Communications Wiring Standards for State Facilities.

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

(A) ANSI--The American National Standards Institute.

(B) EIA--The Electronics Industry Association.

(C) TIA--The Telecommunications Industry Association.

(2) All state agencies will adhere to the following standards when wiring or re-wiring state-owned or state-leased space:

(A) ANSI/EIA/TIA-568-1995, Commercial Building Telecommunications Wiring Standard or its most recent successor document. This applies to the telecommunications wiring for buildings that are office-oriented and when ANSI/EIA/TIA-570-1991 is not selected. The term "commercial enterprises" is used in ANSI/EIA/TIA-568-1991 to differentiate between office buildings and buildings designed for industrial enterprises. ST-type fiber connectors shall be used for fiber optic terminations.

(B) ANSI/EIA/TIA-570-1991, Residential and Light Commercial Building Telecommunications Wiring Standard or its most recent successor document, when planning and designing premises-wiring systems intended for connecting one to four exchange access lines to various types of customer-premises equipment when ANSI/EIA/TIA-568-1991 is not selected.

(C) ANSI/EIA/TIA-569-1990, Commercial Building Telecommunications Pathways and Spaces or its most recent successor document, when planning and designing state-owned and state-leased space to accommodate telecommunications system wiring.

(D) ANSI/EIA/TIA-606-1993, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings or its most recent successor document, when documenting and administering telecommunications infrastructures in state-owned and state-leased space.

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-200100863
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 475-2153

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER J. ORGANIC COTTON RULES

4 TAC §§3.600, 3.601, 3.604-3.608

The Texas Department of Agriculture (the department) proposes amendments to Chapter 3, Subchapter J, §§3.600, 3.601 and 3.604-3.608, concerning organic cotton production in boll weevil eradication zones. The amendments are proposed to make the sections consistent with state law and with emergency pest or disease treatment program provisions included in the recently adopted National Organic Standards, to make the process for determination of whether an organic field has reached a trap count trigger more efficient, and to provide for compensation, with the approval of the Texas Boll Weevil Eradication Foundation (the foundation), to an organic grower who elects treatment of a field that had triggered under the emergency pest or disease treatment program provision.

The department adopted new Subchapter J, §§3.600-3.606 to be effective on May 15, 2000, and §§3.607-3.609 to be effective on June 14, 2000. In the adoption preamble of these rules, the department stated its intent to review the effectiveness of these sections after the 2000 growing season and to conduct public hearings in January of 2001 to take public comment on whether or not changes should be made to the rules for the next growing season. Public hearings were conducted by the department on January 8, 2001 in Lubbock and Lamesa, Texas. Approximately 20 individuals attended the hearing in Lubbock and 25 in Lamesa, with a total of 9 individuals providing oral testimony. In addition to conducting hearings, the department accepted written comments on the regulations until January 18. Many written comments from the previous rulemakings were resubmitted. General comments regarded the department's responsibility to maintain the viability of organic production in Texas and the department's oversight role over the boll weevil eradication program and the activities of the Texas Boll Weevil Eradication Foundation (the foundation), the concerns of growers over the use of malathion as opposed to alternative control methods, the concern that the eradication of the boll weevil may take precedence over the private property rights of organic growers and opposing comments on the amount of compensation to be paid organic growers in the event a crop must be destroyed. Organic growers feel that the indemnification formula would not pay enough, while conventional growers and their representatives feel that organic growers will be paid too much under the indemnification formula. Also in regard to indemnification, conventional growers requested that the production history used to determine indemnification be based on the actual organic cotton production of the particular field, rather than an average of up to 10 years.

Other comments expressed the opinion among organic growers that the foundation is not doing what it can to minimize drift onto organic crops and that the foundation should be required to indemnify a grower in the event drift or an inadvertent direct application occurs. In regard to trigger levels, comments from organic growers requested that an organic field and conventional field be judged in the same manner-that no organic fields be destroyed unless it exceeds trap counts in conventional fields in the zone and that an organic grower be appointed to the technical review committee that determines when a field has triggered. Other comments requested that a representative of the department be appointed to the committee. Other comments requested a change in the definition of "cutout". Comments were also received regarding the newly adopted National Organic Standards that establish organic certification requirements and the allowance for treatment of an organic field under an emergency pest and disease treatment program provision included in those rules. The comments suggested that this provision would allow for treatment of an organic field that has triggered without causing the organic grower to lose his or her certification status. Upon a review of all comments and considering the experience to date that the department has gained with the implementation of the regulations during the 2000 crop year, the department is proposing changes to §§3.600, 3.601 and 3.604-3.608, as follows.

The proposed amendments to §3.600 add, based on comments received, statutory language found in §74.125 of the Texas Agriculture Code, that rules and procedures for organic cotton production are also to ensure that certification continues to meet national standards for organic cotton to maintain marketability; and add reference to an application made under the emergency pest or disease treatment program provisions of the National Organic Standards as an allowed treatment that will not affect the certification status of an organic operation. The recently adopted National Organic Standards, which establish standards for certification of organic production, provide that when a prohibited substance is applied to a certified operation under an emergency pest or disease treatment program, and the certified operation otherwise meets the requirements for certification, the certification status of the operation will not be affected as a result of the application of the prohibited substance. However, the National Standards require that any harvested crop or plant part to be harvested that has contact with the prohibited substance cannot be sold, labeled, or represented as "Organically Produced" or "Transitional-Organic Certification Pending". The boll weevil eradication program is covered by this federal rule. The department is also proposing, in a separate submission, amendments to its organic certification program rules found in Title 4, Chapter 18, to also make those rules consistent with the National standards in regards to the affect of treatment made to an organic operation under emergency pest and disease treatment programs.

The proposed amendment to §3.601 concerns the definitions of a "certified organic crop" and "transitional crop". These definitions are being amended to provide that an application under the emergency pest and disease treatment program provisions of Title 4, Chapter 18 will not interfere with the timeline for organic certification. The proposed amendments to §3.604, concerning protection of organic certification, also add a reference to an application made under the emergency pest or disease treatment program provisions of the National Organic Standards as an allowed treatment which will not interfere with the certification status of an organic operation. This section is also being amended for purposes of clarification and to make it consistent with the Texas Agriculture Code, §74.125, which allows for the department to provide by rule indemnification for organic cotton growers for reasonable losses resulting from a prohibition of production or for any requirement to destroy organic cotton. Consistent with statutory authority, this section does not allow for the department to require indemnification by the foundation for losses due to drift or an inadvertent direct treatment of an organic crop, nor was this section intended to require such indemnification. The department's intent was for the foundation to take a role in working with its contract applicators and organic producers to obtain reasonable compensation for organic growers where it was determined by the department that drift or an inadvertent direct

treatment occurred. The proposed amendments clarify the foundation's role in the process. New language is also added to provide that where appropriate, the department may seek penalties against an applicator making an application for the foundation either as a contractor or an employee. The department will continue to work with the foundation to ensure that measures are taken to minimize the incidence of drift or inadvertent direct application on organic crops.

The proposed amendment to §3.605, concerning trigger levels, at subsection (d)(1), replaces the Texas Agricultural Extension Service (TAEX) representative on the technical review committee that determines when a field has triggered with a representative from the department designated by the commissioner. The proposed amendment to subsection (d)(4), regarding who makes a determination as to whether a crop has reached cut-out stage, also replaces the TAEX representative with a department representative designated by the commissioner. These amendments are proposed based on comment received and at the request of the TAEX. The proposed language does not prevent the department's representative from consulting with a TAEX IPM agent or specialist, as deemed necessary. The proposed amendment to subsection (d)(6) provides for an election by a grower to either destroy a crop that has triggered or allow the crop to be treated under the emergency pest or disease treatment program provisions of Chapter 18.

The proposed amendment to §3.606, concerning crop destruction, extensions and conventional treatment, at subsection (d) provides that a grower may elect for his crop to be treated under the emergency pest or disease treatment program provision in Chapter 18, and if approved by the foundation, may receive compensation in the form of an organic premium based on the amount of cotton actually harvested from the field. Another amendment provides that a grower must notify the foundation of their agreement to allow treatment of their certified crop under the emergency pest or disease treatment program provisions within 3 calendar days of notification that destruction or treatment is necessary. The amendments further provide that if a field is treated under the emergency pest or disease treatment program provisions, such treatment will not affect the certification status of the operation, but the crop cannot be sold, labeled, or represented as "Organically Produced" or "Transitional-Organic Certification Pending".

The proposed amendments to §3.607 clarify that growers may negotiate and enter into voluntary indemnification agreements with the foundation and that such agreements are to be approved by the commissioner. This makes this section consistent with current practice. The amendments more accurately reflect the involvement of growers in the zone in the negotiation process. This amendment is made based on comments received and the department's determination that although grower steering committees may be involved in the negotiation, they are not formal entities to which the department can delegate the function of being the primary negotiator. The proposed language does not prohibit the foundation's seeking input from grower steering committees, or growers in general, in regards to voluntary agreements, and the foundation may seek such input as it deems appropriate.

The proposed amendments to §3.608(b) add the emergency pest or disease treatment program option to the timeline by which a grower is entitled to compensation. The proposed amendments to subsection (e) clarify when notice of required destruction is deemed received by a grower. Proposed new subsection (h) is added to establish the amount of compensation a grower will receive if his crop is treated by conventional means and such compensation is approved by the foundation. Under this proposal, a grower who voluntarily elects and is approved for conventional treatment will be able to sell his cotton as conventional, and may, upon approval by the foundation, receive an organic premium of $0.39 per pound for the actual weight of cotton harvested. The amount, on a per pound basis, is the same premium amount established in §3.609 for payment in the case of required destruction. As noted in the adoption preamble for the adoption of §§3.607-3.609, the premium was determined by evaluating the five-year average price of conventional cotton and organic lint and seed. The department believes that allowing for the payment of a premium under this section as well as allowing a grower to benefit from the sale of cotton in the conventional market will provide reasonable compensation to the grower and will also benefit the eradication program. Further, because under the National Organic Standards and upon adoption of proposed amendments to Texas' state standards the certification status of an operation is not jeopardized by an application made under the emergency pest or disease treatment program provisions, the marketability of an organic grower's cotton will not be affected for future years.

Brian Murray, Special Assistant for Producer Relations, has determined that for the first five year period that the amended sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Costs of administering and enforcing the sections, including any cost of grower compensation will be borne by the foundation, using other than state funds.

Mr. Murray also has determined that for each year of the first five years the amended sections are in effect the public benefit anticipated as a result of enforcing the sections will be having in place clearer and more efficient procedures regarding the growing of organic cotton in active boll weevil eradication zones, which will facilitate boll weevil eradication in Texas, while providing another mechanism by which organic growers may receive reasonable compensation. The adoption of the emergency pest and disease treatment program provisions of the National Standards will also benefit organic cotton production and marketability because growers who are able to utilize this provision will not lose their organic certification on that operation for years other than the year a direct treatment is made. The anticipated economic impact on persons or small businesses operated or owned by organic growers who will be required to comply with the amended sections, as proposed, is not determinable at this time. The department believes that only the amendments relating to the option to treat an organic field and possibly receive compensation based on actual yield will have an economic impact on growers. Because the option is voluntary as to the grower, there is no actual requirement to participate. If this option is utilized, the impact would be a positive one, since the grower would benefit from the sale of cotton as conventional and may also receive an organic premium from the foundation. The amount in which an individual grower would benefit would depend on the yield of the affected field as the $0.39 per pound premium would be applied to actual yield.

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

The amendments are proposed under the Texas Agriculture Code (the Code), §74.125, which provides the department

with the authority to develop rules and procedures to protect the eligibility of organic cotton growers to be certified by the commissioner of agriculture, ensure that certification by the commissioner meets national certification standards and in all events maintain the effectiveness of the boll weevil or pink bollworm eradication program administered under the Code, Chapter 74, Subchapter D, including rules that provide indemnification for organic cotton growers for reasonable losses that result from prohibition or production of organic cotton or from any requirement of destruction of cotton; and, the Code, §74.120, which provides the department with the authority to adopt reasonable rules to carry out the purposes of the Code, Chapter 74, Subchapter D.

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

§3.600. Statement of Purpose and Authority.

The Texas Agriculture Code (the Code), Chapter 74, Subchapter D, §74.1011 designates the Texas Boll Weevil Eradication Foundation, Inc. (the foundation) as the entity to carry out boll weevil and pink bollworm eradication in Texas. The Code, §74.120, provides the Commissioner of Agriculture with the authority to adopt reasonable rules to carry out the purposes of Chapter 74, Subchapter D. The Code, §74.125 provides that the Commissioner shall adopt rules and procedures to protect the eligibility of certified organic and transitional cotton production in active eradication zones and ensure that organic and transitional certification by the commissioner continue to meet national certification standards in order for organic cotton to maintain international marketability, while ensuring the ultimate success of the boll weevil eradication program in Texas. Section 74.125 further provides that rules adopted under that section may provide indemnity for the organic cotton growers for reasonable losses that result from a prohibition of production of organic cotton or destruction of organic cotton. Mitigation of losses with production of an alternative crop may be required by the foundation board of directors. The foundation board may not treat or require treatment of organic cotton with chemicals that are not allowed for use on certified organic cotton except as provided in Chapter 18 of this title (relating to Organic Standards and Certification) . Plow-up of an organic cotton field may be required as an alternative to treatment with chemicals.

§3.601. Definitions.

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

(1) (No change.)

(2) Certified organic crop--A crop which has undergone independent third party verification by the department or a registered private certifying agent that the crop has been produced in compliance with the Texas Organic Standards, Chapter 18 of this title (relating to Organic Standards and Certification), and qualified for full organic status, including the requirement that the land on which the crop is grown has had no prohibited materials applied for at least 36 months prior to harvest, except for a treatment made under the emergency pest or disease treatment program provisions in Chapter 18 of this title (relating to Organic Standards and Certification).

(3)-(6) (No change.)

(7) Transitional crop--A crop which has undergone independent third party verification by the department or a registered private certifying agent that the crop has been produced in compliance with the Texas Organic Standards, Chapter 18 of this title, and fulfills all requirements except the 36 months required for full organic status. A certified transitional organic crop must be produced on land that has had no prohibited materials applied for at least 12 months prior to harvest, except for a treatment made under the emergency pest or disease treatment program provisions found in Chapter 18 of this title.

(8)-(9) (No change.)

§3.604. Protection of Organic Certification.

(a) (No change.)

(b) In the event the foundation or an individual working for the foundation inadvertently treats a certified organic or transitional field or portion of a crop, either directly or through drift, with prohibited materials, other than an application allowed under emergency pest or disease treatment program provisions of Chapter 18 of this title (relating to Organic Standards and Certification), the foundation will, to the extent appropriate, assist the grower in obtaining just and reasonable compensation. [~~indemnify the grower in accordance with subsection (d) of this section. This indemnification will continue on an annual basis until the earliest date that the exposed field or crop is eligible to return to the status it held prior to the inadvertent treatment by the foundation.~~]

(c) (No change.)

(d) In the event of a confirmed case of direct treatment or drift of chemical applied for or by the foundation, and where appropriate, the department will investigate and seek such penalties as warranted under the Texas Agriculture Code, Chapter 76, and Chapter 7 of this title (relating to Pesticides) [~~the grower will receive just and reasonable compensation in an amount recommended by the foundation board and approved by the commissioner~~].

§3.605. Trigger Levels

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

(d) If an organic or transitional field surpasses the set trap count trigger level, a technical review committee will determine if destruction of that field or other alternative action should be required using the following procedures.

(1) This committee will consist of the foundation program director or his designee, a member of the foundation's technical advisory committee appointed by the commissioner, and a department representative designated by the Commissioner [~~and an Integrated Pest Management (IPM) specialist, or his designee, from the Texas Agricultural Extension Service serving the respective area~~].

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

(6) Should the commissioner determine that some type of eradication activity should occur, the grower may elect [~~be required~~] to either destroy the crop as prescribed in §3.606 of this title (relating to Crop Destruction), or may elect [~~choose~~] to allow the crop to be treated under the emergency pest or disease treatment program provisions of Chapter 18 of this title (relating to Organic Standards and Certification).

(e) Destruction of an organic cotton crop under this section will not be required, regardless of trap captures, once the crop in that field has reached cut-out stage for that season. This stage will be determined through the following process.

(1) (No change.)

(2) The grower will contact the foundation when they believe their crop has reached cut-out stage. [~~;~~]

(3) (No change.)

(4) If there is a dispute relating to the stage of the crop, a department representative designated by the commissioner [~~the IPM~~

~~agent/specialist~~ ~~or~~ ~~county~~ ~~extension~~ ~~agent~~ ~~serving~~ ~~the~~ ~~area~~], will inspect the crop and determine if cut-out stage has been reached.

(5) (No change.)

§3.606. Crop Destruction; Extensions :[,] Choice of Conventional Treatment.

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

(d) Choosing conventional treatment.

(1) In lieu of crop destruction, a grower who qualifies under the emergency pest and disease treatment program provisions of Chapter 18 of this title may notify the foundation and the department in writing that he or she desires conventional treatment within three days of receiving notice that the field must be treated or destroyed. Under Chapter 18 of this title, any harvested crop or plant part to be harvested that has been treated cannot be sold, labeled, or represented as Organically Produced or Transitional-Organic Certification Pending; this treatment will not affect the certification status of the operation or future crops [~~chooses to cancel his or her organic or transitional certification on the acreage that has been ordered to be destroyed so that conventional treatment may be used~~].

(2) Such notification must be provided in writing to both the foundation and the department and must be postmarked, if sent by mail, or faxed at least four days before the destruction deadline. [~~The same penalties described in subsection (c) will apply if notification is not received by the destruction deadline.~~]

(3) Once notified, the foundation shall approve or deny the request for conventional treatment within 48 hours If the request is approved, the foundation may treat the crop with conventional methods. Should the request be denied, the grower must destroy the crop as outlined in subsection (a) of this section.

(4) [~~(3)~~] Once [~~After both~~] the foundation [~~and the department receives~~] has approved the grower's request for conventional treatment [~~this notification~~], the Foundation will treat the field in the same manner as all conventional cotton fields in the same zone.

(5) [~~(4)~~] A grower [~~choosing to~~] treated under Chapter 18 of this title [~~cancel organic certification~~] will [~~not~~] be entitled to compensation under §3.608(h) of this title (relating to Calculation of Indemnity or Compensation), for that acreage , if approved by the foundation.

§3.607. Eligibility for Indemnification.

(a) Certified organic and/or transitional cotton growers in active eradication zones may negotiate and enter into voluntary indemnificationagreements with the Foundation, [~~grower steering committees to negotiate indemnification~~] provided that those agreements are negotiated and made in good faith by both parties and are approved by the [~~foundation and the~~] commissioner.

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

§3.608. Calculation of Indemnity or Compensation.

(a) To be eligible for indemnification if a crop must be destroyed under §3.606 of this title (relating to Crop Destruction; Extensions; Choice of Conventional Treatment), a grower must report the Farm Service Agency farm numbers, physical locations, and row acreage on each farm that the grower will use as the base acreage calculated in §3.607 of this title (relating to Eligibility for Indemnification or Compensation), to the foundation before planting each year on a form provided by the foundation.

(b) If certified organic or transitional cotton on the grower's base acreage is destroyed through the requirements of this subchapter, or if the acreage is treated by the foundation under emergency pest or disease treatment program provisions as provided under Chapter 18 of this title (relating to Organic Standards and Certification), any [~~the grower will be entitled to~~] indemnification or compensation will be made by October 31 of that year.

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

(e) When a grower is entitled to indemnification as a result of crop destruction, the foundation will indemnify the grower in accordance with the following formulas:

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

(3) For purposes of this subsection, notice is deemed received by the grower:

(A) upon [~~service of the notice by~~] hand-delivery of the noticeto the grower or an authorized representative by a department employee;

(B) if mailed by certified mail, return receipt requested, upon the date of delivery as shown on the green card receipt, if no delivery date is shown, three days after the date the department deposits the notice in the mail as shown by department records or other component evidence; [~~by the department~~]; or

(C) (No change.)

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

(h) If a field is treated under §3.606(d) of this title (relating to Crop Destruction; Extensions; Choice of Conventional Treatment) by conventional means the foundation will upon agreement by both parties compensate the grower at a rate of $0.39 per pound of lint harvested from that field that crop 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.

Filed with the Office of the Secretary of State, on February 16, 2001.

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

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CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

4 TAC §18.10, §18.11

The Texas Department of Agriculture (the department) proposes amendments to §§18.10 and 18.11, concerning certification of organic food and fiber. The amendment to §18.10 is proposed to make the section consistent with the newly adopted National Organic Standards in regards to emergency pest or disease treatment programs. The National Standards provide that when a prohibited substance is applied to a certified operation due to an emergency pest or disease treatment program and the certified operation otherwise meets certification requirements, the certification status of the operation will not be affected as a result of the application of the prohibited substance. The National Standards also provide that any harvested crop or plant part to be

harvested that has contact with the prohibited substance cannot be sold, labeled, or represented as "Organically Produced" or "Transitional-Organic Certification Pending". The department agrees with the rationale given by the National Organic Program (NOP) in its adoption of this provision that if a certified organic grower has been a good steward of his/her land and has managed the production of his/her product(s) in accordance with all established regulations, the certification status of the operation should not be affected when a prohibited substance is applied for an emergency pest or disease treatment program. The department also agrees with the NOP that maintaining consumer trust is important, and that any harvested crop or plant part to be harvested that has been treated with a prohibited substance as part of an emergency pest or disease treatment program should not be sold as organically produced. With this approach, the certified organic operation can retain its certification status, and the consumer can be assured that a product from a certified organic operation that has been in contact with a prohibited substance as the result of an emergency pest or disease treatment program will not enter the organic marketplace.

The amendment to §18.11 is proposed to provide a more efficient and reasonable procedure for establishing a residue tolerance level for a crop or product that is not intended for consumption for which an Environmental Protection Agency (EPA) tolerance level or Food and Drug Administration (FDA) action level has not been established. The current rule provides that products or crops that are contaminated with toxic, synthetic or other prohibited substances in excess of 5% of the EPA tolerance or FDA action level shall not be represented or sold as organic or transitional. The rule further provides that if an EPA tolerance for a substance is not established for the affected crop or product, the tolerance for the most closely related crop or product will be used as the basis for decisions; and, if available testing methods are not capable of measuring a specific contaminant at the 5% level, the crop or product may not be represented or sold as organic or transitional if the contaminant is detected in the sample. The department fully understands that the EPA tolerance is defined as the maximum legal level of a pesticide residue in or on a raw or processed agricultural commodity. The department also acknowledges that the EPA tolerance is a health-based standard. It is not the department's intent to override EPA's determination on the tolerance level for consumable crops or products; the department is not trying to apply the 5% standard in a manner similar to that of EPA. The proposed amendment will change the method for establishing the tolerance level for non-consumable crops or products. Under the proposed amendment, when crops or products are not intended for consumption and there is no EPA tolerance or FDA action level for a particular substance that is present, the crop or product may not be represented or sold as organic or transitional if the substance is detected in excess of 5% of the highest EPA tolerance or the FDA action level for that substance for all products or crops.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five-year period the new and revised sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended sections.

Mr. Kostroun also has determined that for each year of the first five years the new and revised sections are in effect the public benefit anticipated as a result of enforcing the sections, as proposed, will be greater availability of Texas organic agriculture products in the marketplace. The effect on large and small organic businesses is to provide more product to sell in the organic marketplace. There are no anticipated economic costs to small businesses and persons who are required to comply with the proposed changes.

Comments on the proposal may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A., concerning Organic Standards and Certification.

The code sections which will be affected by the proposal are the Texas Agriculture Code, Chapter 18.

§18.10. Pesticide Drift and Emergency [~~Spray or~~] Pest or Disease Treatment [~~Management~~] Programs.

(a) (No change.)

(b) Emergency [~~spray or~~] pest or disease treatment [~~management~~] programs.

(1) Producers shall comply with federal, state, or local emergency [~~spray or~~] pest or disease treatment [~~management~~] programs [~~and adhere to a pest management plan designated or authorized by the department~~]. When a prohibited substance is applied to a certified operation due to an emergency pest or disease treatment program and the certified operation otherwise meets the requirements of this chapter, the certification status of the operation shall not be affected as a result of the application of the prohibited substance, provided that any harvested crop or plant part to be harvested that has contact with the prohibited substance cannot be sold, labeled, or represented as "Organically Produced" or "Transitional-Organic Certification Pending."

(2) The department shall provide the applicable officers and agents of federal, state, or local emergency pest or disease treatment [~~spray~~] programs [~~or pest management programs~~] with a list of certified organic and transitional producers in each emergency [~~spray or~~] pest or disease treatment [~~management~~] zone.

(3) (No change.)

§18.11. Fertility, Water Quality and Residue Testing.

(a) (No change.)

(b) Residue testing.

(1) (No change.)

(2) The department, or an organic certifying agent, may require testing of certified food or fiber when it has a reasonable cause to suspect that it may have been contaminated.

(3) Products or crops that are contaminated with toxic, synthetic or other prohibited substances in excess of 5% of the Environmental Protection Agency (EPA) tolerance or Food and Drug Administration (FDA) action level shall not be represented or sold as organic or transitional. Except as provided in subsection (b)(4), if [~~If~~] an EPA tolerance for a substance is not established for the affected crop or product, the tolerance for the most closely related crop or product will be used as the basis for decisions. [~~If available testing methods are not capable of measuring a specific contaminant at the 5% level, the crop or product may not be represented or sold as organic or transitional if the contaminant is detected in the sample.~~]

(4) A product or crop for which an EPA tolerance or an FDA action level does not exist for a particular substance and which is

not intended for consumption shall not be represented or sold as organic or transitional, if the product or crop is contaminated with the toxic, synthetic or other prohibited substance in excess of 5% of the highest EPA tolerance or FDA action level for that substance for all products or crops.

(5) If available testing methods are not capable of measuring a specific contaminant at the 5% level, the crop or product may not be represented or sold as organic or transitional if the contaminant is detected in the sample.

(c) The tolerance levels established in subsections (a) and (b) of this section shall apply to testing of any samples taken of organic crops in crop year 2000 and subsequent crop 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 16, 2001.

TRD-200100972
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING, AND REGISTRATION

16 TAC §26.102, §26.107

The Public Utility Commission of Texas (commission) proposes amendments to §26.102 relating to Registration of Pay Telephone Service Providers and §26.107 relating to Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers. The proposed amendments will clarify and simplify the registration process for pay telephone service providers and annually update required information. Project Number 23236 has been assigned to this proceeding.

The commission is also considering revisions to the *Texas Pay Telephone Service Provider Application* form and is accepting comments on the proposed form. The revised form that is under consideration may be obtained from the commission's Central Records Division or through the Project Number 23236 web page at: http://www.puc.state.tx.us/rules/rulemake/23236/23236.cfm

Betsy Tyson, Network Analyst, Telecommunications Division and Mark Gladney, Attorney, Legal Division, have determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Tyson and Mr. Gladney have determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be more accurate information on this industry, increased protection of customers in a competitive environment, and increased enforcement. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Tyson and Mr. Gladney have also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed amendments and form (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 23236.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically PURA §55.173, which provides that a Pay Telephone Service Provider must register with the commission.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002; Chapter 15, Subchapter B; Chapter 17, Subchapter B; and Chapter 55, Subchapter H.

§26.102. Registration of Pay Telephone Service Providers.

(a) Process. All pay telephone service (PTS) providers must register with the commission, using commission-prescribed forms, in order to do business in the state of Texas. [~~Registration requires disclosure of the physical location of each of the registrant's pay telephones; the registrant must update this information for any phone with a change in status. Information related to the physical location of pay telephones shall be confidential unless the Attorney General issues a letter opinion, or a court of competent jurisdiction rules otherwise. Updated filings shall be made with the commission within 45 days after the periods ending December 31 and June 30 of each calendar year.~~]The commission shall provide each registrant with proof of registration within 30 days from the date the application is received, unless the application remains incomplete [~~of filing~~].

(b) Application form. The application form shall request information deemed necessary by the commission in order to analyze this segment of the telecommunications market, monitor technological changes and advances, encourage a competitive environment, and protect the public interest.

(c) Disclosure of location. Registration requires disclosure of the location, by county, of each of the registrant's pay telephones. Each certificated telecommunications utility (CTU) shall maintain a list of the physical location of all pay telephones the CTU connects to the network and shall provide the physical location of a pay telephone under investigation by the commission upon request by the commission.

Information related to the physical location of pay telephones shall be confidential unless the Attorney General issues a letter opinion or a court of competent jurisdiction rules otherwise. All confidential information shall be provided to the commission pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials).

(d) Updates. All PTS providers shall annually refile a registration form with the commission no later than July 31 of each calendar year.

(e) [~~(b)~~]Network Access. CTUs[~~Certificated telecommunications utilities (CTU)~~] shall not provide pay telephone access service (PTAS) to a provider[~~person~~] required to be registered under this section, unless that provider presents[~~person provides~~] a commission-supplied proof of registration.

(f) Compliance enforcement.

(1) Administrative penalties. If the commission finds that a registrant has violated any provision of this section, the commission shall notify the registrant by certified mail to take corrective action. If the registrant has not corrected the violation within ten working days from receipt of the notification letter a hearing pursuant to this section may be scheduled, as necessary, and the registrant may be subject to administrative penalties and other enforcement actions pursuant to Public Utility Regulatory Act (PURA), Chapter 15 and §22.246 of this title (relating to Administrative Penalties).

(2) Revocation or suspension. If the commission finds that a registrant is repeatedly in violation of PURA or commission rules, the commission may suspend or revoke a registration pursuant to PURA, Chapter 17 or PURA §55.180.

(3) Enforcement. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

§26.107. Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers.

(a) Application. This section applies to the registration of persons and entities who provide intralata and interlata long distance telecommunications services, prepaid calling services companies pursuant to §26.34 of this title (relating to Telephone Prepaid Calling Services), [~~pay telephone service providers pursuant to §26.102 of this title (relating to Registration of Pay Telephone Service Providers),~~]and other telecommunications services that do not require certification as established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapter C; except as noted in PURA §51.002(10) (relating to Definitions).

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

(f) Compliance enforcement.

(1) Administrative penalties. If the commission finds that a registrant has violated any provision of this section, the commission shall order the registrant to take corrective action, as necessary, and the registrant may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15 and §22.246, of this title (relating to Administrative Penalties).

(2) (No change.)

(3) Enforcement. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

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

Filed with the Office of the Secretary of State, on February 16, 2001.

TRD-200100971
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

PART 2. STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE

SUBCHAPTER A. THE BOARD

22 TAC §51.3

The Texas State Board of Barber Examiners proposes amendments to §51.3, concerning Administrative Fines. The proposed amendments occur in§51.3 Administrative Fines, (b) Fine Schedule under Penalties for Practice and Procedures Violations, Category VA Expired License changes the reference from TEX. OCC CODE ANN.§1601.402 to TEX. OCC CODE ANN. §1601.251 the change will reference to the correct statute; Practice and Procedures Category II will be adding a new rule violation Right of Access reference 51.6; under Practice and Procedures Category VC will be adding a new rule violation Current Address reference 51.4.

Will K. Brown, Executive Director, has determined that, for the first five-year period the rule is in effect, there will be an increase in revenue to state government as a result of enforcing or administering this new section. For the assessment of administrative fines, Mr. Brown estimates that there will be 500 violations per year. If the Board collects on 250 of those violations, at an average cost of 308.00 each, a 20% reduction for early payment would be a total of 61,600. The remaining 250 violations refereed to State Office of Administrative Hearings (SOAH), would generate the full amount of 77,000. There will be fiscal implications for the state or local government as a result of enforcing or administering the rule in the amount of 138,600.

Mr. Brown also has determined that for each year of the first five-year period the rule is in effect public benefit anticipated as a result of enforcing the rule will be to ensure that school, licensees, and permit holders comply with the requirements of the rules of the board. There are anticipated economic cost to persons who are required to comply with the rules as adopted.

Comments on the proposed amendment may be submitted to Will K. Brown, Executive Director, State Board of Barber Examiners, 333 Guadalupe, Suite 2-110, Austin, Texas 78701 no later than 30 days from the date of the proposed action is published in the Texas Register.

The amendment is proposed under former Texas Barber Law, Texas Civil Statutes, Article 8407a, Section 24A-M, (repealed) now recodified Texas Occupations Code Chapter 1601.155 (1999), which provides the board with the authority to impose administrative penalties to protect the public's health and safety.

No other Article or Statute is effected by this amendment.

§51.3. Administrative Fines.

(a) Civil penalties will be assessed according to schedule of administrative fines set up by the board. It is the desire of the board to be both consistent and equitable and to consider and evaluate each case on an individual basis. The actual civil penalty which the board assesses shall be based on the board's consideration of the factors in the LAW GOVERNING THE PRACTICE OF BARBERING, but the fine for any one violation or rule adopted under the LAW GOVERNING THE PRACTICE OF BARBERING shall not exceed $1,000.

(b) Fine Schedule:
Figure: 22 TAC §51.3(b)

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 15, 2001.

TRD-200100963
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 305-8475

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22 TAC §§51.4-51.6

The Texas State Board of Barber Examiners proposes new §51.4, concerning Current Mailing Address and Change of Mailing Address; §51.5, concerning Good Standing Required for License Renewal; §51.6 concerning Right of Access. The new proposal is a result of the 76th Legislative Session, and the passage of Senate Bill 846, to include all rules enforced by the board.

Will K. Brown, Executive Director has determined that for the first five-year period the rules are in effect: (1) there are no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing for administering the rules; (2) the public benefit of the proposed rules will be clarification of the board's requirements of examinees and licensees and the provision of a secure method of handling funds submitted by examinees and licensees; and (3) there is no foreseeable economic cost to persons required to comply with the proposed rules. Mr. Brown has also determined that there will be no effect on small businesses as a result of the proposed new rules.

Comments on the proposed new rules may be submitted to Will K. Brown, Executive Director, State Board of Barber Examiners, 333 Guadalupe, Suite 2-110, Austin, Texas 78701 no later than 30 days from the date that the proposed action is published in the *Texas Register.*

The new rules are proposed under former Texas Barber Law, Texas Civil Statutes, Article 8401-8407a, Section §28 (a), (repealed) now recodified by House Bill 3155 as Chapter 1601.155 OCCUPATIONS CODE (1999), which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

The following sections of the Texas Barber Law, Texas Civil Statutes, Article 8401-8407a, (repealed) now recodified by House Bill 3155 as Chapter 1601 of the TEXAS OCCUPATIONS CODE (1999) is effected by the proposed new rules 51.4 Current Mailing Address and Change of Mailing Address; 51.5 Good Standing Required for License Renewal; 51.6 Right of Access and are as follows: TEX. OCC. CODE 1601.001 and 1601.155.

§51.4. Current Mailing Address and Change of Mailing Address.

It is the responsibility of the licensees to maintain a current mailing address on file with the Board. All Licensees must notify the Board not later than 10 days following any change of mailing address. The Board may send to a licensee's last known mailing address on file with the board all notices or other information required by the Texas Barber Law, former Texas Civil Statute Article 8401-8407a (repealed) now codified as Texas Occupations Code Chapter 1601: Board Rules, 22 TAC Chapter 51, and the Administrative Procedure Act, Texas Government Code, Chapter 2001. Service of notice of a hearing or investigation on the licensee shall be complete and effective if the document to be served is sent by certified or regular mail to the licensee at his or her most recent address as shown by the records of the Board. Service by mail is complete upon deposit of the document enclosed in a post paid, properly addressed envelope in a U.S. Post Office or official depository under the care and custody of the U.S. Postal Service.

§51.5. Good Standing Required for License Renewal.

No license shall be renewed unless the licensee is in good standing with the Board. Good standing includes, but is not limited to, compliance with Barber Law and Board Rules, no default on a student loan with the Texas Guaranteed Student Loan Corporation, no default on court ordered child support payments, and payment in full of all administrative penalties assessed against the licensee. The Executive Director has the discretion to waive the payment in full of all administrative penalties requirement for license renewal.

§51.6. Right of Access.

(a) Any authorized representative of the board may enter the premises of any licensee at any time, during any business hours or when services are being rendered to the public.

(b) Licensee shall not interfere or impede with the process of an inspection.

(c) Barber schools and colleges must maintain and provide immediate access to any and all records that relates to Texas Barber Law, former Texas Civil Statute Article 8407a Section 9 and Section 9A now codified as Texas Occupations Code Chapter 1601, including but not limited to electronic data for inspection 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.

Filed with the Office of the Secretary of State, on February 15, 2001.

TRD-200100964
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 305-8475

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SUBCHAPTER I. DEFINITIONS

22 TAC §51.141

The Texas State Board of Barber Examiners proposes new §51.141 concerning Definitions. The new proposal is a result of the 76th Legislative Session, and the passage of Senate Bill 846, to include all rules enforced by the board.

Will K. Brown, Executive Director has determined that for the first five-year period the rule is in effect: (1) there are no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing for administering the rules; (2) the public benefit of the proposed rule will be clarification of the board's requirements of examinees and licensees and the provision of a secure method of handling funds submitted by examinees and licensees; and (3) there is no foreseeable economic cost to persons required to comply with the proposed rule. Mr. Brown has also determined that there will be no effect on small businesses as a result of the proposed new rule.

Comments on the proposed new rule may be submitted to Will K. Brown, Executive Director, State Board of Barber Examiners, 333 Guadalupe, Suite 2-110, Austin, Texas 78701 no later than 30 days from the date that the proposed action is published in the *Texas Register*.

The new rule is proposed under former Texas Barber Law, Texas Civil Statutes, Article 8407a, Section 28 (a), (repealed) now recodified by House Bill 3155 as Chapter 1601.155 OCCUPATIONS CODE (1999), which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

The following sections of the Texas Barber Law, Texas Civil Statutes, Article 8401-8407a, (repealed) now recodified by House Bill 3155 as Chapter 1601 TEXAS OCCUPATIONS CODE (1999) is effected by the proposed new rule 51.141 Definitions are as follows: TEX. OCC CODE 1601.001 AND 1601.155.

§51.141. Definitions.

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

(1) Line of Demarcation between "the hair" and "the beard"-- The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a line drawn from the bottom of the ear.

(2) The hair Relating to Haircutting -- The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(3) The Sideburn -- A sideburn may be part of a hair cut or style that is a continuation of the natural scalp hair growth, and must not extend below the bottom of the ear lobe, and must not be connected to any other bearded area on the face. Only a licensed barber shall trim, shape or cut the sideburns with any type of razor.

(4) The Beard -- The beard extends from below the line of demarcation and includes all facial hair regardless of texture and shall only be trimmed, shaped or cut by a licensed barber.

(5) Out of Scope --

(A) The use of any blade, drill or cutting tool (power or manual) designed for the purpose of removing corns and calluses or violating the nail bed in any manner is prohibited.

(B) Any chemical currently not approved for a particular use by the EPA, FDA, or any other governmental agency is prohibited.

(C) Or any other practice prohibited by Barber Law or Board Rules.

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

Filed with the Office of the Secretary of State, on February 15, 2001.

TRD-200100965
Will K Brown
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 305-8475

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PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 183. ACUPUNCTURE

22 TAC §183.2, §183.4

The Texas State Board of Medical Examiners proposes an amendment to §183.2, concerning Definitions and §183.4, concerning Licensure. The amendments will clarify the number of times a licensure applicant is allowed to interview with the board, committee of the board, or the executive director to demonstrate the ability to communicate in the English language.

Michele Shackelford, Assistant General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the amendments as proposed.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification regarding the number of times a licensure applicant is allowed to interview with the board, committee of the board, or the executive director to demonstrate the ability to communicate in the English language. There will be no effect on small businesses. There will be no effect to individuals required to comply with the sections as proposed.

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

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

The Occupations Code Annotated, §§205.201-205.208 are affected by the amendments.

§183.2. Definitions.

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

(1) Ability to communicate in the English language--An applicant who has met the requirements set out in §183.4(a)(7) of this title (relating to Licensure) [~~passed the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination in English within three attempts. The Executive Director will review on a case-by-case basis the application of any applicant who did not pass the NCCAOM examination within three attempts and it will be at his discretion to evaluate the applicant's eligibility for licensure~~].

(2)-(35) (No change.)

§183.4. Licensure.

(a) Qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant:

(1)-(6) (No change.)

(7) is able to communicate in English as demonstrated by one of the following:

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

(F) an interview conducted in English with the acupuncture board, a committee of the acupuncture board, or the executive director of the acupuncture board. Only one interview shall be granted to each requesting applicant unless that applicant can satisfactorily demonstrate that a second personal interview is the only remaining opportunity for the applicant to meet the required ability to communicate in the English language. Should the applicant fail to adequately demonstrate the ability to communicate in the English language at the second interview, the applicant is ineligible for future interviews to determine English proficiency.

(b)-(h) (No change.)

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

Filed with the Office of the Secretary of State, on February 16, 2001.

TRD-200100981
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 305-7016

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.15

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.15, concerning Compliance with Act, Rules, Board Directives and Orders. The amendment is being proposed in order to make the rules agree with the Act and a recent attorney general opinion JC-321 regarding exempt facilities.

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

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to makes the rules easier for licensees and the general public to follow and understand. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brian Creath, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§461.15. Compliance with Act, Rules, Board Directives and Orders. Licensees[~~, including those in an exempt setting,~~] must comply with the Act, Rules, Board Directives and Board Orders and must cooperate with Board investigations.

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 15, 2001.

TRD-200100967
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.30

(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 State Board of Examiners of Psychologists or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Examiners of Psychologists proposes the repeal of §463.30, concerning Time Period for Appealing a Decision. The repeal is being proposed in order to agree with the proposed revisions to §470.8, concerning Informal Disposition of Complaints and Applications Disputes.

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

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rules easier for the general public and licensees to follow and understand. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule.

Comments on the proposed repeal may be submitted to Brian Creath, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

This repeal is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed repeal does not affect other statutes, articles or codes.

§463.30. Time Period for Appealing a Decision.

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

Filed with the Office of the Secretary of State, on February 15, 2001.

TRD-200100966
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 305-7700

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PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §741.1 and §741.41, concerning speech-language pathology and audiology. Specifically, the sections cover definitions and the Code of Ethics.

The proposed amendment to §741.1 defines the term "dispense", and renumbers the remaining paragraphs in this section. The proposed amendment to §741.41 clarifies advertising of services with respect to the fitting and dispensing of hearing aids to residents within the State of Texas by facsimile broadcast and Internet providers. The amendments are a result of the Audiology Practices, Inc., Petition for Adoption of a Rule, which was submitted in response to the phenomenal growth in the mail order business through the advent of the Internet and E-commerce.

Dorothy Cawthon, Executive Secretary, has determined that for the first five-year period the sections are in effect the only fiscal implications as a result of enforcing or administering the sections would be for complaint investigations. It cannot be determined what the cost would be to the state since the board cannot determine the number of complaints, if any, that would be investigated. There are no anticipated fiscal implications to local government as a result of enforcing or administering the sections as proposed.

Ms. Cawthon has also determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to insure that clients seeking treatment of hearing loss through the use of amplification devices receive a comprehensive audiological evaluation to determine the appropriate device needed.

There may be economic costs anticipated to micro-businesses, small businesses, and individuals registered to fit and dispense hearing instruments as a result of the proposed amendments if a violation is committed and an enforcement action is pursued. The amendments are a safeguard to provide the board's complaints committee with a specific rule in case a licensee does provide false or misleading information while using the Internet and facsimile broadcasts. The cost for complaint investigations varies from less than fifty dollars to several hundred dollars. There are too many variables to determine the cost. There will be no effect on local employment.

Comments on the proposal may be submitted to Ms. Dorothy Cawthon, State Board of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183, telephone (512) 834-6627, fax (512) 834-6677. Public comments will be accepted for 30 days following the publication of the proposal in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

The amendment affects the Texas Occupations Code, Chapter 401.

§741.1. Definitions.

Unless the context clearly indicates otherwise, the words and terms below shall have the following meanings. Also, refer to the Texas Occupations Code, §401.001, for definitions of additional words and terms.

(1) (No change.)

(2) Dispense--To provide or deliver, directly or indirectly, by U.S. Postal Service or any commercial delivery service.

(3) [~~(2)~~] Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, and otorhinolaryngologists.

(4) [~~(3)~~] Extended absence--More than two consecutive working days for any single continuing education experience.

(5) [~~(4)~~] Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(6) [~~(5)~~] Health care professional--An individual required to be licensed or registered under Texas Occupations Code, Chapter 401, or any person licensed, certified, or registered by the state in a health-related profession.

(7) [~~(6)~~] Hearing instrument--A device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(8) [~~(7)~~] Hearing screening--A manually administered individual pure-tone air conduction screening with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(9) [~~(8)~~] Sale or purchase--Includes the sale, lease or rental of a hearing instrument to a member of the consuming public who is a user or prospective user of a hearing instrument.

(10) [~~(9)~~] Used hearing instrument--A hearing instrument that has been worn for any period of time by a user. However, a hearing instrument shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing instrument evaluation conducted to determine whether to select that particular hearing instrument for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing instrument health professional selected by the dispenser to assist the buyer in making such a determination.

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-200100883
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 458-7236

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SUBCHAPTER D. THE STANDARDS OF PROFESSIONAL AND ETHICAL CONDUCT

22 TAC §741.41

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce the Texas Occupations Code, Chapter 401.

The amendment affects the Texas Occupations Code, Chapter 401.

§741.41 Code of Ethics.

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

(d) A licensee or registrant shall not present false, misleading, deceptive, or not readily verifiable information relating to the services of the licensee or registrant or any person supervised or employed by the licensee or registrant which includes, but is not limited to:

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

(3) presenting false, misleading, or deceptive information relating to the following:

(A)-(C) (No change.)

(D) commercial products; [~~or~~]

(E) (No change.)

(F) facsimile broadcast; or

(G) Internet website.

(4) presenting false, misleading, or deceptive advertising that is not readily subject to verification includes any manner of communication referenced in paragraph (3) of this subsection and advertising that:

(A)-(I) (No change.)

(e)-(o) (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 12, 2001.

TRD-200100884
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER E. TDMHMR HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

25 TAC §417.201

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Department of 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 repeal of §417.201 of Chapter 417, Subchapter E, concerning TDMHMR Historically Underutilized Business Program.

The section, which adopts by reference rules of the General Services Commission (GSC) contained in 1 TAC §§111.11-111.27 (relating to Historically Underutilized Business Certification Program), has been duplicated in rules governing contracts management for TDMHMR facilities and Central Office, 25 TAC §417.54(e), proposed in the December 29, 2000, issue of the *Texas Register*. The repeal would eliminate the duplicative provision.

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

Bill Campbell, deputy commissioner for finance and administration, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit expected is the adoption of a single rule governing the TDMHMR Historically Underutilized Business Program. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeal.

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

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

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

This section is proposed for repeal 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, §2161.003, which requires state agencies to adopt rules of the General Services Commission governing historically underutilized businesses.

This section would affect the Texas Government Code, §2161.003.

§417.201. TDMHMR Historically Underutilized Business Program .

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

Filed with the Office of the Secretary of State, on February 15, 2001.

TRD-200100968
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 206-5216

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMIT

31 TAC §§65.601, 65.602, 65.605, 65.607-65.610

The Texas Parks and Wildlife Department proposes amendments to §§65.601, 65.602, 65.605, and 65.607-65.610, concerning Scientific Deer Breeders. The proposed amendments are identical to the provisions of those sections as adopted by the Parks and Wildlife Commission on January 20, 2000, and submitted on February 15, 2000, for publication in the March 3, 2000, issue of the *Texas Register*. Due to circumstance beyond the agency's control involving the publication process outside of Texas Parks and Wildlife, the Notice of Adoption was not published. The department therefore must re-propose and re-adopt the regulations. The department regrets any confusion and stresses that the contents of the proposal are identical in every respect to the contents of the Notice of Adoption submitted on February 15, 2000.

The amendment to §65.601, concerning Definitions, provides for an optional marking convention. The amendment to §65.602, concerning Permit Requirement and Permit Privileges, stipulates that a scientific breeder may temporarily relocate deer for nursing or breeding purposes. The amendment to §65.605, concerning Holding Facility Standards and Care of Deer, removes provisions for temporary relocation of fawns for nursing purposes, which are being revamped and installed in another section. The amendment to §65.607, concerning Marking of Deer, would: allow scientific breeders to defer the tattooing of deer until such time as they leave a breeding facility; provide for an optional marking convention; require all deer within a facility to be ear-tagged by March 1 of each year; and mandate, as a consequence of purchase, the replacement of the seller's ear tags with the buyer's ear tags prior to the introduction of deer from a facility. The amendment to §65.608, concerning Annual Reports and Records, would require permittees to submit an annual report by November 1 of each year, at which time they would also furnish all purchase permits used during the reporting period. The amendment to §65.609, concerning Purchase of Deer and Purchase Permit, would simplify provisions for the acquisition and use of purchase permits by: eliminating the requirement for possession of a return fax from the department prior to transport and replacing it with a more flexible notification and reporting procedure; and allowing purchase permits to be obtained in bulk, to be used as necessary during the span of a scientific breeder permit's validity. The amendment to §65.610, concerning Transport of Deer and Transport Permit, would provide for the temporary movement of deer for breeding or nursing purposes by implementing a notification requirement for such activities, and would create an identification requirement for vehicles and trailers used to transport deer.

Robert Macdonald, Wildlife Division Regulations Coordinator, has determined that for the first five years that the amendments

as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the amendments.

Mr. Macdonald also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to regulate persons possessing white-tailed or mule deer for propagation, scientific, and management purposes.

There will be no effect on small businesses or microbusinesses. There are additional economic costs to persons required to comply with the rules as proposed, but the department has determined that such costs range from minimal to negligible.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact 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 rules may submitted to Jerry Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4774 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the Parks and Wildlife Commission to establish regulations governing the possession of white-tailed and mule deer for scientific, management, and propagation purposes.

The amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.601. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1)-(10) (No change.)

(11) Unique number--A four-digit alphanumeric identifier used by the department to track the ownership of a specific deer. Unique numbers may be assigned by the department or by the permittee. If the permittee chooses to assign the unique numbers, each deer must be tattooed with the permittee's serial number in one ear and the unique number in the other ear. No two deer shall share a common unique number. [~~A four-digit alphanumeric identifier issued by the department to a scientific breeder for the purpose of permanently marking a deer such that the animal's history of ownership can be tracked.~~]

§65.602. Permit Requirement and Permit Privileges.

(a) Except as provided in this subchapter, no [~~No~~] person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R.

(b) A person who possesses a valid scientific breeder's permit may:

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

(4) release deer from a permitted facility into the wild as provided in this subchapter; [~~and~~]

(5) recapture lawfully possessed deer that have been marked in accordance §65.607 of this title (relating to Marking of Deer) that have escaped from a permitted facility; and [~~.~~]

(6) temporarily relocate and hold deer in accordance with the provisions of §65.610(a)(2) and (3) of this title (relating to Transport of Deer and Transport Permit) for breeding or nursing purposes.

§65.605. Holding Facility Standards and Care of Deer.

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

[~~(c) A scientific breeder may move fawns from a permitted facility to another location for nursing purposes, provided:~~]

[~~(1) the nursery is located on the same tract of land as the permitted breeding facility;~~]

[~~(2) the scientific breeder requests and receives written authorization from the department to establish a designated location for nursing purposes; and~~]

[~~(3) all fawns in such a nursery are marked in accordance with §65.607(a) of this title (relating to Marking of Deer).~~]

§65.607. Marking of Deer.

(a) Each deer held in captivity by a permittee under this subchapter shall be permanently marked by[~~:~~]

[~~(1) a unique number tatooed in one ear; and~~]

[~~(2)~~] an ear tag that shows the letters "TX" followed by the serial number assigned to the scientific breeder. All deer within a scientific breeder facility shall be tagged by March 1 of the year immediately following their birth.

(b) No person shall remove or knowingly allow the removal of a deer held in a facility by a permittee under this subchapter unless it has been permanently tattooed in one or both ears with a unique number. [~~Fawns must be permanently marked by the first November 1 following birth.~~]

(c) No person shall introduce deer to a facility under the provisions of a purchase permit unless the ear tag identifying the seller has been removed form the deer and replaced with an ear tag bearing the TX number of the purchaser. [~~All deer held in a scientific breeder facility prior to the effective date of this section must be marked upon first handling or prior to leaving the facility, whichever occurs first.~~]

§65.608. Annual Reports and Records.

(a) Each scientific breeder shall file a completed annual report on a form supplied or approved by the department, accompanied by the originals of all invoices for the temporary relocation of deer and all purchase permits used by the permittee during the reporting period, by not later than April 16 of each year.

(b) A permittee shall notify the department in writing by November 1 of each year of the number of fawns held by the permittee in each permitted facility, including fawns that have been temporarily relocated for nursing purposes.

(c) [~~(b)~~] The holder of a scientific breeder's permit shall maintain and, on request, provide to the department adequate documentation as to the source or origin of all deer held in captivity, including all invoices for the temporary relocation of deer, and buyer's and seller's copies, as applicable, of all purchase permits used by the permittee.

§65.609. Purchase of Deer and Purchase Permit.

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

(c) An individual may possess or obtain deer only after a purchase permit has been issued by the department. A purchase permit is

valid for a period of 30 days after it [~~Purchase permits shall be valid for 30 days from the date that the scientific breeder~~] has been:

[~~(1)~~] completed (to include the unique number of each deer being transferred [~~purchased~~]), dated, signed, and faxed to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The purchase permit shall also be signed and dated by the other party to a transaction at the time that the transfer of possession of any deer. [~~;~~]

[~~(2) received and possesses on their person a return fax from the department in acknowledgment of the fax required by paragraph (1) of this subsection.~~]

(d) A purchase permit is valid [~~only during the period of validity of a scientific breeder's permit, is effective~~] for only one transaction, and expires after one instance of use.

(e) (No change.)

(f) A person may amend a purchase permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(g) [~~(f)~~] The department may issue a purchase permit for liberation for stocking purposes if the department determines that the release of deer will not detrimentally affect existing populations or systems.

(h) [~~(g)~~] Deer lawfully purchased or obtained for stocking purposes may be temporarily held in captivity:

(1) to acclimate the deer to habitat conditions at the release site;

(2) when specifically authorized by the department;

(3) for a period to be specified on the purchase permit, not to exceed six months;

(4) if they are not hunted prior to liberation; and

(5) if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility.

§65.610. Transport of Deer and Transport Permit.

(a) The holder of a valid scientific breeder's permit or a designated agent may, without any additional permit, transport legally possessed deer:

(1) (No change.)

(2) to another scientific breeder on a temporary basis for breeding purposes. The scientific breeder providing the deer shall complete and sign a free, department-supplied invoice prior to transporting any deer, which invoice shall accompany all deer to the receiving facility. The scientific breeder receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held in the receiving facility. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the scientific breeder relinquishing the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. The original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title (relating to Annual Reports and Records). In the event that a deer has not been returned to a facility at the time the annual report is due, a scientific breeder shall submit a photocopy of the original invoice and submit the original invoice with the following year's report.

(3) to another person on a temporary basis for nursing purposes. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a nursery, which invoice shall accompany all deer to the receiving facility. The person receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the person holding the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. The original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title.

(4) [~~(2)~~] to an individual who does not possess a scientific breeder's permit if a valid purchase permit for release into the wild for stocking purposes has been issued for that transaction; and

(5) [~~(3)~~] to and from an accredited veterinarian for the purpose of obtaining medical attention.

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

(e) Transport permits shall be effective for 30 days from the date that the scientific breeder has[~~:~~]

[~~(1)~~] completed (to include the unique number of each deer being transported), dated, signed, and faxed the permit to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The transport permit shall also be signed and dated by the other party to a transaction upon the transfer of possession of any deer. [~~; and~~]

[~~(2) received and possesses on their person a return fax from the department in acknowledgment of the fax required by paragraph (1) of this subsection.~~]

(f) (No change.)

(g) A person may amend a transport permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(h) [~~(g)~~] A one-time, 30-day extension of effectiveness for a transport permit may be obtained by notifying the department prior to the original expiration date of the transport permit.

(i) Except as provided by Parks and Wildlife Code, Chapter 43, no person may possess, transport, or cause the transportation of deer in a trailer or vehicle unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting deer upon

a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a scientific breeder, the inscription shall be "TXD". If the person is a scientific breeder, the inscription shall be the scientific breeder serial number issued to the person.

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 16, 2001.

TRD-200100986
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection proposes amendments to §421.5, concerning definitions. The amendments change the definition of training officer to specify that the individual must be in charge of a commission "certified training facility."

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for the first five-year period that the amendments are in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule as amended.

Mr. Soteriou has also determined that for each year of the first five years the rule as amended is in effect, the public benefit anticipated as a result of enforcing the amended rule will be the proper delivery of commission-approved curriculum. The training officer will ensure the certified facility will be compliant with commission standards in content and delivery of programs.

There are no additional costs of compliance for individuals or small and large businesses required to comply with the amended rule.

The commission has determined that the proposed amendments relating to Standards for Certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, TX 78768- 2286, or submitted by e-mail to *info@tcfp.state.tx.us*.

The amendments are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission with authority to approve or revoke the approval of a training facility and to certify or revoke the certification of fire protection personnel instructors.

Texas Government Code, §419.028 is affected by the proposed amendments.

§421.5. Definitions.

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

(1)-(31) No change.

(32) Training officer--The officer or supervisor, by whatever title he or she may be called, that is in charge of a commission certified [~~approved~~] training facility [~~program~~].

(33) Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(34) Years of experience--For purposes of higher levels of certification or fire service instructor certification as provided for in Chapter 425, Subchapter A of this title (relating to Fire Service Instructor Certification):

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part- time or volunteer fire service while holding:

(i) a Texas Commission on Fire Protection certification as a full- time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have completed as a minimum requirements for a Texas Department of Health Emergency Care Attendant (ECA) certification, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, and have completed as a minimum requirements for a Texas Department of Health Emergency Care Attendant (ECA) certification, or its equivalent; or

(iv) for fire service instructor certification only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one 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.

Filed with the Office of the Secretary of State, on February 13, 2001.

TRD-200100892
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 239-4921

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection proposes an amendment to §441.5, concerning requirements. The amendment to §441.5 changes the continuing education requirement for Track A so that no more than four hours in any one subject can be counted toward meeting the 20-hour continuing education requirement per year. This is a change from allowing no more than four hours in any one section.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for the first five year period that the proposed amendment is in effect there will be no fiscal implications for state and local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be a clearer understanding of the Commission's intent with regard to the four hour limitation on subject matter taken for continuing education credit.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amended section.

The commission has determined that the proposed amendment relating to Continuing Education will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, and Austin, TX 78768-2286 or submitted by e-mail to *info@tcfp.state.tx.us*.

The amendment is proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code §419.032, which provides the commission with authority to adopt rules relating to continuing education for fire protection personnel. §Texas Government Code, §419.032 is affected by the proposed amendment.

§441.5. Requirements.

(a)-(d) No change.

(e) No more than four hours per year in any one subject [~~section~~] of the appropriate chapter of the Commission Certification Curriculum Manual may be counted toward the 20-hour continuing education requirement for Track A.

(f)-(m) 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 13, 2001.

TRD-200100893
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 239-4921

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 9. TEXAS DEPARTMENT ON AGING

CHAPTER 254. OPERATION OF THE TEXAS DEPARTMENT ON AGING

40 TAC §254.24, §254.35

The Texas Department on Aging proposes new §254.24 and §254.35 concerning Agency Training Plan and Historically Underutilized Business Program.

Section 254.24 is proposed in order to conform to Texas Government Code, Chapter 656, Subchapter C, which directs state agencies to provide training and educational opportunities to its employees.

Section 254.35 is proposed in order to conform to Texas Government Code, §2161.003, which directs state agencies to adopt the rules of the General Services Commission (GSC) regarding historically underutilized businesses (HUBs) as the agency's own rules. Those rules apply to the Board's purchase of goods and services paid for with appropriated money. The GSC rules the Board 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 recertification 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.

Barbara Zimmerman, Chief Fiscal Officer has determined that for the first five-year period the new sections are in effect there

will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Ms. Zimmerman also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to implement training and educational opportunities to its employees and to conform to the Texas Government Code regarding the General Services Commission's rules pertaining to historically underutilized businesses. There will be no effect on small businesses. There will be no effect to individuals required to comply with the sections as proposed.

Comments on the new rules may be submitted to Joy Modawell, Chief Program Officer, Texas Department on Aging, P. O. Box 12786, Austin, Texas 78711. All comments must be written and delivered via mail, in person, or facsimile. E-mail and verbal comments cannot be accepted. All comments must be received within 30 calendar days following the date of publication of the proposed new rules in the *Texas Register*.

The new rules are proposed under Texas Government Code, §2161.003, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

Texas Government Code, §2161.003 is affected and implemented by this proposed action.

§254.24. Agency Training Plan.

(a) Purpose. In accordance with the State Employees Training Act, Government Code, Chapter 656, Subchapter C, it is the policy of the Texas Department on Aging (TDoA) to provide training and educational opportunities to its employees. This program is designed to help employees gain knowledge about general subjects required by the agency and to allow employees to participate in job related professional development opportunities that will increase an employee's job potential. This subchapter prescribes the policies governing employee eligibility for participation in TDoA's Staff Training and Development program and the obligations of the employees upon receiving education.

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

(1) Academic Training--Any subject offered through an accredited college or university.

(2) Department--The Texas Department on Aging.

(3) Employee--An individual employed with TDoA in either a full-time or part-time position, not including contract employees.

(4) Hardship--A serious or catastrophic illness, family emergency, or extenuating circumstance beyond the control of the student that precludes the student from being reasonably expected to comply with the terms of an education assistance agreement.

(5) Institution of higher education--A public or private technical institute, junior college, senior college, university, medical or dental unit, or other institution offering an associate's, baccalaureate, master's, or doctoral degree program.

(6) Part-time employee--An individual employed with TDoA and working less than 40 hours per week.

(7) Professional development--Educational, academic or technical training used to improve an employee's professional or technical knowledge and skills or to maintain license requirements.

(8) Reimburse--To repay monies spent for the cost of public college or university's tuition fees and books.

(9) TDoA--The Texas Department on Aging.

(10) Training--Planned, structured activities designed to improve employee job performance and job related skills by achieving specific, measurable, and predetermined learning objectives.

(c) Employee Training.

(1) Purpose. TDoA provides employees with a program which allows employees to gain knowledge about general subjects and encourages employees to participate in job related professional development opportunities that will help each employee to achieve his or her highest potential for the job they hold. This section establishes eligibility criteria for employee participation in TDoA training opportunities.

(2) Eligibility. TDoA may provide training for an employee if such training is:

(A) designed to increase the employee's competency through an objective, systematic program of teaching and/or self-study and is utilized to improve an employee's professional or technical knowledge and skills, or to maintain license requirements;

(B) directly related to the employee's current job duties, or for the purpose of upward mobility into a position currently available within the employee's career path; or

(C) designed to increase an employee's awareness of State or Federal laws regarding equal opportunity, non-discrimination, Drug-Free workplace, AIDS/HIV, workplace safety and other relevant topics.

(d) Employee Training Obligations.

(1) Obligation. Employee training under this section is conditional upon:

(A) the employee attending and satisfactorily completing the training, including passing tests or other types of performance measures where required; and

(B) as required by the TDoA, the employee completing and filing with TDoA, on forms prescribed by TDoA, an employee training agreement that sets forth the terms and conditions of the training assistance.

(2) Waiver. For training covered by Texas Government Code, Chapter 656, Subchapter D, the Texas Board on Aging has the discretion to waive an employee's obligation to abide by the terms of the agreement if the Board finds that a waiver is in the best interest of TDoA or is warranted because of an extreme personal hardship suffered by the employee.

(e) Academic Training Program.

(1) Purpose. The Texas Department on Aging (TDoA) encourages employees to participate in job related professional development opportunities that will help each employee to achieve his or her highest potential for the job they hold or allow upward mobility into a position within their career path. This section establishes eligibility criteria for participation in the program.

(2) Eligibility. To qualify for the academic training program, the employee:

(A) must currently meet or exceed performance standards in job performance;

(B) must not be on probation of any kind;

(C) must seek enrollment in a field of study where:

(i) course content is related to the employee's present job duties, or the course is taken for the purpose of upward mobility into a position available within the agency; and

(ii) the course will equip the employee with skills and knowledge needed to work efficiently and improve the employee's job effectiveness;

(D) must complete and file with TDoA, on forms prescribed by TDoA, a training agreement that sets forth the terms and conditions of the training assistance including:

(i) the course must be taken after working hours or, if the course is taken during working hours, accrued leave is taken to attend class;

(ii) the employee must have continued employment for the entirety of the course; and

(iii) the employee must have completed the course with a grade of "C" or above.

(3) Type of Institution. An employee who participates in the Academic Training Program must attend a public institution in the State of Texas, unless:

(A) no accredited public institution offers program courses that can reasonably be attended by an employee;

(B) a public institution does not offer the approved courses or degree program;

(C) the admission requirements of the public institution are so restrictive as to preclude the employee's qualifications for the program;

(D) the completion of the course at a private institution costs less than a public institution; or

(E) the employee attends the private institution under an agreement that TDoA will pay only the equivalent of what the education would have cost at a public institution.

(4) Eligible Expenses. Financial assistance may be awarded for tuition fees and books.

(f) Academic Training Program Obligations.

(1) Obligation. Academic training under this section is conditional upon:

(A) the employee having continued employment in good standing for the entirety of the course;

(B) the employee completed the course with a grade of "C" or above; and

(C) as required by the Texas Department on Aging (TDoA), the employee completing and filing with TDoA, on forms prescribed by TDoA, an employee training agreement that sets forth the terms and conditions of the training assistance.

(2) Waiver. For training covered by Texas Government Code, Chapter 656, Subchapter D, the Texas Board on Aging has the discretion to waive an employee's obligation to abide by the terms of the agreement if the Board finds that a waiver is in the best interest of TDoA or is warranted because of an extreme personal hardship suffered by the employee.

§254.35. Historically Underutilized Business Program.

Historically Underutilized Business Program. The Texas Board on Aging adopts by reference the rules promulgated by the General Services Commission (GSC) that are set forth at 1 TAC, Part 5, Chapter 111, Subchapter B, regarding the Historically Underutilized Business Program. A copy of the GSC rules may be obtained by writing to: Mary Sapp, Executive Director, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711-2786 or by accessing the website of the Secretary of State, at www.sos.state.tx.us/tac/.

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

Filed with the Office of the Secretary of State, on February 16, 2001.

TRD-200100987
Joy Modawell
Chief Program Officer
Texas Department on Aging
Earliest possible date of adoption: April 1, 2001
For further information, please call: (512) 424-6857

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES
SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

4 TAC §19.101

The Texas Department of Agriculture (the Department) adopts an amendment to §19.101(b) concerning red imported fire ant quarantine, without changes to the proposal published in the December 29, 2000 issue of the *Texas Register* (25 TexReg 12874). The amendment adds Mills County to the areas listed in §19.101 as quarantined.

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

No oral or written comments were received concerning the amendment.

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

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 14, 2001.

TRD-200100952

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: March 6, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

The Texas Department of Licensing and Regulation adopts the repeal of §75.25 and amendments to §§75.1, 75.10, 75.20-75.24, 75.26, 75.30, 75.40, 75.65, 75.70, 75.80, 75.90, and 75.100 concerning air conditioning contractors, as published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12302). No comments were received on the proposed repeal of §75.25 or the proposed amendments to §§75.1, 75.21-75.24, 75.26, 75.30, 75.40, 75.65, 75.80, and 75.90. These sections are adopted without change and will not be reprinted. §§75.10, 75.20, 75.70, and 75.100 are adopted with changes.

Comments were received on §§75.10, 75.20, 75.70, and 75.100. The amendment to §75.10 deletes a part of the definition of "Advertising or Advertisement", which is covered in the rule on Advertising; adds language to describe how "Biomedical Remediation" is accomplished; adds a definition of "Design of a system"; and clarifies the definition of "Repair work". The amendment to §75.10 is to provide clarification to industry and promote understanding of the terms used in this Chapter.

Several commenters objected to deletion of "simultaneous" from the proposed definition of "Repair work". The commenters believed that the definition could be misconstrued to mean installation of condensing units, furnace, and evaporator coils are never included in repair work. The Department agrees with the commenters and is not removing "simultaneous" from the definition.

A commenter stated that the definition of "Repair Work" should not include refrigeration equipment. The Department disagrees with the commenter because the statute includes refrigeration in

the definition of "Air Conditioning and Refrigeration Maintenance Work".

The amendment to §75.20(a) deletes the 45-day requirement on receipt of an application prior to an examination date and specifies all licensing requirements must be completed within one year of the date the application is filed. The justification for the changes in §75.20(a) is that 45 days is no longer necessary to process applications for exams, since exams are now computer-based. A time limit on completing the licensing process simplifies procedures and facilitates timely enforcement actions.

Changes in §75.20(b) deletes, "who wishes to use", and adds, "uses", to provide clarification to the subsection. A commenter stated that 75.20(b)(3) does not agree with the rules of the Proprietary Schools Division of the Texas Workforce Commission concerning equivalency between classroom hours and semester hours. The Department agrees with commenter and is amending this rule to state that fifteen lecture hours are equivalent to one semester hour and 30 lab hours are equivalent to one semester hour.

The amendments proposed for §75.70 clarify that the section applies to an air conditioning and refrigeration contracting company; remove the requirement that the license be displayed in the permanent office of the business to which it is assigned; move the provision that the license number must be on all proposals and invoices to a new subsection concerning invoices; restates the subsection making the licensee responsible for all work performed under his/her license to make it clearer; deletes the requirement that the license must be displayed at the office to which it is assigned; restates the subsection on advertising by listing exclusions to the requirement of showing the license number on all advertising instead of listing the types of advertising that require showing the license number; adds a requirement that the contractor furnish an invoice to all consumers; and clarifies the information to be provided to the Department in the event of change by the licensee.

The justification for the amendments in §75.70 is that both companies and licensees must comply with these rules; that the display of a license in the business office is not necessary, since few consumers visit the contractor's office; that the Department can better track responsibility with clear notice to the licensee that he/she is responsible for all work under his/her supervision; that stating the types of advertising that do not require listing the license number will make the rule easier to understand and enforce; that consumers have a right to receive an invoice documenting work performed; and that clarifying the requirements for revising information furnished to the Department will eliminate some of the time spent requesting additional or corrected information.

A commenter stated that subsection 75.70(h) does not correspond to other rule provisions that require the licensee to be a bona fide employee of the company to which he or she has assigned his or her license. The Department agrees with the commenter and is adding the words, "and by whom he or she is not employed" to the subsection.

The amendments to §75.100 clarify that Duct Cleaning that includes biomedical remediation requires a license under this Act, and add a subsection on Standards for the practice of air conditioning and refrigeration contracting. The justification is that the amendment will facilitate enforcement of duct cleaning companies that engage in biomedical remediation without the required license; and that standards that can be applied throughout the state will give better accountability of workmanship and protection to consumers.

A commenter stated that subsection 75.100(b)(2) concerning drain piping does not make it clear that the limitations in that subsection apply only to drain piping that terminates within a building. The Department agrees with the commenter and is changing the limitations to state that licensees must install drain piping that terminates outside the building, and if the piping terminates inside the building that it may be installed by a licensee if the connection is on the inlet side of a properly installed trap.

A commenter pointed out the omission of the word, "Mechanical" in the name of the 2000 International Code. The Department agrees with the commenter and has added the word.

Comments were received from the Capitol Trade School, James Heard, Ronal C. Malek, the Southern Building Code Conference International, the Texas Apartment Association, the Texas Building Owners and Managers Association, and the Texas Mini Storage Association.

16 TAC §§75.1, 75.10, 75.20 - 75.24, 75.26, 75.30, 75.40, 75.65, 75.70, 75.80, 75.90, 75.100

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 8861 which authorizes the Commissioner of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assurance compliance with the intent and purpose of the Article.

The Article and Code affected by the adopted amendments is Texas Revised Civil Statutes Annotated, Article 8861 and Texas Occupations Code, Chapter 51.

§75.10. Definitions.

The following words and terms have the following meanings:

(1) Advertising or Advertisement-Any commercial message which promotes the services of an air conditioning and refrigeration contractor.

(2) Air conditioning and refrigeration subcontractor-A person or firm who contracts with a licensed air conditioning contractor for a portion of work requiring a license under the Act. The subcontractor contracts to perform a task according to his own methods, and is subject to the contractor's control only as to the end product or final result of his work.

(3) Air conditioning or heating unit-A stand-alone system with its own controls that conditions the air for a specific space and does not require a connection to other equipment, piping, or ductwork in order to function.

(4) Assumed name-As defined in the Business and Commerce Code, Title 4, Chapter 36, Subchapter A, Section 36.02.

(5) Biomedical Remediation-The treatment of ducts, plenums, or other portions of air conditioning or heating systems by applying disinfectants, anti-fungal substances, or products designed to reduce or eliminate the presence of molds, mildews, fungi, bacteria, or other disease-causing organisms.

(6) Boiler-As defined in the Health and Safety Code, Title 9, Subtitle A, Chapter 755.Boilers.

(7) Business affiliation-The business organization with which a licensee elects to affiliate.

(8) Cheating-Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(9) Contracting-Agreeing to perform work, either verbally or in writing, or performing work, either personally or through an employee or subcontractor.

(10) Cryogenics-refrigeration that deals with producing temperatures ranging from:

(A) -250 degrees F to Absolute Zero (-459.69 degrees F);

(B) -156.6 degrees C to -273.16 degrees C;

(C) 116.5 K to 0 K; or

(D) 209.69 degrees F to 0 degrees R.

(11) Design of a system-making decisions on the necessary size of equipment, number of grilles, placement and size of supply and return air ducts, and any other requirements affecting the ability of the system to perform the function for which it was designed.

(12) Direct personal supervision-Directing and verifying the design, installation, construction, maintenance, service, repair, alteration, or modification of an air conditioning, refrigeration, process cooling, or process heating product or equipment for compliance with mechanical integrity.

(13) Employee-An individual who performs tasks assigned to him by his employer. The employee is subject to the deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal. Simultaneous employment with a temporary employment agency, a staff leasing agency, or other employer does not affect his status as an employee.

(14) Employer-One who employs the services of others, pays their wages, deducts the required social security and federal income taxes from the employee's pay, and directs and controls the employee's performance.

(15) Full time employee-an employee who is present on the job 40 hours a week, or at least 80% of the time the company is offering air conditioning and refrigeration contracting services to the public, whichever is less.

(16) Licensee-an individual holding a license of the class and endorsement appropriate to the work performed under the Act and these rules.

(17) Permanent office-Any business location at which contractual agreements to perform work requiring a license under the Act are arranged and where supervising control for those contracts originate. Temporary construction sites or other locations at which employees of a licensee work under contract to provide service, maintenance and repair work are not permanent offices.

(18) Primary process medium-a refrigerant or other primary process fluid that is classified in the current ANSI/ASHRAE Standard 34 as Safety Group A1, A2, B1, or B2. Safety Groups A3 and B3 refrigerants are specifically excluded.

(19) Proper installation-installing air conditioning or refrigeration equipment in accordance with:

(A) applicable municipal ordinances and codes adopted by a municipality where the installation occurs;

(B) the most stringent current Uniform Mechanical Codes, Standard Mechanical Code, Standard Gas Code, International Mechanical Code, and International Fuel Gas Code in areas where no code has been adopted;

(C) the manufacturer's instructions; and

(D) all requirements for safety and the proper performance of the function for which the equipment or product was designed.

(20) Repair work-diagnosing and repairing problems with air conditioning, commercial refrigeration, or process cooling or heating equipment, and remedying or attempting to remedy the problem. Repair work does not mean simultaneous replacement of the condensing unit, furnace, and evaporator coil.

§75.20. Licensing Requirements - Application and Experience Requirements.

(a) An applicant shall submit a complete application and appropriate fees. An applicant must complete all requirements, including passing the exam, within one year of the date the application is filed.

(b) An applicant who uses credit for air conditioning and refrigeration courses to fulfill up to two years of the required 36 months of experience with the tools of the trade must furnish a copy of:

(1) a transcript or diploma showing a degree in air conditioning engineering, refrigeration engineering, or mechanical engineering;

(2) a transcript, certificate or diploma in a course emphasizing hands-on training with the tools of the trade; or

(3) transcript of courses taken without earning a certificate or diploma emphasizing hands-on training with the tools of the trade. Transcripts must be from schools authorized or approved by the Texas Workforce Commission, the U.S. Department of Education, the Coordinating Board of the Texas College & University System, or other organizations recognized by the Department. Credit will be allowed at the rate of one month credit for every two months of completed training. Thirty semester hours are equivalent to six months credit of experience. For schools issuing certificates based on classroom hours, fifteen lecture hours are equivalent to one semester hour and 30 lab hours are equivalent to one semester hour.

§75.70. Responsibilities of the Licensee and the Air Conditioning and Refrigeration Contracting Company.

(a) The licensee shall:

(1) if affiliated with a business, choose one business affiliation that will use the licensee's license;

(2) be a bona fide employee or owner of the business affiliation, and must work full time at the business affiliation, or permanent office of the business affiliation;

(3) use his license for one business affiliation and one permanent office at any given time;

(4) furnish the Department with his or her permanent mailing address and the name, physical address, and telephone number of the business affiliation; and

(5) furnish to the Department, copies of assumed name registrations.

(b) A licensee may subcontract portions of work requiring a license under the Act to unlicensed persons, firms, or corporations as long as:

(1) the licensee actively provides work or service which requires a license, either in person or with the licensee's bona fide employees;

(2) the work or service provided in person or with the licensee's bona fide employees consists of more than accepting a contract or request for service, scheduling the work, and providing supervision of the work; and

(3) the licensee is ultimately responsible to the customer for all work performed by the subcontractor.

(c) The design of a system may not be subcontracted to an unlicensed person, firm or corporation.

(d) A licensee who subcontracts with an air conditioning and refrigeration contracting company other than his own, must work under the license of the other air conditioning and refrigeration business. The work must be billed by the other air conditioning and refrigeration contracting company, and the licensee working as a subcontractor must be paid by the other company. The licensee who is the contractor is responsible for all subcontracted work.

(e) Each air conditioning and refrigeration contracting company shall have a licensee employed full time in each permanent office operated in Texas. All work requiring a license under the Act shall be under the direct personal supervision of the licensee for that office.

(f) The licensee is responsible under the Act for all work performed under his/her supervision, regardless of whether or not the owners, officers, or managers of the air conditioning and refrigeration contracting company allow the licensee the authority to supervise, train, or otherwise control compliance with the Act.

(g) If an air conditioning and refrigeration contracting company uses locations other than a permanent office, those locations shall be used only to receive instructions from the permanent office on scheduling of work, to store parts and supplies, and/or to park vehicles. These locations may not be used to contract air conditioning sales or service. The air conditioning and refrigeration contracting company shall provide the address of these other locations to the Department no later than 30 days after the locations are established or changed.

(h) A licensee may not permit a person or any company with which his or her license is not affiliated, and by whom he or she is not employed, to use his or her license for any purpose.

(i) Each licensee and air conditioning and refrigeration contracting company shall display the license number and company name in letters not less than two inches high on both sides of all vehicles used in conjunction with air conditioning and refrigeration contracting. When an unlicensed subcontractor is at a job site not identified by a marked vehicle, the site shall be identified either by a temporary sign on the subcontractor's vehicle or on a sign visible and readable from the nearest public street containing the contractor's license number and company name.

(j) All advertising by licensees and air conditioning and refrigeration contracting companies designed to solicit air conditioning or refrigeration business shall include the licensee's license number. The following advertising does not require the license number:

(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the licensee's license number;

(2) telephone book listings that contain only the name, address, and telephone number;

(3) manufacturers' and distributor's telephone book trade ads endorsing an air conditioning and refrigeration contractor;

(4) telephone solicitations, provided the solicitor states that the company is licensed by the state. The license number must be provided upon request of a consumer.

(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts;

(6) letterheads and printed forms for office use; and

(7) signs located on the contractor's permanent business location.

(k) An invoice shall be provided to the consumer for all work performed. The company name, address, and phone number shall appear on all proposals and invoices. The licensee's license number shall appear on all proposals and invoices for that office. The following information: "Regulated by The Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599" shall be listed on:

(1) proposals and invoices;

(2) written contracts; and

(3) a sign prominently displayed in the place of business if the consumer or service recipient may visit the place of business for service.

(l) A licensee or an air conditioning and refrigeration contracting company that also acts as a general contractor may provide a one-time notice stating the information above to customers for whom they provide services requiring a license under the Act.

(m) If information provided to the Department by the licensee changes, the licensee shall:

(1) notify the Department, in writing, within 30 days of any change in name, permanent mailing address, business affiliation, business location, or business telephone number; and

(2) if the information is printed on the license:

(A) return the current original license to the Department;

(B) pay the appropriate revision fee required in Section 75.80 of this title (relating to Fees); and

(C) provide a revised insurance certificate if the business affiliation name or address has changed.

(n) The permanent address shall be considered the licensee's permanent mailing address and address of record. All correspondence from the Department will be mailed to that address.

§75.100. Technical Requirements.

(a) Electrical Connections.

(1) On new construction of environmental air conditioning, commercial refrigeration, and process cooling or heating systems, licensees shall connect the appliance to the electrical line or disconnect that is provided for that purpose.

(2) Licensees may replace and reconnect environmental air conditioning, commercial refrigeration, process cooling or heating systems, or component parts of the same or lesser amperage. On replacement environmental air conditioning, commercial refrigeration, process cooling or heating systems where the electrical disconnect has not been installed and is required by the current National Electrical Code, the licensee may install a disconnect directly adjacent to or on the replacement system and reconnect the system.

(3) Control wiring of 50 volts or less may be installed and serviced by a licensee.

(4) All electrical work shall be performed in accordance with standards at least as strict as that established by the current National Electrical Code.

(b) Piping.

(1) Fuel gas piping for new or replaced environmental air conditioning, commercial refrigeration, or process cooling or heating systems may be installed by a licensee. Fuel gas piping by a licensee is limited to the portion of piping between the appliance and the existing piping system, connected at an existing shut-off valve for such use. Existing piping systems, stops, or shut-off valves shall not be altered by a licensee.

(2) Drain piping associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee if it terminates outside the building. If the piping terminates inside the building, a licensee may make the connection if the connection is on the inlet side of a properly installed trap. Such drain piping shall be installed in accordance with applicable plumbing and building codes.

(3) Mechanical piping associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee.

(c) Duct cleaning.

(1) Duct cleaning and air quality testing, including biomedical testing may be performed by an unlicensed person or company if:

(A) the task is limited to the air distribution system, from the discharge of the unit to the inlet of the unit;

(B) no cuts are made to ducts or plenums;

(C) no changes are made to electrical connections;

(D) the only disassembly of any part of the system is opening or removal of access panels or doors, return air grills, or registers that are removable without cutting or removing any other part of the system; and

(E) coils are cleaned in place and can be accessed without cutting or disassembly of any part of the system, and no biomedical remediation is performed.

(2) Biomedical testing may be performed by an unlicensed person or company. Biomedical remediation requires a license.

(d) Process Cooling and Heating.

(1) Process cooling and heating work does not include cryogenic work.

(2) Process cooling and heating is limited to work performed on piping and equipment in the primary closed loop portions of processing systems containing a primary process medium. Once a primary closed loop process system has been deactivated and rendered inert, a non-licensed person may perform repairs on piping, heat exchangers, and vessels.

(e) Standards

(1) The standard for the practice of air conditioning and refrigeration in a municipality is the code the municipality adopted by ordinance, provided that the ordinance does not make the code less strict than the 2000 edition of the code adopted.

(2) The standard for the practice of air conditioning and refrigeration in an area where no code has been adopted is the least strict applicable provision of the 2000 International Mechanical Code or the 2000 Uniform Mechanical Code.

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

Filed with the Office of the Secretary of State on February 15, 2001.

TRD-200100954
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 7, 2001
Proposal publication date: December 15, 2000
For further information, please call: (512) 463-7348

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16 TAC §75.25

The repeal is adopted under Texas Revised Civil Statutes Annotated, Article 8861, which authorizes the Commissioner of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the article

The Article and Code affected by the repeal is Texas Revised Civil Statutes Annotated, Article 8861 and Texas Occupations Code, Chapter 51.

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

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TRD-200100953
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 7, 2001
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For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) adopts amendments to §§89.1001, 89.1011, 89.1015, 89.1035, 89.1055, 89.1065, 89.1075, 89.1090, 89.1095, 89.1121, 89.1125, and 89.1131; the repeal of §§89.1020, 89.1025, 89.1030, 89.1040, 89.1045, 89.1050, 89.1060, 89.1070, 89.1085, 89.1105, 89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, and 89.1190; and new §§89.1040, 89.1045, 89.1047, 89.1049, 89.1050, 89.1056, 89.1060, 89.1070, 89.1076, 89.1085, 89.1096, 89.1150, 89.1151, 89.1165, 89.1170, 89.1180, 89.1185, and 89.1191, concerning special education services. The sections clarify federal regulations and state statutes pertaining to delivering special education services to

students with disabilities. The sections also establish definitions, requirements, and procedures related to: interagency agreements; special education funding; personnel issues; and resolution of disputes between parents and school districts. Amendments to §§89.1001, 89.1011, 89.1035, 89.1055, 89.1065, 89.1075, and 89.1131 and new §§89.1040, 89.1045, 89.1049, 89.1050, 89.1070, 89.1096, and 89.1185 are adopted with changes to the proposed text as published in the August 18, 2000, issue of the *Texas Register* (25 TexReg 7983). Amendments to §§89.1015, 89.1090, 89.1095, 89.1121, and 89.1125; the repeal of §§89.1020, 89.1025, 89.1030, 89.1040, 89.1045, 89.1050, 89.1060, 89.1070, 89.1085, 89.1105, 89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, and 89.1190; and new §§89.1047, 89.1056, 89.1060, 89.1076, 89.1085, 89.1150, 89.1151, 89.1165, 89.1170, 89.1180, and 89.1191 are adopted without changes and will not be republished.

The Individuals with Disabilities Education Act (IDEA) Amendments of 1997, was signed into law in June 1997. The final federal regulations were published by the United States Department of Education, Office of Special Education Programs, in March 1999. The IDEA Amendments of 1997 contain numerous changes to the federal law pertaining to the education of students with disabilities. In addition, during the 76th Texas Legislative Session, 1999, several new sections of special education law were added and other sections were amended. As a result of the changes to the federal special education law and regulations and state law, 19 Texas Administrative Code (TAC) Chapter 89, Adaptations for Special Populations, Subchapter AA, Special Education Services, must be amended to reflect these changes to ensure school district compliance with new procedural and reporting requirements.

The most significant issue pertaining to these adopted amendments relates to the expiration of §89.1095 and adoption of new §89.1096, relating to dual enrollment. The amendment to §89.1095 includes the expiration date of June 30, 2001. New §89.1096 includes an implementation date of July 1, 2001, and will replace §89.1095 at that time. Section 89.1095 requires school districts to serve students with disabilities placed in private schools by their parents if the student was dually enrolled in the school district and private school. The amended federal law limits the service that schools and states are obligated to provide to students placed in private schools by their parents. Adopted new §89.1096 addresses these federal regulations and limits school district responsibility to provide services under "dual enrollment" to students ages 3-5. In addition to the changes in federal law, the Texas Education Code (TEC) was amended during the legislative session in 1999 to require the commissioner to adopt rules relating to surrogate and foster parents and the transfer of assistive technology devices. As a result of these amendments to state statute, new §89.1047 and §89.1056 are adopted to reflect legislative intent.

Chapter 89, Subchapter AA, is organized to track and clarify the special education child-centered process. In addition, the subchapter contains clarification specific to the distribution and expenditure of state funds, personnel issues, due process hearings, and new state requirements regarding surrogate and foster parents and the transfer of assistive technology. The commissioner's rules ensure compliance with state statutes and federal regulations for the delivery of special education to students with disabilities, while giving districts more local control and flexibility consistent with the spirit and intent of both the executive and legislative branches of Texas state government.

Carol Francois, associate commissioner for education of special populations, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

In response to comments, the following changes have been made to the following sections since published as proposed.

Language has been added and amended in §89.1001 based on public comment and to clarify school district responsibility regarding the provision of services to students with disabilities who reside in a residential facility.

Language has been added to §89.1011 based on public comment and to clarify the need for a referral when a student continues to experience difficulty after the provision of interventions. In addition, language was added to reference the 60-day time line for the completion of the evaluation report.

A specific rule reference was added to§89.1035 to reflect amendments which had been made to §89.1070, relating to graduation.

Several additions and amendments based on public comment have been made to §89.1040. Proposed language pertaining to the responsibility of evaluation personnel was removed; specification of individuals participating in multidisciplinary teams has been modified; sections, references, and terminology errors have been corrected; language was added regarding the evaluation of students with visual impairments; language was added to reference attention deficit disorder or attention deficit hyperactivity disorder (ADD/ADHH) in the other health impairment definition; and the proposed noncategorical eligibility criteria has been removed and replaced with current rule language.

Current section title and rule language have been reinstated in §89.1045, with an updated federal citation, in response to public comment relating to notice to parents for admission, review, and dismissal committee meetings.

Language has been added and amended in §89.1049 to reflect public comment regarding the transfer of parental rights when the student turns 18 years of age. The added language establishes that the parent and the student will share parental rights.

Language has been added and amended in §89.1050 to reflect public comment regarding the admission, review, and dismissal committee process; the participation of the general education teacher; and the transfer admission, review, and dismissal committee meeting time line.

Language was added to §89.1055 to reflect public comment regarding student participation in state- and district-wide assessments and goals for extended school years services.

Language was amended in §89.1065 to reflect public comment regarding certain criteria for establishing the need for extended school year services.

Language was added and amended in §89.1070 to reflect public comment regarding graduation requirements for students with disabilities.

Language was added and amended in §89.1075 to reflect public comment relating to support for teachers in the implementation of a student's individualized education program.

Language was added to §89.1096 in response to public comment and federal responsibility regarding services to students

with disabilities who have been placed in private schools by their parents. An expiration date of June 30, 2004, has been added to this section.

Language was added to §89.1131 to reflect public comment and federal regulation pertaining to paraprofessionals. In addition, language was added to reflect reference to the correct certification and certifying entities.

Language was added to §89.1185 to reflect public comment and to clarify school district responsibility regarding the implementation of a hearing officer's order.

Comments were received regarding adoption of the amendments, repeals, and new sections.

The proposed rules were filed with the *Texas Register* in August 2000. Over 1,000 comments were received by the TEA from individuals, school district administrators, special education advocacy group, and others. The provision of services to students with disabilities placed by their parents in private schools remains a significant issue. In addition, personnel responsible for evaluation; the parent's right to request an admission, review, and dismissal (ARD) committee meeting; the transfer of parental rights when the student turns 18 years of age; criteria for extended school year services; and graduation requirements were hotly debated issues.

During the public comment period, the due process hearing procedures were also significantly debated. Many commenters have argued that the rules relating to due process hearings should include a presentment requirement that precludes an issue from being raised at a due process hearing unless it has first been raised at an ARD committee meeting. Because a presentment requirement was not included in the proposed rules, the interested parties were not on notice that the presentment issue could be considered in this rulemaking. In order to give all interested parties notice of and an opportunity to comment on a presentment requirement, a presentment requirement will be addressed in a separate rulemaking proceeding.

Four stakeholder meetings were held over 15 days. These meetings included the participation of parents, advocates, school districts, education service centers, support personnel organizations, teacher organizations, administrator organizations, and the school board association. In addition, the proposed rules were posted on the TEA website and comments were received by regular and electronic mail. Seven public hearings were also held in El Paso, Lubbock, Austin, Dallas, Houston, Corpus Christi, and Edinburg during which public comment was received. Changes based on comments from written comment and the public hearings have been incorporated into the commissioner's rules. Following is a summary of the more than 1,000 remarks received by TEA. Agency responses are provided after each comment.

Comment. Concerning §89.1001, an individual stated that they supported the proposed rule changes and thought the changes would simplify the process.

Agency Response. The agency agrees.

Comment. Concerning §89.1001, four individuals stated that they endorsed development of state rules consistent with, and not beyond, federal law.

Agency Response. The agency agrees.

Comment. Concerning §89.1001, two individuals requested that the Texas Education Agency develop a side- by-side rule document after adoption of commissioner's rules.

Agency Response. The agency agrees and intends to produce a side-by-side document.

Comment. Concerning §89.1001, four individuals stated that other regulatory agencies and state boards sometimes have policies that contradict TEA policies and that these contradictions should be identified and resolved at the state level.

Agency Response. The agency agrees and will continue to promote interagency agreements and collaboration.

Comment. Concerning §89.1001, an individual and two representatives from statewide advocacy organizations requested that the words "if the facility does not have an education program" be removed from subsection (c). They stated that the presence of a "program" at a facility does not diminish the responsibility of the local education agency and state education agency to assure free appropriate public education.

Agency Response. The agency agrees in part and additional language was added to clarify the responsibility of school districts regarding services to eligible students who reside in residential facilities.

Comment. Concerning §89.1011, six individuals, one local special education director, the Texas Special Education Continuing Advisory Committee (CAC) and five representatives from advocacy organizations requested that since §89.1030 (relating to Comprehensive Individual Assessment) has been removed from rule, language should be added here stating the 60-day timeline required by state law for completing an evaluation. They commented that failure to meet this timeline continues to be a major problem in Texas and that a clear restatement in rule is needed.

Agency Response. The agency agrees and language has been added to clarify the 60-day timeline.

Comment. Concerning §89.1011, a local special education director requested that the rule clarify "educational need that is only correctable through special education." They further stated that students who are doing well in other support programs should not be referred even with parents' request. The director commented that they are being successful and therefore it is not necessary to refer to special education.

Agency Response. The agency does not feel that this is a necessary clarification.

Comment: Concerning §89.1011, the CAC suggested the following wording, "This referral for a full and individual initial evaluation shall be initiated. School personnel, the student's parents or legal guardian, or another person involved in the education or care of the student are eligible for full and individual initial evaluation referral at any time."

Agency Response. The agency agrees in part and wording has been revised to reflect the requirement for referral after previous interventions have been unsuccessful.

Comment. Concerning §89.1011, a local special education director asked the question, "What constitutes the initiation of referral?" In addition, the director offered the following response, "Federal guidelines say when parent signs consent!"

Agency Response. The agency disagrees with this comment and believes that state statute provides a higher standard related to the initiation of referral.

Comment. Concerning §89.1011, a representative of a state advocacy organization requested that the deadline for completion of referral and evaluation report be no more than four weeks.

Agency Response. The agency disagrees. TEC, §29.004, establishes a 60-calendar day timeline.

Comment. Concerning §89.1011, four individuals stated that this section could be interpreted to read that special education services should be offered prior to evaluation. They offered the following language for clarification: "such as tutorial, remedial, compensatory, and other non-special education services."

Agency Response. The agency does not feel that this is a necessary clarification.

Comment. Concerning §89.1011, an individual stated they supported the change from assessment to evaluation.

Agency Response. The agency agrees.

Comment. Concerning §89.1011, a local special education director stated that the change from assessment to evaluation was unnecessary and would add confusion.

Agency Response. The agency disagrees. Use of the term evaluation will bring state language in line with federal regulations and it will contrast the individualized evaluation process from student assessment activities related to the state accountability system.

Comment. Concerning §89.1011, an individual stated that he thought there was a very fine line between the use of the terms "evaluation" and "assessment." In addition, the commenter offered the following question, "What is used to clarify the difference between "evaluation" and "assessment?"

Agency Response. The agency does not feel that this is a necessary clarification.

Comment. Concerning §89.1011, an individual stated he has misgivings about the change from the term, "comprehensive" to the term "full." He also believes that the use of the term "full" will be misleading. The commenter asked the following questions, "What exactly does Full mean?" Why the term Initial?" "What happens when the student has the second or third evaluation?" "Is that still an initial evaluation?" The commenter offered the following: "I propose that if Comprehensive Individual Assessment needs to be changed, then change it to Comprehensive Individual Evaluation."

Agency Response. The agency does not feel that this is a necessary clarification. The proposed changes reflect federal language to eliminate conflicting terminology.

Comment. Concerning §89.1011, an individual stated that the word "full" is kind of a flat word. This commenter prefers the term "comprehensive." The commenter offered that currently, the state uses the term comprehensive individual assessment for initial and for re-evaluations. The individual commented that using the word comprehensive allows for the term to continue to be appropriate for initial and for re-evaluations. The proposed term "full and individual initial evaluation" has the word "initial," which to the commenter seems limiting to the first evaluation that would be presented for this child.

Agency Response. The agency does not feel that this is a necessary clarification. The proposed changes reflect federal language to eliminate conflicting terminology.

Comment. Concerning §89.1011, an individual stated that the proposed use of the term "full" should be replaced be the term "complete."

Agency Response. The agency disagrees. Use of the term "full" will bring state language in line with federal regulations.

Comment. Concerning §89.1015, an individual and three representatives from advocacy organizations stated they supported the rule language as proposed.

Agency Response. The agency agrees.

Comment. Concerning §89.1020, three individuals raised concerns that the repeal of the section was unnecessary and would give the impression that written notice was not required.

Agency Response. The agency disagrees. The requirements for written parental notice before assessment are contained in federal regulations.

Comment. Concerning §89.1025, an individual raised concerns that the repeal of the section was unnecessary and would give the impression that written consent was not required.

Agency Response. The agency disagrees. The requirements for written consent for assessment are contained in federal regulations.

Comment. Concerning §89.1035, seven individuals requested clarification regarding when services should start regarding young children and the summer session.

Agency Response. The agency feels that the requirements related to initial services to young children are addressed in the adopted rule.

Comment. Concerning §89.1035, two individuals expressed the concern that this rule, relating to three-is- three, could be burdensome to small/rural school districts relating to the provision of services during the summer months and finding qualified personnel to provide such services.

Agency Response. The agency understands the concern; however, this is a federal requirement.

Comment. Concerning §89.1035, five individuals requested that language be added to the section clarifying/defining graduation for students with disabilities.

Agency Response. The agency agrees and has made appropriate changes to address the public comments received by adding reference to §89.1070(b)(1)-(2).

Comment. Concerning §89.1035, two individuals requested that Texas issue certificates of completion/attendance instead of diplomas to certain students with disabilities.

Agency Response. The agency disagrees; however, for the purposes of student eligibility, the agency has clarified which graduation methods terminate a student's eligibility to receive services.

Comment. Concerning §89.1035, an individual stated that she believes that once a student receives a regular diploma, they should not be able to return and receive services.

Agency Response. The agency agrees and has made appropriate changes to address the public comments received by adding reference to §89.1070(b)(1)-(2).

Comment. Concerning §89.1035, a local special education director proposed that §89.1035(a) define a regular high school diploma "as a diploma granted to each of those students who

have satisfactorily completed the minimum academic credit requirements for graduation applicable to students in regular education including satisfactory performance on the exit level assessment skills."

Agency Response. The agency agrees and has made appropriate changes to address the public comments received by adding reference to §89.1070(b)(1)-(2).

Comment. Concerning §89.1040, a local special education director requested that the commissioner consider adding that a child with a disability must have an educational need which is not correctable without special education.

Agency Response. The agency does not feel that this is a necessary clarification.

Comment. Concerning §89.1040, a representative of an advocacy organization stated that they supported the alignment of the state eligibility definitions with the federal definitions.

Agency Response. The agency agrees.

Comment. Concerning §89.1040, seventy-one individuals commented that eligibility determination for attention deficit disorder or attention deficit hyperactivity disorder (ADD/ADHD) should include medical professionals in addition to school evaluation professionals.

Agency Response. The agency agrees and has made appropriate changes to address the public comments received.

Comment. Concerning §89.1040, an individual stated that if the amended section is adopted, licensed specialists in school psychology (LSSP) and educational diagnosticians (ED) will need training from the education service centers.

Agency Response. The agency agrees.

Comment. Concerning §89.1040, forty individuals stated that the rules should more clearly state which type of professionals should conduct which evaluations.

Agency Response. The agency agrees in part. However, the agency wishes to allow local districts to make decisions based on qualifications and credentials of evaluation personnel conducting evaluations for the school district.

Comment. Concerning §89.1040, thirty-nine individuals stated that the diagnosis of autism should be done by a LSSP with specific training in autism. In addition, the commenter offered that licensed speech language pathologist should also participate in making the autism diagnosis.

Agency Response. The agency agrees in part. However, the agency wishes to allow local districts to make decisions based on qualifications and credentials of evaluation personnel conducting evaluations for the school district.

Comment. Concerning §89.1040, fifty-two individuals stated that the diagnosis of emotional disturbance should be done by a LSSP and conform to Texas State Board of Examiners of Psychology (TSBEP) rules and best practices.

Agency Response. The agency agrees in part. However, the agency wishes to allow local districts to make decisions based on qualifications and credentials of evaluation personnel conducting evaluations for the school district.

Comment. Concerning §89.1040, an individual stated that the diagnosis of mental retardation should include a definition of the developmental nature of the eligibility criteria.

Agency Response. The agency agrees in part. However, the purpose of these proposed rules was not to make significant changes in eligibility criteria. The agency does recognize the need to convene a task force to study the current eligibility requirements for all eligibility areas.

Comment. Concerning §89.1040, sixty individuals stated that the diagnosis of autism (AU), ED, and ADD/ADHD should be done by a LSSP and not by other professionals, such as educational diagnosticians.

Agency Response. The agency wishes to allow local districts to make decisions based on qualifications and credentials of evaluation personnel conducting evaluations for the school district.

Comment. Concerning §89.1040, twelve individuals stated that trained and knowledgeable professionals, such as educational diagnosticians and LSSPs, should conduct the diagnosis of AU and ADD/ADHD.

Agency Response. The agency wishes to allow local districts to make decisions based on qualifications and credentials of evaluation personnel conducting evaluations for the school district.

Comment. Concerning §89.1040, twelve individuals stated that the diagnosis of Traumatic Brain Injury should be done by a LSSP.

Agency Response. The agency wishes to allow local districts to make decisions based on qualifications and credentials of evaluation personnel conducting evaluations for the school district.

Comment. Concerning §89.1040, an individual stated that the definition/eligibility criteria of learning disability should be updated to current best practice.

Agency Response. The agency agrees in part. However, the purpose of these proposed rules was not to make significant changes in eligibility criteria. The agency does recognize the need to convene a task force to study the current eligibility requirements for all eligibility areas.

Comment. Concerning §89.1040, fourteen individuals stated that LSSPs need to participate in the evaluation process.

Agency Response. The agency wishes to allow local districts to make decisions based on qualifications and credentials of evaluation personnel conducting evaluations for the school district.

Comment. Concerning §89.1040, two individuals stated that they supported the rules as proposed.

Agency Response. The agency agrees in part. However, amendments were made to the proposed rules to reflect public comment where appropriate.

Comment. Concerning §89.1040, an individual requested that any clinician licensed by TSBEP be able to provide services in the school setting.

Agency Response. The agency disagrees because this would be a violation of state statute and TSBEP administrative rules.

Comment. Concerning §89.1040, an individual requested clarification of the term "belief" in subsection (c)(13)(B).

Agency Response. The agency has revised the rule to eliminate the wording in question.

Comment. Concerning §89.1040, an individual requested that the commissioner add developmental delay to the list of eligibility criteria.

Agency Response. The agency agrees in part; however, the purpose of these proposed rules was not to make significant changes in eligibility criteria. The agency recognizes the need to convene a task force to study the current eligibility requirements for all eligibility areas, including developmental delay.

Comment. Concerning §89.1040, an individual requested state standards to prevent diagnosis by private psychologists as being the benchmarks instead of a multidisciplinary team decision.

Agency Response. The agency feels that the adopted rule adheres to federal law requirements that a knowledgeable group of professionals conduct the evaluation.

Comment. Concerning §89.1040, an individual identified two erroneous references in subsection (c)(2).

Agency Response. The agency agrees and the references have been corrected.

Comment. Concerning §89.1040, an individual and two representatives of an advocacy organization offered support for the proposed language relating to auditory impairment.

Agency Response. The agency agrees.

Comment. Concerning §89.1040, an individual requested that the changes made at subsection (c)(3), relating to auditory impairment, also be made in other sections of the subchapter to ensure that students with mild hearing impairments don't fall through the cracks.

Agency Response. The agency agrees in part. However, the purpose of these proposed rules was not to make significant changes in eligibility criteria. The agency does recognize the need to convene a task force to study the current eligibility requirements for all eligibility areas.

Comment. Concerning §89.1040, an individual stated that a communication assessment must be completed; however, the individual could not find reference to the assessment in the rule.

Agency Response. The requirements for a communication evaluation are contained in federal regulations.

Comment. Concerning §89.1040, an individual recommended that the mental retardation definition should be changed to read, "of general ability and verbal ability or either performance or nonverbal ability." In addition, the individual recommended changing the eligibility standard from "two or more standard deviations" to "general intellectual functioning level is approximately 70-75 or below."

Agency Response. The agency agrees in part. However, the purpose of these proposed rules was not to make significant changes in eligibility criteria. The agency does recognize the need to convene a task force to study the current eligibility requirements for all eligibility areas.

Comment. Concerning §89.1040, two individuals and five representatives from advocacy organizations requested that a reference to ADD/ADHD be added to the other health impairment (OHI) definition.

Agency Response. The agency agrees and adopted rules have been revised to reflect the suggested wording.

Comment. Concerning §89.1040, an individual recommended that "except as provided in subsection (b)(1) of this section" be deleted from subsection (c)(8).

Agency Response. The agency agrees and changes were made to reflect public comment.

Comment. Concerning §89.1040, a representative of a statewide Learning Disability organization supported rule language in subsection (c)(9)(B).

Agency Response. The agency agrees.

Comment. Concerning §89.1040, an individual recommended changing the category title from "speech impairment" to "speech/language impairment" as a helpful clarification for parents.

Agency Response. The agency does not feel that this is a necessary clarification.

Comment. An individual recommended that a reference to the multidisciplinary team be added to subsection (c)(12). In addition, the individual recommended that the commissioner add language to subsection (c)(12)(A) to specify that the visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye "in a report by a licensed ophthalmologist or optometrist."

Agency Response. The agency agrees in part and revisions to the proposed rule were made to incorporate language relating to the evaluation report.

Comment. Concerning §89.1040, nine individuals stated that they supported the expansion of the noncategorical early childhood (NCEC) age range, but requested clarification of the term "belief" in subsection (c)(13)(B).

Agency Response. The agency agrees in part, and wording in subsection (c)(13)(B) has been removed. However, NCEC age ranges have been restored to ages 3-5.

Comment. Concerning §89.1040, an individual stated that they supported rule language at subsection (c)(13)(B).

Agency Response. The agency has removed this language based on public comment.

Comment. Concerning §89.1040, twenty-five individuals requested that the commissioner limit NCEC to ages 3-5.

Agency Response. The agency agrees and has incorporated this revision into the adopted rule.

Comment. Concerning §89.1040, twenty-four individuals stated that the rule language in subsection (c)(13)(B) was too vague and should be eliminated.

Agency Response. The agency agrees. The agency has removed this language based on public comment.

Comment. Concerning §89.1040, nineteen individuals recommended that the commissioner change the word "belief" to "support."

Agency Response. The agency has removed this language based on public comment.

Comment: Concerning §89.1040, the CAC recommended that language conform to the federal language in relation to establishing eligibility for young children with disabilities and indicated concerns with use of the word "belief."

Agency Response. The agency agrees in part and has reworded the section. However, the agency will revert to a previous standard for determining students to be eligible under the NCEC category.

Comment. Concerning §89.1040, four individuals and three representatives from an advocacy organization support NCEC, but recommend that the commissioner use developmental delay.

Agency Response. The agency agrees in part. However, the purpose of these proposed rules was not to make significant changes in eligibility criteria. The agency does recognize the need to convene a task force to study the current eligibility requirements for all eligibility areas.

Comment. Concerning §89.1040, five individuals recommend that NCEC should not stand alone and continue to be optional.

Agency Response. The agency agrees in part and disagrees in part. Use of the category NCEC will continue to be optional; however, the agency believes inclusion of the NCEC category provides local flexibility for ARD committees in the assignment of disabling conditions to young children with disabilities.

Comment. Concerning §89.1040, an individual suggested that the commissioner eliminate NCEC.

Agency Response. The agency disagrees. The agency believes inclusion of the NCEC category provides local flexibility for ARD committees in the assignment of disabling conditions to young children with disabilities.

Comments. Concerning the repeal of §89.1045, an individual and the CAC requested that the rule language from the proposed repeal be reinstated.

Agency Response. The agency agrees. The current section title and rule language have been reinstated in the new §89.1045, with an updated federal citation.

Comment. Concerning new §89.1045, six individuals and seven representatives from advocacy organizations opposed the addition of "addressing and resolving the parent's concerns through an alternative process."

Agency Response. The agency has addressed this concern by replacing the proposed language with the current language that includes an updated federal citation.

Comment. Concerning new §89.1045, ten individuals requested that the commissioner establish a timeline definition for "reasonable time" when parents request an ARD committee meeting.

Agency Response. The agency has addressed this concern by replacing the proposed language with the current language that includes an updated federal citation.

Comment. Concerning new §89.1045, sixteen individuals recommended that the commissioner eliminate the proposed rule language and adopt the federal requirement.

Agency Response. The agency has addressed this concern by replacing the proposed language with the current language that includes an updated federal citation.

Comment. Concerning new §89.1045, ten individuals stated that they support the proposed rule.

Agency Response. The agency responded to public comment by replacing the proposed language with the current language that includes an updated federal citation.

Comment. Concerning §89.1047, a representative of the Texas State Foster Parent, Inc., requested that a timeline be placed on districts regarding when a district notifies the foster parent that the district is denying the foster parent the right to serve as the surrogate.

Agency Response. The agency does not believe that additional clarification is necessary since the adopted rule states that notice must be provided within seven calendar days to foster parents denied the opportunity to serve as a surrogate or parent.

Comment. Concerning §89.1047, three individuals and a local special education director requested clarification regarding when district employees may serve as foster parents.

Agency Response. The agency will provide additional clarification regarding surrogate parents through the education service centers.

Comment. Concerning §89.1047, an individual and three representatives of advocacy organizations suggested that the training required under this rule should be open to all parents in the district. In addition, they also recommended that the 90-day timeline for training be reduced to 30 days.

Agency Response. The agency agrees in part. Nothing in the rules will prevent a district from providing training to all parents. The agency disagrees with shortening the timeline for training.

Comment. Concerning §89.1047, the CAC recommended that the training be available to all parents. They commented that nothing in the rules will prevent a district from providing training to all parents.

Agency Response. The agency does not feel that this clarification is necessary.

Comments. Concerning §89.1047, an individual recommended that the 90-day time line for training be reduced to 60 days.

Agency Response. The agency disagrees with shortening the timeline for training.

Comment. Concerning §89.1047, two individuals commented that requirements from TEC, §29.015(b)(1)-(2), should be added to subsection (b).

Agency Response. The agency does not feel that this is a necessary clarification.

Comment. Concerning §89.1047, nine individuals request clarification regarding TEA's responsibility in developing training.

Agency Response. The agency does not feel that this is a necessary clarification. Content of the training is addressed in the rule.

Comment. Concerning §89.1047, six individuals questioned how the rule will be monitored and whether training in one district will be honored in another district.

Agency Response. The agency agrees and further guidance will be forthcoming through the education service centers.

Comment. Concerning §89.1047, eight individuals requested a grandfather clause exempting training participation for those who were trained prior to the effective date of the rule.

Agency Response. The agency disagrees. The rule and related statute specify particular training content and no assurance can be made that training provided prior to implementation of this rule covered all required content.

Comment. Concerning §89.1047, two individuals recommended deleting proposed subsection (d) regarding notification to a foster parent of denial for the right to serve as a surrogate parent.

Agency Response. The agency disagrees. Deletion of subsection (d) would not provide adequate notice to foster parents of their rights to complaint proceedings.

Comment. Concerning §89.1047, fourteen individuals requested clarification regarding the conflict of interest provision in the proposed rule since the current rule eliminates any likely conflict in the State of Texas.

Agency Response. Further guidance will be forthcoming through the education service centers.

Comment. Concerning §89.1047, a local special education director opposed the proposed rules beyond a single child foster home. The special education director requested additional clarification of conflict of interest relating to group foster facilities.

Agency Response. Further guidance will be forthcoming through the education service centers.

Comment. Concerning §89.1047, four individuals recommended that if a surrogate refuses to participate in the training, they couldn't serve as a surrogate.

Agency Response. The agency agrees and the rules reflect the requirement for training.

Comment. Concerning §89.1047, two individuals recommended that the training should be provided by the education service centers.

Agency Response. The agency will provide guidance regarding the sources of surrogate parent training.

Comment. Concerning §89.1049, an individual recommended that state law needs to change or be clarified so parental rights transfer at age 18.

Agency Response. The agency agrees.

Comment. Concerning §89.1049, forty-four individuals and five advocacy organizations opposed the proposed rule as written, because the language creates serious legal issues by not transferring parental rights when the student turns 18 years of age. They commented that if the rule is adopted, additional clarification will be necessary.

Agency Response. The agency agrees in part and has made revisions to the adopted rule to reflect public comment in part.

Comment. Concerning §89.1049, five individuals and a representative from a parent/professional organization supported the rules as proposed.

Agency Response. The agency agrees in part but has made revisions to the proposed rule to reflect public comment in part.

Comment. Concerning §89.1049, ten individuals questioned whether the rule language means that students with disabilities no longer have the right to attend the ARD meeting, provide consent, etc.

Agency Response. The agency will provide guidance to the education service centers related to the rule.

Comment. Concerning §89.1050, an individual supported the use of the term "ARD Committee" instead of "IEP Team."

Agency Response. The agency agrees.

Comment. Concerning §89.1050, an individual suggested replacement of the term ARD committee with school district in subsection (a).

Agency Response. The agency agrees.

Comment. Concerning §89.1050, an individual requested that a side-by-side document be developed after the rules are adopted.

Agency Response. The agency agrees and a side-by-side document will be developed.

Comment. Concerning §89.1050, two individuals supported the clarification that consent is not necessary when sending or receiving student records.

Agency Response. The agency agrees.

Comment. Concerning §89.1050, an individual requested that language be added to the last sentence in subsection (f) to allow for extenuating circumstances that may prevent the sending district's providing student records within 30 days.

Agency Response. The agency disagrees. State statute requires compliance with the 30-day period.

Comment. Concerning §89.1050, five individuals, the CAC, and four representatives of parent/advocacy organizations opposed subsection (c) as written because the subsection does not contain reference to the participation of the general education teacher in the ARD committee process/meeting.

Agency Response. The agency agrees and made the suggested changes.

Comment. Concerning §89.1050, an individual raised concerns about subsection (h) regarding teacher/school personnel disagreement with the ARD committee decision and whether the 10-day recess applies.

Agency Response. The 10-day recess does not apply to school personnel's disagreement with ARD decisions.

Comment. Concerning §89.1050, six individuals, a state representative, the CAC, and eight representatives from advocacy organizations commented that the proposed rule language in subsection (e) should be amended to include the following, "In the event the child's parents are unable to speak English…." to assist in clarifying district responsibility. In addition, they requested the term "good-faith efforts" be defined.

Agency Response. The agency disagrees with adding the suggested language regarding district responsibility because requirements are defined in the Texas Education Code and such an addition would expand the statutory requirement. The agency does not feel it is necessary to define "good-faith efforts."

Comment. Concerning §89.1050, twenty-five individuals and the CAC opposed the proposed rule language in subsection (f) referencing "student enrollment" instead of "first ARD committee meeting" as the starting point for conducting transfer ARD committee meetings.

Agency Response. The agency agrees and made the suggested change.

Comment. Concerning §89.1050, an individual suggested that records should be sent within 20 calendar days.

Agency Response. The agency disagrees. State law defines the timeline as 30 days.

Comment. Concerning §89.1050, an individual suggested that records should be sent to the new district 30 days after the old district receives notice from the new district instead of 30 days from when the student enrolls.

Agency Response. The agency disagrees. State law specifies the timeline as 30 days after enrollment.

Comment. Concerning §89.1055, an individual recommended that rule language addressing positive behavioral supports and functional behavior assessment should be added to the proposed rules.

Agency Response. This requirement is addressed in federal regulation.

Comment. Concerning §89.1055, three individuals and three representatives from parent/advocacy organizations are opposed to subsection (a) as written. Specifically, they are opposed to the removal of subsection (a)(2) relating to the student's participation in state- and district-wide assessments. Their rationale for reinstating (a)(2) is based on the new federal requirements relating to student participation in state- and district- wide assessments and the new alternative assessment, which will be administered for the first time in April 2001.

Agency Response. The agency agrees and the proposed rule was revised.

Comment. Concerning §89.1055, twenty-two individuals, the CAC, and four representatives from parent/advocacy organizations requested the addition of the phrase "from the student's current IEP" to the end of subsection (b) in relation to extended school year services goals and objectives.

Agency Response. The agency agrees and the proposed rule was revised. Proposed subsection (b) has become subsection (c) as a result of the insertion of a new subsection (b).

Comment. Concerning §89.1055, an individual requested the elimination of subsections (d) and (e) relating to additional consideration items for students with autism/pervasive developmental disorders.

Agency Response. The agency disagrees. This section was opened only for the purposes of reordering the rules. The agency did not propose changes to these areas.

Comment. Concerning §89.1056, an individual commented that TEA should develop procedures or guidelines to assist districts with the transfer process.

Agency Response. The agency agrees. Clarification regarding requirements will be provided through the education service centers.

Comment. Concerning §89.1056, three individuals commented that TEA should clarify that assistive technology (AT) devices belong to the school district and any transfer of the device must be agreed to by the school district.

Agency Response. The agency does not feel that this clarification is necessary.

Comment. Concerning §89.1056, an individual and six parent/advocacy organizations supported the rule as proposed.

Agency Response. The agency agrees.

Comment. Concerning §89.1056, four individuals questioned the need for this section, since it is not required.

Agency Response. This rule was developed based on requirements of state statute.

Comment. Concerning §89.1056, an individual questioned the need for parental consent.

Agency Response. This rule was developed based on requirements of state statute.

Comment. Concerning §89.1056, two individuals questioned the amount of "sale" and whether this applies to any price or just over a certain amount. The individuals also questioned when the uniform transfer agreement (UTA) is required.

Agency Response. Clarification will be provided through the education service centers.

Comment. Concerning §89.1060, an individual requested that the Texas Education Agency provide a definition of occupational therapy and physical therapy.

Agency Response. The agency does not feel that this clarification is necessary.

Comment. Concerning §89.1065, a representative from a parent/advocacy organization opposed the continuation of using a regression/recoupment standard. In addition, they commented that funding reimbursement should not be limited to the regression/recoupment criteria.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Concerning §89.1065, an individual recommended changing proposed rule language to "significant loss of skills necessary for the student to appropriately progress toward achieving the goals set out in the student's IEP for which he cannot recoup within the normal amount of time needed for students being served in the general education curriculum."

Agency Response. The agency agrees in part and has made revisions to the rule language.

Comment. Concerning §89.1065, two individuals suggested that the extended school year (ESY) decision system is becoming too vague and offered that ESY services should be for students who have demonstrated regression and this need should be documented.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Concerning §89.1065, three individuals supported proposed language in paragraph (1)(A) and (B).

Agency Response. The agency agrees.

Comment. Concerning §89.1065, two individuals opposed paragraphs (1) and (2) because the proposed rule language maintains the regression/recoupment standard.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Concerning §89.1065, an individual and two representatives from parent/advocacy organizations opposed paragraphs (2) and (3) because the proposed rule language maintains the regression/recoupment standard.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Concerning §89.1065, three individuals and three representatives from parent/advocacy organizations oppose paragraph (4) because the proposed rule language maintains the regression/recoupment standard.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Concerning §89.1065, seven individuals opposed paragraph (4)(B) because it is too vague, goes beyond intent of regression/recoupment standard, and will require full ESY funding to implement. They recommend the following wording, "significant loss of skills necessary for the student to appropriately progress toward achieving the goals set out in the student's IEP."

Agency Response. The agency agrees in part and has revised rule language to reflect consideration for loss of skills. Wording related to progress toward goals set in the student's IEP goes beyond intent of ESY services.

Comment. Concerning §89.1065, two individuals and three representatives from a parent/advocacy organization supported paragraph (4)(B), but opposed paragraph (4)(A) and (C)-(E) because the proposed rule language maintains the regression/recoupment standard.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Ten individuals opposed paragraph (4)(B) because it is too vague, goes beyond intent of regression/recoupment standard, and will require full ESY funding to implement.

Agency Response. The agency agrees in part and has revised rule language.

Comment. Concerning §89.1065, an individual supported (4)(B).

Agency Response. The agency has revised rule language based on public comment.

Comment. Concerning §89.1065, the CAC suggested rewording of paragraph (4)(B) to reflect that the ESY services are not for advancing skills, but for maintenance.

Agency Response. The agency has revised rule language based on public comment.

Comment. Concerning §89.1065, an individual recommended that the state adopt the federal regulation pertaining to ESY.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Concerning §89.1065, an individual and a representative from a parent/advocacy organization opposed paragraph (6) because the proposed rule language maintains the regression/recoupment standard.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Concerning §89.1065, four individuals and four representatives from parent/advocacy organizations opposed paragraph (9) because the proposed rule language maintains the regression/recoupment standard and does not allow for reimbursement for other types of determination of ESY services.

Agency Response. The purpose of the proposed amendment to this section was to update the terminology and reference to extended school year services and not to make significant changes to related issues. The agency recognizes the need to convene a task force to study issues surrounding extended school year services.

Comment. Concerning §89.1070, five individuals requested that the commissioner define a regular high school diploma "as a diploma granted to a student who has satisfactorily completed the minimum academic credit requirements for graduation applicable to students in general education, including satisfactory performance on the exit level assessment instrument."

Agency Response. The agency agrees in part and has made changes to this section.

Comment. Concerning §89.1070, two individuals requested that the commissioner add the language to reflect that for students who graduate according to subsection (2)(C)(3) of this subsection, the ARD committee shall determine whether educational services will be resumed upon the request of the student or parent, as appropriate, so long as the student meets the age eligibility requirements.

Agency Response. The agency agrees in part and has made changes to this section.

Comment. Concerning §89.1070, four individuals requested that the rule language list the requirements of state statute, instead of just a reference to the code.

Agency Response. The agency does not feel this is necessary.

Comment. Concerning §89.1070, an individual states that this section offers helpful clarification.

Agency Response. The agency agrees in part but has made changes to this section.

Comment. Concerning §89.1070, an individual commented that subsection (c) sets no standard and that there are grammatical problems with this section.

Agency Response. The agency has made changes to this section.

Comment. Concerning §89.1070, four individuals commented that the term "retain" relative to employment is vague.

Agency Response. The agency disagrees. The agency believes that local education agencies will be able to determine whether students with disabilities are able to retain employment based on follow-up queries to determine the employment status of individuals.

Comment. Concerning §89.1070, four individuals commented that reference to TEC, §39.024, does not state clearly how a student would then graduate.

Agency Response. Additional clarification will be provided through the education service centers.

Comment. Concerning §89.1070, five individuals commented that receipt of a certificate or credential does not terminate entitlement to special education services, but makes no reference to where educational services would then be rendered. A high school setting is not appropriate.

Agency Response. Additional clarification will be provided through the education service centers.

Comment. Concerning §89.1070, an individual stated that students need to have minimum credits or criteria, such as attend high school four years or be age appropriate for graduation.

Agency Response. Additional clarification will be provided through the education service centers.

Comment. Concerning §89.1070, eleven individuals, Advocacy, Inc., and the Disability Policy Consortium commented that they feel too much discretion is left to the districts in determining whether to allow students with disabilities to participate in graduation ceremonies with their peers, while receiving a certificate other than a diploma and being able to return for additional services. Other language was proposed (by Advocacy and supported by most commenters) requiring the decision to be an ARD committee decision setting a statewide standard rather than local control. These commenters also agreed that participation in graduation ceremonies with peers even though graduation requirements had not yet been met was appropriate and several expressed appreciation for the attempt to address it in rule.

Agency Response. The agency disagrees in part. However, proposed changes regarding participation in graduation ceremonies have been removed from the adopted rule.

Comment. Concerning §89.1070, four individuals commented that students with disabilities should be allowed to participate in graduation ceremonies with peers even though graduation requirements had not yet been met, receive a certificate other than a diploma, and be able to return to the school district for additional special education services.

Agency Response. The agency agrees and has addressed these issues in the changes.

Comment. Concerning §89.1070, two individuals stated subsection (f) relating to participation in graduation ceremonies should be deleted.

Agency Response. The agency has revised the rules to address this issue.

Comment. Concerning §89.1070, an individual commented that schools should have their own policy on graduation.

Agency Response. The agency agrees that this may be appropriate within the context of administrative code and has modified the section.

Comment. Concerning §89.1070, an individual commented that more clarification is needed on when a certificate is granted and what the certificate should say.

Agency Response. The agency agrees in part and has removed the rule language related to issuance of a certificate.

Comment. Concerning §89.1070, seven individuals were against allowing students with disabilities to participate in graduation ceremonies and receive a certificate other than a diploma because it would either invalidate efforts to include students and/or would result in the likelihood of students with disabilities not returning to complete graduation requirements. Several commenters related participation in a graduation ceremony to social promotion. Additionally it was expressed that participation in graduation should indicate a conclusion/completion of requirements thereby terminating entitlement to special education services.

Agency Response. This issue has been addressed in rule changes. The rule has been modified in response to public comment.

Comment. Concerning §89.1070, an individual states we should just use a diploma to indicate graduation and reflect what had been completed in the AAR.

Agency Response. The agency agrees in part and changes have been made to reflect public comment.

Comment. Concerning §89.1070, an individual requested the addition of wording relating to the exception of age eligibility to §89.1070 (as per §89.1035 relating to Age Ranges for Student Eligibility).

Agency Response. The agency agrees and has modified the section to include wording related to age eligibility requirements.

Comment. Concerning §89.1070, an individual commented that wording on aging from current §89.1070(6) should be left in new rules.

Agency Response. The agency agrees and rules have been revised to incorporate language regarding age eligibility requirements into §89.1070(d).

Comment. Concerning §89.1075, an individual requested that language be added to subsection (c) regarding federal requirements specific to the support of teachers and the implementation of the IEP. In addition, this same individual requested clarification of the timeline for providing parents of students with disabilities notice of student progress.

Agency Response. The agency agrees with the comment relating to teachers' implementation of the IEP, and the section has been revised. The agency removed the parental notification wording in this section as this requirement already is reflected in federal regulations.

Comment. Concerning §89.1076, three statewide advocacy groups and six individuals opposed these rules stating they are weak and will not encourage districts that are out of compliance to change. Seven of the nine commented about the lack of timelines. Six were concerned that public release of information would be a sanction when in fact it was a part of the public's right to know and should be made public for all schools. Six commented on the fact that of the eleven items listed only

one (withholding funds) was truly a sanction. The rest were interventions that are already a part of the monitoring process. They stated that only sanctions, not interventions, should be part of the rule. Four of the nine wanted sanctions comparable to those for accreditation sanctions in TEC, §39.13, which are ranked in order of severity and state clearly the actions to be taken by the school and the agency.

Agency Response. The agency disagrees and has the authority to determine interventions and sanctions necessary to ensure compliance with IDEA.

Comment. Concerning §89.1076, three special education directors opposed sanctions in paragraphs (3), (7), and (9) stating they exceed the scope of the complaints process and overlap the due process system. They commented that to implement the entire list of possible interventions and sanctions would render a relatively useless role to the due process hearings as they now stand.

Agency Response. The agency disagrees and has the authority to determine interventions and sanctions necessary to ensure compliance with IDEA.

Comment. Concerning §89.1085, an individual requested clarification of the meaning and implications of the use of the words "may place" instead of "may refer" in 89.1085(a).

Agency Response. The agency does not feel that this clarification is necessary.

Comment. Concerning §89.1095, an individual stated that this section was confusing. He requested clarification in the area of special education transportation.

Agency Response. Additional clarification will be forthcoming through the education service centers.

Comment. Concerning §89.1095, two individuals, two local special education directors, and a principal stated that they supported the change. They felt that following more closely with federal guidelines reduces undue hardship on the school system. One individual asked, "Could it be implemented January 1, 2001?"

Agency Response. The agency agrees in part but the implementation timeline will stand in conformance with agency procedure.

Comment. Concerning §89.1095, the CAC recommended the retention of the dual enrollment provision.

Agency Response. The agency disagrees. Federal requirements limit the responsibility of local education agencies related to the provision of special education services to students with disabilities placed by their parents in private schools.

Comment. Concerning §89.1095, a parent providing home school services to a child with a disability stated that the changes in dual enrollment provisions will deny the child with disabilities valuable services, to which they are entitled, through the school district.

Agency Response. The agency disagrees. Federal requirements limit the responsibility of local education agencies related to the provision of special education services to students with disabilities placed by their parents in private schools.

Comment. Concerning §89.1095, two individuals stated that dual enrollment needs to be deleted as an option. They stated that it goes beyond the intent of the federal law and that it has fiscal impact on school districts. They said, "Private schools should only be entitled to proportional share as outlined in IDEA."

Agency Response. The agency agrees.

Comment. Concerning §89.1095, six individuals stated that they are against the changes in dual enrollment. They stated that they are worried the state is eliminating, or drastically reducing, much needed special education services for children in private schools. One stated that, "… public schools will always need more money, but this is not where it should come from."

Agency Response. The agency disagrees in part and refers to federal requirements in this area.

Comment. Concerning §89.1095, parents of a hearing impaired child stated that they are against the changes in dual enrollment. They have the impression that it is a money issue for schools. They felt that if schools were held accountable for helping children with hearing impairments to reach their full potential and could provide successful programming, parents would not have to consider private school placements. They stated that it is discriminating against special populations.

Agency Response. The agency disagrees. Federal requirements limit the responsibility of local education agencies related to the provision of special education services to students with disabilities placed by their parents in private schools.

Comment. Concerning §89.1095, an individual supported subsection (a) establishing the expiration date of June 30, 2001.

Agency Response. The agency agrees.

Comment. Concerning §89.1096, a special education director stated that keeping dual enrollment for children with disabilities ages 3-5 would put undue financial burdens on small school districts that contract with related service personnel. They commented that the federal government has chosen to cap the numbers. Yet, since the cap was put into effect, their special education numbers have increased 13%. They stated that there needs to be a way to fund small school districts that do not have related service personnel on permanent staff.

Agency Response. The agency disagrees. However, an expiration date has been added to the rule wording, which will bring state requirements in line with federal requirements effective June 30, 2004. Until the expiration date, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities.

Comment. Concerning §89.1096, a special education director stated that it was very appropriate to continue to have dual enrollment available to children with disabilities ages 3-5.

Agency Response. The agency agrees in part. However, an expiration date has been added to the rule wording. Until the expiration date of June 30, 2004, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities.

Comment. Concerning §89.1096, fourteen individuals stated that this was a significant improvement, as it will give some relief

in providing services to home/private school students. They felt that by being able to provide specific services; yet, not having the responsibility for daily supervision and creative programming, there was a more varied continuum of placement services providing a free and appropriate public education. One said, "…the flexibility of dual enrollment with 3- and 4-year-old students would go a long way in fostering a very good, positive working relationship with parents in those early stages…"

Agency Response. The agency agrees in part. However, an expiration date has been added to the rule wording. Until the expiration date of June 30, 2004, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities. The provision of a wide continuum of services will foster a positive working relationship with parents.

Comment. Concerning §89.1096, a special education director and an individual stated it was fairly unsuccessful to attempt to provide services under the current dual enrollment. They supported following federal regulations without additions by TEA.

Agency Response. The agency agrees in part. However, a higher state standard for students ages 3-5 will be in place until June 30, 2004. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities.

Comment. Concerning §89.1096, three attorneys stated that the dual enrollment provisions exceed the agency's rule-making authority and that they will require a significant expenditure of money for the school district. They said, "It's unfair to impose this financial obligation on school districts without going through the legislative process." They urged that this issue go through the legislative process and be presented as state law. They have concerns about how districts are supposed to implement dual enrollment without clear guidelines. They agree with the provision that says if a parent objects to aspects of dual enrollment services, it should be presented as a TEA complaint, rather than a due process hearing. They stated that there should be added language that says if parents file for hearing challenging the district's free appropriate public education offer, that they cannot introduce evidence pertaining to the implementation of dual enrollment services to support their claim for reimbursement or prospective private services.

Agency Response. The agency agrees in part. An expiration date has been added to the rule wording, which will bring state requirements in line with federal requirements effective June 30, 2004. Until the expiration date, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities. Due to proposed expiration of this section, the agency does not feel it is necessary to add language regarding hearing challenges on dual enrollment.

Comment. Concerning §89.1096, five individuals stated that they were against the proposed changes included in this section. The following reasons were listed: 1) Private school parents pay their full share of property taxes and their children should have access to special education, 2) Reducing services to special needs children is bad for the community in the long run because medical conditions go untreated, 3) The federal law is just the minimum that a state or local district must do, 4) There may be higher cost to public schools, and 5) It is hard to be accountable for preschool children in a private facility.

Agency Response. The agency understands these concerns. However, state requirements will be brought in line with federal requirements effective June 30, 2004. Until the expiration date, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities.

Comment. Concerning §89.1096, an individual stated that tax funds for special education services should be available to all students including students who do not attend public schools.

Agency Response. The agency disagrees. An expiration date has been added to the rule wording, which will bring state requirements in line with federal requirements effective June 30, 2004. Until the expiration date, a higher state standard will apply related to dual enrollment for students ages 3-5. However, after the expiration date, the state will implement the federal standard and will not impose a higher standard.

Comment. Concerning §89.1096, two advocacy groups and a Head Start program strongly supported the changes and appreciated the continued availability of dual enrollment for children three to four years old. They stated that due to the lack of integrated preschool opportunities in many Texas public schools, it is essential to have this provision.

Agency Response. The agency agrees in part. However, an expiration date has been added to the rule wording, which will bring state requirements in line with federal requirements effective June 30, 2004. Until the expiration date, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities.

Comment. Concerning §89.1096, twelve individuals stated that they strongly supported dual enrollment for three to four year olds. They also stated that school districts should understand their responsibility of providing the full continuum of placement options including integrated settings in community preschool programs.

Agency Response. The agency agrees in part. However, an expiration date has been added to the rule wording, which will bring state requirements in line with federal requirements effective June 30, 2004. Until the expiration date, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities.

Comment. Concerning §89.1096, an individual stated that this provision aligns Texas with federal regulations and will provide clear direction for parents and school staff.

Agency Response. The agency agrees in part. After the June 30, 2004, expiration date, state requirements will align with federal requirements.

Comment. Concerning §89.1096, three individuals stated that they supported the section as proposed.

Agency Response. The agency agrees in part. However, an expiration date has been added to the rule wording. After the June 30, 2004, expiration date, state requirements will align with federal requirements.

Comment. Concerning §89.1096, nineteen individuals stated that they are against this dual enrollment for preschool students because it is a burden not required by IDEA, adds undue fiscal burdens, and creates confusion about their transportation. Individuals raised a question relating to how the federal funds would be dispersed for this age group. They stated that procedures should be developed to help districts implement federal standard.

Agency Response. The agency agrees in part. An expiration date has been added to the rule wording, which will bring state requirements in line with federal requirements effective June 30, 2004. Until the expiration date, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities. Additional guidance related to these requirements will be disseminated through regional education service centers.

Comment. Concerning §89.1096, an individual requested the inclusion of the requirements in 34 Code of Federal Regulations for clarification.

Agency Response. The agency agrees in part. However, an expiration date has been added to the rule wording, which will bring state requirements in line with federal requirements effective June 30, 2004. Until the expiration date, a higher state standard will apply related to dual enrollment for students ages 3-5. During the intervening time period, the agency will implement activities to build capacity of the education service centers and local education agencies related to an appropriate continuum of placement options for young children with disabilities.

Comment. Concerning §89.1096, two individuals stated that the dual enrollment for ages 3-4 should be deleted.

Agency Response. The agency agrees in part. An expiration date for the dual enrollment provision for young children has been added to the rule wording.

Comment. Concerning §89.1096, an individual stated that the language in subsection (f) relating to complaints about the implementation of a student's IEP is confusing.

Agency Response. The agency disagrees and believes the wording in subsection (f) provides information regarding the due process rights available to students receiving services based on dual enrollment.

Comment. Concerning §89.1096, an individual expressed support for the provisions because funds are being used by students in private placements who do not generate any revenue for local districts and who have no accountability as to the expenditure of those dollars.

Agency Response. The agency agrees in part. However, a higher state standard will apply for young children until the expiration date of June 30, 2004.

Comment. Concerning §89.1125, three individuals stated they supported the proposed rule language as proposed.

Agency Response. The agency agrees.

Comment. Concerning §89.1131, two individuals, believing the proposed change is designed to reduce restrictions, supported allowing any clinicians who are certified by TSBEP to provide psychological services in the schools, without an LSSP license, and request specific wording to clarify this. Without the explicit statement, they fear TSBEP will create burdensome and restrictive requirements that deter clinicians from working with schools, as they believe they have done with the LSSP licensure.

Agency Response. The agency disagrees. While the agency wishes to provide local flexibility regarding the assignment of qualified personnel, professional licensing boards have the authority to license practitioners within their scope of responsibility.

Comment. Concerning §89.1131, one individual stated that the change clarifies participation of teachers in ARD committees for students with visual impairments.

Agency Response. The agency agrees.

Comment. Concerning §89.1131, one student, two parents, and three teachers supported the rule requiring teachers certified in the education of students with visual impairments to be available to students with visual impairments because of their expertise in the unique needs of these students.

Agency Response. The agency agrees.

Comment. Concerning §89.1131, one teacher stated a need for wording that is stronger than the vision teacher "must be available."

Agency Response. The agency disagrees. This wording is consistent with past rule, and some specific requirements related to the involvement of the teacher are provided within the section.

Comment. Concerning §89.1131, three individuals stated that the rule should be changed so that vision teachers would be required to participate only in initial and annual ARD committees, not brief ARD committees, because of the burden on the district.

Agency Response. The agency disagrees. Any ARD committee convened for the purposes of discussing a student's IEP should have available all members necessary to make appropriate decisions related to the student's educational program as it will be addressed in the meeting.

Comment. Concerning §89.1131, one individual stated that the change clarifies participation of teachers in ARD committees for students with auditory impairments.

Agency Response. The agency agrees.

Comment. Concerning §89.1131, four individuals stated that teachers certified in the education of students with auditory impairments should be required to be available at only initial and annual ARD committees, not brief ARD committees, because of potential burden on district.

Agency Response. The agency disagrees. Any ARD committee convened for the purposes of discussing a student's IEP should

have available all members necessary to make appropriate decisions related to the student's educational program as it will be addressed in the meeting.

Comment. Concerning §89.1131, two individuals stated the rule continues to allow districts to have flexibility in using personnel related to teaching physical education.

Agency Response. The agency agrees.

Comment. Concerning §89.1131, one individual stated a need for specific language clearly stating that paraprofessionals cannot be used to instruct students in special education, emphasizing the intent of federal law.

Agency Response. The agency does not feel that this clarification is necessary.

Comment. Concerning §89.1131, one individual requested a rule making retaliation against school employees who advocate for special education students illegal.

Agency Response. The agency does not feel this is necessary as it is outside the scope of intended rule-making at this time.

Comment. Concerning §89.1131, two individuals expressed a need for the rule to specifically require certified teachers to supervise paraprofessionals.

Agency Response. The agency does not feel that clarification is necessary.

Comment. Concerning §89.1131, five individuals and one representative of a statewide advocacy group stated a need for the rule to allow paraprofessionals to be assigned to regular education teachers as well as special education teachers, particularly in the mainstream setting.

Agency Response. The agency agrees and the change was made in subsection (f).

Comment. Concerning §89.1131, one individual stated that the rule clarifies that the commissioner can issue emergency permits rather than waivers for certified interpreters.

Agency Response. The agency agrees.

Comment. Concerning §89.1131, five individuals indicated a need to expand the time period for allowing emergency certifications for interpreters to be five years instead of three, because of the current interpreter shortage.

Agency Response. The agency disagrees and chooses to uphold its current requirements in order to ensure compliance with the federal standard related to qualified personnel. This timeline is consistent with other timelines implemented for educators seeking emergency certification.

Comment. Concerning §89.1150, an individual did not favor the proposed rule since he felt it is contrary to federal law.

Agency Response. The agency disagrees and believes that the proposed rule is in compliance with federal requirements.

Comment. Concerning §89.1150, two individuals favored the proposed rule in general.

Agency Response. The agency agrees.

Comment. Concerning §89.1150, an individual favored the proposed rule, but recommended a re-ordering of the options available.

Agency Response. The agency agrees in part, but the section was not re-ordered.

Comment. Concerning §89.1150, an individual suggested improving the proposed rule with four specific proposals related to encouraging dispute resolution at the lowest level, requiring a two-step resolution attempt, ordering the rules options from lowest to highest levels, and resolution of complaints.

Agency Response. The agency disagrees and feels that additional restrictive wording could inappropriately limit the rights of parents to pursue due process. The current wording discusses a list of possible options for dispute resolution but does not prescribe an order or required method for accessing the options.

Comment. Concerning §89.1150, three individuals fully supported the proposed rule.

Agency Response. The agency agrees.

Comment. Concerning §89.1150, an individual favored the proposed rule in general, but recommended that specific clarifying language be added related to a presentment requirement prior to filing for a due process hearing.

Agency Response. The agency agrees in part, but proposed language was not revised. The agency proposes to address the presentment requirement in future rule-making activities.

Comment. Concerning §89.1150, nine individuals favored the proposed rule, but provided specific rationale for suggested changes related to exhausting administrative remedies prior to pursuing other due process options.

Agency Response. The agency agrees in part, but proposed language was not revised. The agency feels that additional restrictive wording could inappropriately limit the rights of parents to pursue due process.

Comment. Concerning §89.1150, an individual suggested more clarification concerning "conflict of interest" and specificity concerning resolving disputes at the lowest possible level for subsection (b).

Agency Response. Additional clarification will be forthcoming through the education service centers.

Comment. Concerning §89.1150, an individual recommended wording changes concerning the development of collaborative partnerships in subsection (b).

Agency Response. This agency disagrees. While collaborative partnerships between parents and schools are positively acknowledged, this section related to due process rights must provide specific information related to official means for dispute resolution.

Comment. Concerning §89.1150, an individual indicated that options seem to infer that attorneys are necessary in subsection (c).

Agency Response. The agency disagrees and does not feel that the wording infers that attorneys are necessary in the dispute resolution process.

Comment. Concerning §89.1150, an individual suggested that a two-step resolution attempt be made prior to filing for a due process hearing in subsection (c).

Agency Response. The agency disagrees and feels that additional restrictive wording could inappropriately limit the rights of parents to pursue due process.

Comment. Concerning §89.1151, seven individuals fully support the proposed rule.

Agency Response. The agency agrees.

Comment. Concerning §89.1151, an individual favored the proposed rule, but was disappointed that it does not include a presentment requirement.

Agency Response. The agency agrees in part and proposes to address the presentment requirement in future rule- making activities.

Comment. Concerning §89.1151, four individuals provided specific feedback on language in the proposed rule and suggested that the agency should not proceed with due process activities if the parent has agreed to go to ARD or mediate, etc.

Agency Response. The agency disagrees and feels that additional restrictive wording could inappropriately limit the rights of parents to pursue due process.

Comment. Concerning §89.1151, an individual supported the proposed rule, but made recommendations relating to subsection (b) stating that parents should be required to complete forms and delineate specific efforts tried to resolve concerns prior to submitting a request for due process hearing.

Agency Response. The agency disagrees and feels that additional restrictive wording could inappropriately limit the rights of parents to pursue due process.

Comment. Concerning §89.1151, seven individuals opposed limiting the statute of limitations to one year for subsection (c).

Agency Response. The agency disagrees and believes that the proposed statute of limitations establishes a legal standard and provides a framework for addressing concerns related to due process actions.

Comment. Concerning §89.1151, an individual suggested that a portion of the rule in subsection (c) is in conflict with the U.S. Court of Appeals 5th Circuit decisions.

Agency Response. The agency disagrees and believes that the proposed rule establishes a legal standard.

Comment. Concerning §89.1151, an advocacy group was opposed to shortening the statute of limitations in subsection (c).

Agency Response. The agency disagrees and believes that the proposed statute of limitations meets current legal requirements and provides a framework for addressing concerns related to due process actions.

Comment. Concerning §89.1151, fifteen individuals support subsection (c) of the proposed rule.

Agency Response. The agency agrees.

Comment. Concerning §89.1165, five special education administrators would like to add to the end of subsection (b): "If such clarification does not occur, the hearing officer shall dismiss the complaint without prejudice to refiling."

Agency Response. The agency disagrees. The agency believes that procedures afforded under this section and federal regulation provide the hearing officer sufficient discretion in managing these concerns.

Comment. Concerning §89.1165, seven districts supported and hoped "that the intent of the document and the intent of the rule here is to further eliminate the broad based facts that we receive" and that it "specifies the exact disagreement with the proposed education IEP for the child and exactly what relief the complaining party is wanting."

Agency Response. The agency agrees that the rule will require additional specificity.

Comment. Concerning §89.1165, one district in addition to the comment above would like the requirement that parents must bring the complaint to the ARD committee first.

Agency Response. The agency agrees in part and proposes to address the presentment requirement in future rule- making activities.

Comment. Concerning §89.1170, an individual stated that the regulation in subsection (c) does not specify or even give a clue about what sanctions are contemplated by subsection (c). The commenter also stated that, as a practical matter, hearing officers have no authority to award any sanction that does not effectively interfere with a party's due process right to a hearing on legitimate claims and to present evidence.

Agency Response. The agency disagrees and believes it is within the authority of the hearing officer to implement appropriate sanctions to maintain an orderly hearing process.

Comment. Concerning §89.1170, an individual stated that the new provisions omit existing provisions that are designed to assure that the hearing officer does not have affiliations that would interfere with impartiality. The individual commented that such provisions should be retained or enhanced and that to many, there is the appearance that the education establishment is inbred with a resulting lessening of standards and accountability. The individual also stated that it is clear that hearing officers need significant expertise to be effective; and, nevertheless, that expertise is available without compromising the reality and important appearance of neutrality.

Agency Response. The agency disagrees and believes the wording related to selection of an impartial hearing officer excludes from selection hearing officers with affiliations that preclude impartiality.

Comment. Concerning §89.1180, an individual noted that the specificity of this section was excellent.

Agency Response. The agency agrees.

Comment. Concerning §89.1180, an individual noted that this section is not for hearing officers to put words in parents' mouths.

Agency Response. The agency agrees.

Comment. Concerning §89.1180, an individual noted the pre-hearing procedures were an excellent revision, good for all students.

Agency Response. The agency agrees.

Comment. Concerning §89.1180, an individual noted that the pre-hearing conference being mandatory and recorded would provide for focus on the true issues. Using the same disclosure deadline when a suit is refiled after dismissal will eliminate "wavering."

Agency Response. The agency agrees.

Comment. Concerning §89.1180, two individuals noted the recording of the pre-hearing conference would be cumbersome and expensive and that the written record could also be difficult. One individual suggested that if the law requires records, a tape

recording would be preferred. The other individual suggested that a tape recording would present issues regarding sanitation of personally identifiable information.

Agency Response. The agency disagrees. The rule prescribes a written, or, at the option of either party, an electronic, verbatim record of the prehearing conference. The agency believes that an official recording of the prehearing conference will promote a definition of issues at the early stages of the process.

Comment. Concerning §89.1180, five individuals noted that a written transcript of all prehearing conferences should be required.

Agency Response. The agency agrees in part but wishes to allow parties to accept electronic recordings.

Comment. Concerning §89.1180, an individual noted that the electronic verbatim recording requires a court reporter, requires a hearing officer to make the call, and would be costly.

Agency Response. The agency disagrees. A court reporter will not necessarily be required for an electronic verbatim recording. The agency also believes that an official recording of the prehearing conference will promote a definition of issues at the early stages of the process.

Comment. Concerning §89.1180, five individuals noted that defining the issues of the dispute would keep the hearing focused. The change will encourage efforts to be more productive. This will also minimize costs.

Agency Response. The agency agrees.

Comment. Concerning §89.1180, twelve individuals noted that continuances and refiling are costly and nonproductive and agree with the present wording.

Agency Response. The agency agrees.

Comment. Concerning §89.1180, an individual noted that subsection (f) appears to give hearing officers the discretion to issue subpoenas, which is not permitted under the current law. That additional discretion is desirable.

Agency Response. The agency agrees.

Comment. Concerning §89.1180, seven individuals noted that the wording should be clarified to require specific disclosure of witnesses and exhibits and that parties who miss the deadline should not be permitted to call witnesses or introduce evidence.

Agency Response. The agency is open to additional discussion of this topic in the future.

Comment. Concerning §89.1180, Advocacy, Inc., and an individual noted that a strict rule related to barring the introduction of evidence that was not previously disclosed would not be best in this situation, but should be dealt with by the hearing officer on a case-by-case basis.

Agency Response. The agency disagrees and believes the discovery requirements will promote the efficiency of proceedings.

Comment. Concerning §89.1180, an individual noted that there could be many reasons for refiling and introduction of new evidence; this would be a burden to parents.

Agency Response. The agency disagrees and believes the dismissal and refiling requirements will promote the efficiency of the prehearing process.

Comment. Concerning §89.1185, a hearing officer requested clarification on the regulation's "reasonable notice." The officer inquired whether it is associated with the filing of the hearing request or with the receipt of the hearing officer's statement of issues.

Agency Response. Additional clarification will be provided through hearing officer training.

Comment. Concerning §89.1185, a special education director is in favor of the changes. These proposed rules should help make disputes between schools and parents be more easily worked through.

Agency Response. The agency agrees.

Comment. Concerning §89.1185, one individual proposed a change to subsection (b) of "reasonably convenient to all (or the) parties" and believes current wording allows discretion of the parent and hearing officer but does not take into account that the school district witnesses may not be available during the summer months.

Agency Response. The agency disagrees and believes current discretion in allowing hearing officers to set hearing times and places is appropriate. Additionally, subsection (o) allows for the granting of extensions for good cause.

Comment. Concerning §89.1185, a hearing officer requested clarification on what it means to require a court reporter to "immediately" prepare a transcript of the proceedings. "Is a procedural right of the party violated if the court reporter fails to prepare this immediately, but instead takes ten days to prepare it?"

Agency Response. Additional clarification will be provided through hearing officer training.

Comment. Concerning §89.1185, a hearing officer suggested that the mailing of final decisions to counsel be an option when another method of choice is faxing the decisions. "It is of no practical significance to me either way- except with fax the receipt of the decision can be easily verified, whereas with a mailing, additional cost to the Agency is required by the necessity of certified mail or Federal Express."

Agency Response. Additional clarification will be provided through hearing officer training.

Comment. Concerning §89.1185, eight individuals opposed the change on subsection (q) in that it goes beyond the requirements of 34 CFR §300.514 (c), and will be a hardship on districts choosing an appeal to the hearing officer's decisions. The requirement to implement adverse decisions within ten days is unwarranted, especially in regard to reimbursement issues.

Agency Response. The agency disagrees. However, the agency has changed subsection (q) to address reimbursement issues.

Comment. Concerning §89.1185, six individuals opposed the change of subsection (k). They commented that it places excessive and unnecessary limitations on the hearing officer's discretion to decide what additional analysis, briefing, etc., are necessary for the hearing officer to make a just decision.

Agency Response. The agency disagrees and believes that post-hearing briefs are necessary only when legal issues involved in the hearing are novel or unsettled in the State of Texas or the U.S. Court of Appeals 5th Circuit.

Comment. Concerning §89.1185, a representative of a state-based advocacy group and a hearing officer opposed the

changes of subsection (k) in that to deny a party the opportunity to make its legal arguments would violate due process and could generate more litigation. A 30-day limitation period is inconsistent with the policies underlying the IDEA.

Agency Response. The agency disagrees and believes that the proposed changes to hearing procedures will improve the efficiency of the hearing process while maintaining equity in the system.

Comment. Concerning §89.1185, a representative of a state-based advocacy group and a hearing officer opposed the changes of subsection (m) stating that the change only encompasses findings that would be potentially more beneficial to the school district.

Agency Response. The agency disagrees and believes that the proposed changes to hearing procedures will improve the efficiency of the hearing process while maintaining equity in the system.

Comment. Concerning §89.1185, two individuals opposed changes to subsection (m) in that it would not incorporate the substantive jurisdiction for the due process hearing, which is not contemplated or authorized under IDEA.

Agency Response. The agency disagrees and believes that the proposed changes to hearing procedures will improve the efficiency of the hearing process while maintaining equity in the system.

Comment. Concerning §89.1185, one individual opposes changes in subsection (m) unless the hearing officer can also include findings as to whether the party was a prevailing party.

Agency Response. The agency does not believe this clarification is necessary.

Comment. Concerning §89.1185, one individual expressed concern for the changes in subsection (m) in that TEA should further discuss and develop procedures for the admission and consideration of settlement offers.

Agency Response. The agency disagrees and believes that the proposed changes to hearing procedures will improve the efficiency of the hearing process while maintaining equity in the system.

Comment. Concerning §89.1185, five individuals would like the change to include whether either party unreasonably protracted the resolution in the hearing officer's decision.

Agency Response. The agency agrees. Subsection (m)(1) requires a finding of fact by the hearing officer related to protraction of the proceedings if either party requests such a finding.

Comment. Concerning §89.1185, a hearing officer opposed the ten days notice rule. The hearing officer commented that alternatively, and to avoid the continuance-and-delay scenario, perhaps this regulation could specify that hearing officer findings regarding protraction need not meet the 45-day deadline for issuing findings and conclusions on free appropriate public education issues.

Agency Response. The agency disagrees and believes that the proposed changes to hearing procedures will improve the efficiency of the hearing process while maintaining equity in the system.

Comment. Concerning §89.1185, seven individuals agreed that hearing officers should consider all parties' good faith participation in resolving the issues involved with the complaint. Districts should be allowed to settle the disputes earlier in the dispute resolution process.

Agency Response. The agency agrees.

Comment. Concerning §89.1185, a hearing officer suggested amending subsection (m)(2) to reflect more specificity about what is being required of the parents' attorney. The hearing officer commented that otherwise the subsection will be ineffective because the pleading requirements are so minimal, or will be susceptible to challenge as unlawful because it imposes a pleading requirement that federal law omits.

Agency Response. The agency disagrees and believes the section's reference to federal regulations related to this requirement provides the necessary specificity.

Comment. Concerning §89.1185, a district and an education service center applauded the changes.

Agency Response. The agency agrees. However, revisions to rule wording have been made.

Comment. Concerning §89.1185, two individuals opposed permitting a local education agency (LEA) to convene an ARD after a protracted failure to fulfill its obligations. They commented that this is "unwarranted and will encourage LEAs to continue to be willfully noncompliant."

Agency Response. The agency disagrees and believes that the proposed changes to hearing procedures will improve the efficiency of the hearing process while maintaining equity in the system.

Comment. Concerning §89.1185, an individual opposed the change to subsection (p) citing that the U.S. Court of Appeals 5th Circuit has already rejected a 30-day statute of limitations and speculating that a 45-day statute will also be rejected.

Agency Response. The agency disagrees and believes that the proposed changes to hearing procedures will improve the efficiency of the hearing process while maintaining equity in the system.

Comment. Concerning §89.1185, four individuals supported the provision of a 45-day appeal deadline.

Agency Response. The agency agrees.

Comment. Concerning §89.1185, a hearing officer commented that, "the regulations do not appear to contemplate whether hearing officers have authority to modify the 10-day implementation."

Agency Response. Further clarification will be provided through hearing officer training.

Comment. Concerning §89.1185, three individuals opposed the ten school days implementation requirement.

Agency Response. The agency disagrees and believes that the proposed changes to hearing procedures will improve the efficiency of the hearing process while maintaining equity in the system.

Comment. Concerning §89.1185, one individual agreed with the ten school days implementation requirement.

Agency Response. The agency agrees.

Comment. Concerning §89.1191, an individual stated they supported the rule section as proposed.

Agency Response. The agency agrees.

DIVISION 1. GENERAL PROVISIONS

19 TAC §89.1001

The amendment is adopted under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057, which authorizes the commissioner of education to adopt rules related to delivering special education services.

§89.1001. Scope and Applicability.

(a) Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan Under Part B of the Individuals with Disabilities Education Act (IDEA).

(b) Education programs, under the direction and control of the Texas Youth Commission, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.

(c) A school district having a residential facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility. If, after contacting the facility to offer services to eligible students with disabilities, the district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, the district shall annually contact the facility to offer services to eligible students with disabilities.

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 14, 2001.

TRD-200100951
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Effective date: March 6, 2001
Proposal publication date: August 18, 2000
For further information, please call: (512) 463-9701

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DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §§89.1011, 89.1015, 89.1035, 89.1040, 89.1045, 89.1047, 89.1049, 89.1050, 89.1055, 89.1056, 89.1060, 89.1065, 89.1070, 89.1075, 89.1076, 89.1085, 89.1090, 89.1095, 89.1096

The amendments and new sections are adopted under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057, which authorizes the commissioner of education to adopt rules related to delivering special education services.

§89.1011. Referral for Full and Individual Initial Evaluation.

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial, remedial, compensatory, and other services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full and individual initial evaluation. This referral for a full and individual initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student. The referral for a full and individual initial evaluation must be completed in accordance with Texas Education Code, §29.004, related to the 60 calendar day time line.

§89.1035. Age Ranges for Student Eligibility.

(a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070(b)(1)-(2) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year shall be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070(b)(1)-(2) of this title, whichever comes first.

(b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free, appropriate, public education shall be available from birth to students with visual or auditory impairments.

§89.1040. Eligibility Criteria.

(a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.7(a), subject to the provisions of 34 CFR, §300.7(c), the Texas Education Code (TEC), §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with 34 CFR, §§300.530-300.536. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

(1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.7(c)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation shall include specific recommendations for behavioral interventions and strategies.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.7(c)(2). In meeting the criteria stated in 34 CFR, §300.7(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsections (c)(3) and (c)(12) of this section:

(A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.

(3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.7(c)(3), or for hearing impairment as stated in 34 CFR, §300.7(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available. An audiological evaluation by a licensed audiologist shall also be conducted. The evaluation data shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(4) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.7(c)(4). The written report of evaluation shall include specific recommendations for behavioral supports and interventions.

(5) Mental retardation. A student with mental retardation is one who has been determined to meet the criteria for mental retardation as stated in 34 CFR, §300.7(c)(6). In meeting the criteria stated in 34 CFR, §300.7(c)(6), a student with mental retardation is one who has been determined to be functioning at two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.7(c)(7). In meeting the criteria stated in 34 CFR, §300.7(c)(7), a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disability is expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III) communication;

(IV) social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph shall not be classified or reported as having multiple disabilities.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.7(c)(8). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment as stated in 34 CFR, §300.7(c)(9). Students with attention deficit disorder or attention deficit hyperactivity disorder are included under this category. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.

(9) Learning disability.

(A) A student with a learning disability is one who has been determined by a multidisciplinary team to meet the criteria for specific learning disability as stated in 34 CFR, §300.7(c)(10), and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with the provisions in 34 CFR, §§300.540-300.543. A severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas specified in 34 CFR, §300.541, is more than one standard deviation below the student's intellectual ability.

(B) If the multidisciplinary team cannot establish the existence of a severe discrepancy in accordance with subparagraph (A) of this paragraph because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria in subparagraph (A) of this paragraph but the team believes a severe discrepancy exists, the team must document in its written report the areas identified under subparagraph (A) of this paragraph and the basis for determining that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement.

(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech

or language impairment as stated in 34 CFR, §300.7(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.7(c)(12). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.7(c)(13). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.7(c)(13), a student with a visual impairment is one who:

(i) has been determined by a licensed ophthalmologist or optometrist:

(I) to have no vision or to have a serious visual loss after correction; or

(II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction.

(ii) has been determined by the following evaluations to have a need for special services:

(I) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and

(II) a learning media assessment by a professional certified in the education of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.

(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

(13) Noncategorical. A student between the ages of 3-5 who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

§89.1045. Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.

(a) A district shall invite the parents and adult student to participate as members of the admission, review, and dismissal (ARD) committee by providing written notice in accordance with 34 Code of Federal Regulations (CFR), §§300.345, 300.503, and 300.505, and Part 300, Appendix A.

(b) A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education services. The school district must respond to the parent's request either by holding the requested meeting or by requesting assistance through the Texas Education Agency's mediation process. The district should inform parents of the functions of the ARD committee and the circumstances or types of problems for which requesting an ARD committee meeting would be appropriate.

§89.1049. Parental Rights Regarding Adult Students.
Unless parental rights have been terminated by judicial decree, the parent and student with a disability shall begin to share parental rights under the Individuals with Disabilities Education Act (IDEA) when the student reaches 18 years of age. Beginning at least one year before a student reaches 18 years of age, the student's individualized education program must include a statement that the student has been informed of his or her rights under IDEA, Part B, that will be shared with his or her parents.

§89.1050. The Admission, Review, and Dismissal (ARD) Committee.

(a) Each school district shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted pursuant to §89.1011 of this title (relating to Referral for Full and Individual Initial Evaluation). The ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.344. The school district shall be responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including, specifically, the following:

(1) 34 CFR, §§300.340-300.349, and Texas Education Code (TEC), §29.005 (Individualized Education Program);

(2) 34 CFR, §§300.400-300.402 (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.452, 300.455, and 300.456 (relating to the development and implementation of service plans for eligible students in private school who have been designated to receive special education and related services);

(4) 34 CFR, §§300.520, 300.522, and 300.523, and TEC, §37.004 (Placement of Students with Disabilities);

(5) 34 CFR, §§300.532-300.536 (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.550-300.553 (relating to least restrictive environment);

(7) TEC, §28.006 (Reading Diagnosis);

(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(9) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(10) TEC, §30.002 (Education of Children with Visual Impairments);

(11) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

(12) TEC, §33.081 (Extracurricular Activities);

(13) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(14) TEC, §42.151 (Special Education).

(b) For a child from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§303.340-303.346, and the memorandum of understanding between the Texas Education Agency (TEA) and Texas Interagency Council on Early Childhood Intervention.

(c) At least one general education teacher of the student (if the student is, or may be, participating in the general education environment) shall participate as a member of the ARD committee. The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.344(a)(3), must be certified in the child's suspected areas of disability. When a specific certification is not required to serve certain disability categories, then the special education teacher or special education provider must be qualified to provide the educational services that the child may need. Districts should refer to §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) to ensure that appropriate teachers and/or service providers are present and participate at each ARD committee meeting.

(d) The ARD committee shall make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning placement and the IEP, unless the full and individual initial evaluation indicates that the student will need extended year services during that summer.

(e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.344, 300.345, 300.348, and 300.349. The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d), applies, the district shall provide a written or audiotaped copy of the student's IEP, as defined in 34 CFR, §300.346 and §300.347.

(f) For a student who is new to a school district, the ARD committee may meet when the student enrolls and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. Special education services that are provided prior to receipt of valid evaluation data from the previous school district or collection of new evaluation data are temporary and contingent upon either receipt of valid evaluation data from the previous school district or the collection of new evaluation data. In any event, an ARD committee meeting must be held within 30 school days from the date of the first ARD committee meeting in the district to finalize or develop an IEP based on the evaluation data. The student's current and previous school districts are not required to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §99.31(a)(2) and §99.34. In accordance with TEC, §25.002, the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district.

(g) All disciplinary actions regarding students with disabilities shall be determined in accordance with 34 CFR, §§300.121 and 300.519-300.529 (relating to disciplinary actions and procedures) and the TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).

(h) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP). The requirements of this subsection (h) do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than the failure of the parents and the school district from reaching mutual agreement about all required elements of an IEP.

(2) During the recess the committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons which may assist in enabling the ARD committee to reach mutual agreement.

(3) The date, time, and place for continuing the ARD committee meeting shall be determined by mutual agreement prior to the recess.

(4) If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for the student.

(5) When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.

(6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.503.

(7) Parents shall have the right to file a complaint, request mediation, or request a due process hearing at any point when they disagree with decisions of the ARD committee.

§89.1055. Content of the Individualized Education Program (IEP).

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with the requirements of 34 Code of Federal Regulations (CFR), §300.346 and §300.347, and Part 300, Appendix A.

(b) The IEP must include a statement of any individual allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment. If the ARD committee determines that the student will not participate in a particular state- or district-wide assessment of student achievement (or part of an assessment), the IEP must include a statement of:

(1) why that assessment is not appropriate for the child; and

(2) how the child will be assessed using a locally developed alternate assessment.

(c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services (ESY Services)), then the IEP must also include goals and objectives for ESY services from the student's current IEP.

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) shall also meet the requirements of TEC, §30.002(e).

(e) For students with autism/pervasive developmental disorders, information about the following shall be considered and, when needed, addressed in the IEP:

(1) extended educational programming;

(2) daily schedules reflecting minimal unstructured time;

(3) in-home training or viable alternatives;

(4) prioritized behavioral objectives;

(5) prevocational and vocational needs of students 12 years of age or older;

(6) parent training; and

(7) suitable staff-to-students ratio.

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e)(1)-(7) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

§89.1065. Extended School Year Services (ESY Services).

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.

(1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.309, and the provisions of this section. In determining the need for and in providing ESY services, a school district may not:

(A) limit ESY services to particular categories of disability; or

(B) unilaterally limit the type, amount, or duration of ESY services.

(2) The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation shall demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

(3) The reasonable period of time for recoupment of acquired critical skills shall be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment shall not exceed eight weeks.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:

(A) placement in a more restrictive instructional arrangement;

(B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;

(C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

(D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

(E) loss of access to on-the-job training or productive employment as a result of regression in skills.

(5) If the district does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.344.

(6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee shall reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.

(8) The provision of ESY services is limited to the educational needs of the student and shall not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student shall be denied ESY services because the student receives care and treatment services under the auspices of other agencies.

(9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.

§89.1070. Graduation Requirements.

(a) Graduation with a regular high school diploma terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act (IDEA), 20 United States Code, §§14.01 et seq. In addition, as provided in Texas Education Code (TEC), §42.003(a), graduation with a regular high school diploma terminates a student's entitlement to the benefits of the Foundation School Program.

(b) A student receiving special education services may graduate and be awarded a high school diploma only if:

(1) the student has satisfactorily completed the minimum academic credit requirements for graduation applicable to students in general education, including satisfactory performance on the exit level assessment instrument; or

(2) The student has satisfactorily completed the minimum academic credit requirements for graduation applicable to students in general education and has been exempted from the exit-level assessment instrument because modifications and accommodations provided during instruction would render the result of the assessment invalid.

(c) A student receiving special education services may also graduate and receive a regular high school diploma when the student's admission, review, and dismissal (ARD) committee has determined that the student has successfully completed the student's individualized education program (IEP), including the district's minimum credit requirements for students without disabilities. Successful completion of an IEP occurs when one of the following conditions has been met:

(1) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;

(2) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or

(3) access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program.

(d) A student receiving special education services may also graduate and receive a regular high school diploma upon the ARD committee determining that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.

(e) When considering graduation under subsection (c) of this section, the ARD committee shall, when appropriate, seek in writing and consider written recommendations from appropriate adult service agencies and the views of the parent and, when appropriate, the student.

(f) Employability and self-help skills referenced under subsection (c) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(g) Students with disabilities who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for instruction in accordance with the TEC, §39.024.

(h) For students who receive a diploma according to subsection (c) of this section, the ARD committee shall determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

§89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

(a) The provisions of this section shall be implemented beginning July 1, 2001, and at that time shall supersede §89.1095 of this title (relating to Provision of Services for Students Placed by their Parents in Private Schools). This section will expire on June 30, 2004.

(b) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.454, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.450-300.462.

(c) When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.450-300.462 or subsection (d) of this section, until such time as the parents choose to enroll the student in public school full-time.

(d) Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five, subject to the following.

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.

(2) From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.550-300.553, and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

(e) The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.

(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (d) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.660-300.662. The procedures in 34 CFR, §§300.504-300.515 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (d).

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
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19 TAC §§89.1020, 89.1025, 89.1030, 89.1040, 89.1045, 89.1050, 89.1060, 89.1070, 89.1085, 89.1105

The repeals are adopted under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057, which authorizes the commissioner of education to adopt rules related to delivering special education services.

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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DIVISION 4. SPECIAL EDUCATION FUNDING

19 TAC §89.1121, §89.1125

The amendments are adopted under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, and 29.005, which authorizes the commissioner of education to adopt rules related to delivering special education services.

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DIVISION 5. SPECIAL EDUCATION AND RELATED SERVICE PERSONNEL

19 TAC §89.1131

The amendment is adopted under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, and 29.005, which authorizes the commissioner of education to adopt rules related to delivering special education services.

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.23 and §300.136; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.

(1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency (TEA) certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.

(2) Teachers holding only a special education endorsement for early childhood education for children with disabilities shall be assigned only to programs serving infants through Grade 6.

(3) Teachers assigned full-time to teaching students who are orthopedically impaired or other health impaired with the teaching station in the home or a hospital shall not be required to hold a special education certificate or endorsement as long as the personnel file contains an official transcript indicating that the teacher has completed a three-semester-hour survey course in the education of students with disabilities and three semester hours directly related to teaching students with physical impairments or other health impairments.

(4) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center (ESC). A teacher who is certified in the education of students with visual impairments must attend each admission, review, and dismissal (ARD) committee meeting or individualized family service plan (IFSP) meeting of a student with a visual impairment, including deaf-blindness.

(5) Teachers certified in the education of students with auditory impairments must be available to students with auditory impairments, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, a shared services arrangement with other school districts, or an ESC. A teacher who is certified in the education of students with auditory impairments must attend each ARD committee meeting or IFSP meeting of a student with an auditory impairment, including deaf-blindness.

(6) The following provisions apply to physical education.

(A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program (IEP), physical education may be provided by the following personnel:

(i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;

(iii) occupational therapists;

(iv) physical therapists; or

(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(7) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, shall be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blindness, shall be certified in education for students who are deaf and severely hard of hearing. Other certifications for serving these students shall require prior approval from TEA.

(8) Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.

(c) Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.

(d) Interpreting services for students who are deaf shall be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be certified by the Registry of Interpreters for the Deaf or the Texas Commission for the Deaf and Hard of Hearing, unless the interpreter has been granted an emergency permit by the commissioner of education to provide interpreting services for students who are deaf. The commissioner shall consider applications for the issuance of an emergency permit to provide interpreting services for students who are deaf on a case-by-case basis in accordance with requirements set forth in 34 CFR, §300.136, and standards and procedures established by the TEA. In no event will an emergency permit allow an uncertified interpreter to provide interpreting services for more than a total of three school years to students who are deaf.

(e) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals or by the Association for Education and Rehabilitation of the Blind and Visually Impaired.

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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DIVISION 6. HEARINGS CONCERNING STUDENTS WITH DISABILITIES UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

19 TAC §§89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, 89.1190

The repeals are adopted under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, and 29.005, which authorizes the commissioner of education to adopt rules related to delivering special education services.

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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DIVISION 7. RESOLUTION OF DISPUTES BETWEEN PARENTS AND SCHOOL DISTRICTS

19 TAC §§89.1150, 89.1151, 89.1165, 89.1170, 89.1180, 89.1185, 89.1191

The new sections are adopted under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, and 29.005, which authorizes the commissioner of education to adopt rules related to delivering special education services.

§89.1185. Hearing.

(a) The hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than ten days, unless the parties agree otherwise.

(b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 Code of Federal Regulations (CFR), §§300.507- 300.514, 300.521, or 300.528, or the provisions of §§89.1151-89.1191 of this subchapter, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.

(i) Hearings conducted under this subchapter shall be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing shall be recorded and transcribed by a reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties. The hearing officer shall instruct the reporter to delete all personally identifiable information from the transcription of the hearing.

(k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer and only upon a finding by the hearing officer that the legal issues involved in the hearing are novel or unsettled in the State of Texas or the Fifth Circuit. Any post-hearing briefs permitted by the hearing officer shall be limited to the legal issues specified by the hearing officer.

(l) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after a request for hearing is received by the Texas Education Agency, unless the deadline for a final decision has been extended by the hearing officer as provided in subsection (m) of this section. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:

(1) whether the parent or the school district unreasonably protracted the final resolution of the issues in controversy in the hearing; and

(2) if the parent was represented by an attorney, whether the parent's attorney provided the school district the appropriate information in the due process complaint in accordance with 34 CFR, §300.507(c).

(n) In making a finding regarding the issue described in subsection (m)(1) of this section, the hearing officer shall consider the extent to which each party had notice of, or the opportunity to resolve, the issues presented at the due process hearing prior to the date on which the due process hearing was requested. If, after the date on which a request for a due process hearing is filed, either the parent or the school district requests that a meeting of the admission, review, and dismissal (ARD) committee of the student who is the subject of the due process hearing be convened to discuss the issues raised in the request for a due process hearing, the hearing officer shall also consider the extent to which each party participated in the ARD committee meeting in a good faith attempt to resolve the issue(s) in dispute prior to proceeding to a due process hearing.

(o) A hearing officer may grant extensions of time for good cause beyond the 45-day period specified in subsection (l) of this section at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.

(p) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2), and 34 CFR, §300.512. A civil action brought in state or federal court under 20 USC, §1415(i)(2), and 34 CFR, §300.512, must be initiated no more than 45 days after the date the hearing officer issued his or her written decision in the due process hearing.

(q) In accordance with 34 CFR, §300.514(c), a school district shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within ten school days after the date the decision was rendered. School districts must provide services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals.

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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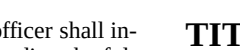

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 164. PHYSICIAN ADVERTISING

22 TAC §164.4

The Texas State Board of Medical Examiners adopts new §164.4, relating to the use of the term board certification by physicians in advertising, without changes to the proposed text as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12887).

This section outlines the criteria to be followed when using the term board certification so as not to be false or misleading in content.

Comments on the proposal are as follows:

Texas Society of Plastic Surgeons commented in support of the rule overall, but suggested a few minor changes. The board considered the suggestions, but did not agree that the changes would add clarification to the rule as proposed.

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

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

Filed with the Office of the Secretary of State on February 16, 2001.

TRD-200100982
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: March 8, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 305-7016

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CHAPTER 175. FEES, PENALTIES, AND APPLICATIONS

22 TAC §175.1

The Texas State Board of Medical Examiners adopts an amendment to §175.1, regarding fees, without changes to the proposed text as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12888).

The amendment clarifies new fees for biennial non-profit health organization applications and fees for filing late applications.

No comments were received regarding adoption of the amendment.

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

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

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CHAPTER 177. CERTIFICATION OF NON-PROFIT ORGANIZATIONS

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

The Texas State Board of Medical Examiners adopts amendments to §§177.1, 177.2, 177.4, 177.6-177.11, 177.13, 177.15, and 177.16, regarding certification of non-profit health organizations, without changes to the proposed text as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12889).

The amendments update new cites to the Occupations Code, address administrative procedures regarding late filing of biennial applications and insufficient reports, and clarify fees.

No comments were received regarding adoption of the amendments.

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

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

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.6

The Texas State Board of Medical Examiners adopts an amendment to §193.6(h), relating to standing delegation orders, without changes to the proposed text as published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11820).

The amendment clarifies cite references to the Texas Occupations Code Annotated.

No comments were received regarding adoption of the amendment.

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

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

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F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34, §291.36

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records, and §291.36, concerning Class A Pharmacies Compounding Sterile Pharmaceuticals. These amendments are adopted without changes to the proposed text as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12893).

The amendments streamline the process of issuing written prescriptions and permit practitioners to electronically replicate their manual signature on written prescriptions.

No comments were received.

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

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

The 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.

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 15, 2001.

TRD-200100962
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 7, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.72

The Texas State Board of Pharmacy adopts amendments to §291.72, concerning Definitions. These amendments are adopted without changes to the proposed text as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12895).

These amendments streamline the drug delivery system for persons confined in state operated correctional facilities resulting in a more efficient use of public funds. Specifically, the amendments permit a patient of any state operated correctional facility to be considered an inpatient of any other state operated correctional facility for the purpose of delivery of pharmacy services.

No comments were received.

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

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

The 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.

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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Gay Dodson, R.Ph.
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Texas State Board of Pharmacy
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Proposal publication date: December 29, 2000
For further information, please call: (512) 305-8028

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CHAPTER 305. EDUCATIONAL REQUIREMENTS

22 TAC §305.2

The Texas State Board of Pharmacy adopts new §305.2, concerning Pharmacy Technician Training Programs. This new rule is adopted without changes to the proposed text as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12895).

The new section implements the provisions of Senate Bill 730, Acts of the 76th Legislature, by setting standards for recognition and approval of pharmacy technician training programs wishing to be approved and listed by the Texas State Board of Pharmacy.

Comments were received from the American Society of Health-System Pharmacists (ASHP), Bethesda Maryland. ASHP applauds the Board's adoption of the ASHP Accreditation Standard for Pharmacy Technician Training Programs as its standard

for Board-approved training programs. However, ASHP had the following comments with regard to Board approval of training programs not accredited by ASHP. (1) ASHP felt that the proposed rule needs to clarify whether approval of pharmacy technician training programs by the Board is voluntary or mandatory. The Board disagrees and believes §305.2(a) clearly indicates that approval is voluntary. (2) ASHP stated that the terms "healthcare organization" and "academic institution" contained within the ASHP Accreditation Standard are interpreted broadly enough that §305.2(b)(4)(A)(i) is not necessary. The Board disagrees and believes §305.2(b)(4)(A)(i) clarifies Board-approved training programs may be offered by other types of entities. (3) Referring to §305.2(b)(4)(A)(ii), ASHP believes that a health-system facility should be accredited by one of the listed organizations. The Board disagrees and believes that accreditation by one of the listed accrediting bodies is not necessary for the limited purpose of this rule. (4) During the next revision of the Standard, ASHP will consider whether to continue requiring a high school diploma or equivalent. The implication being that if ASHP deletes their degree requirement, §305.2(b)(4)(A)(iii) which allows a person enrolled in a high school or equivalent degree program to participate in a technician training program, will not be necessary. The Board disagrees and believes there should not be a delay in the implementation of §305.2(b)(4)(A(iii). (5) ASHP states that the proposed preamble does not mention fiscal impact to small or large businesses or other entities who are required to comply with this section. The Board disagrees because the proposed preamble addressed the matter with a statement that since compliance with this section is not required, there is no fiscal impact for small or large businesses or other entities who are required to comply with this section.

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

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

The 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.

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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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Commissioner of Insurance adopts amendments to §5.4201, concerning endorsements for use with policy forms issued by the Texas Windstorm Insurance Association (Association or TWIA), and §5.4501, concerning the adoption by reference of the rule manual governing the writing of windstorm and hail insurance coverage by the Association. The amendments to §5.4201 and §5.4501 are adopted with changes to the proposed text published in the November 17, 2000 issue of the Texas Register (25 TexReg 11372).

The adoption of a new endorsement form providing for the addition of coverage for the loss of business income due to the suspension of business operations resulting from windstorm or hail as well as eligibility and rating rules that will be used to govern the writing of the new business income coverage was requested by the Association in a petition filed with the department on October 3, 2000 (Ref. No. P-100-25). The commissioner held a public hearing on the proposed amendments on December 18, 2000, under Docket No. 2474, at the William P. Hobby Jr., State Office Building, 333 Guadalupe Street in Austin, Texas. Article 21.49, the Texas Windstorm Insurance Association Act, declares that an adequate market for windstorm, hail, and fire insurance is necessary to the economic welfare of the state and that without such insurance orderly growth and development of the State of Texas would be severely impeded. The act also declares as its purpose "to provide a method whereby adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of the State of Texas." The act creates the Texas Windstorm Insurance Association, which consists of all property insurers authorized to transact property insurance business (except for those companies that are prevented by law from writing coverages available through the Association on a statewide basis). The Association is authorized by the act to issue policies of insurance to applicants who are otherwise unable to obtain such coverage through the voluntary market; the act says "insurance" shall include windstorm and hail insurance, defined as "deductible insurance against direct loss, and indirect losses resulting from a direct loss, to insurable property as a result of windstorm or hail," as those terms are defined and limited in policies and forms approved by the commissioner. The new business income coverage, as petitioned for by the Association, addresses the legislative mandate in Article 21.49 §1 that the Association provide adequate windstorm, hail, and fire insurance in the catastrophe areas of the state to provide orderly growth and

development of the Texas coast. In its petition, the Association substantiated the need for this new business income coverage by citing Insurance Services Office (ISO) data for business income losses on commercial policies in other jurisdictions. The ISO data showed that in each of four major hurricanes (Fran, Erin, Opal, and Andrew) the business income losses comprised a significant dollar amount and a significant percentage of the total property losses that resulted from these hurricanes. These statistics support the conclusion that business income coverage is needed by Texas businesses located in the catastrophe areas to provide coverage for this potentially devastating exposure. Many small businesses operate on such a narrow profit margin that they would probably not be able to absorb the loss of business income during the reconstruction period following a hurricane. With business income coverage, these businesses would have a much lower probability of being forced into bankruptcy or other adverse economic consequences. The need for TWIA to offer business income coverage was further substantiated by testimony presented at the public hearing on the proposed rule held on December 18, 2000. In 1998, the Independent Insurance Agents of Texas (IIAT), which provided testimony at the hearing, surveyed its member agents who are located in the first tier counties of the Texas seacoast to gather information regarding whether business income coverage was available in the voluntary market for their commercial risks. IIAT found that commercial risks in the catastrophe areas had a serious problem with obtaining business income coverage for the perils of windstorm and hail because this coverage was not generally available in the voluntary market. The representative of IIAT further testified that the property insurance market in the counties along the seacoast is tighter today than it was at the time of the 1998 survey, indicating an even greater need for TWIA to offer such coverage today.

The amendment to §5.4201 adds a new business income coverage endorsement to the list of endorsements that may be attached to the TWIA commercial policy. This new coverage is not mandatory, but may be purchased at the option of the insured. This new endorsement is necessary to provide business income coverage by endorsement to those commercial windstorm insureds who desire such coverage. The adopted new endorsement form is for use with the TWIA commercial windstorm policy and is entitled Form No. TWIA-17, Business Income Coverage Endorsement. The first page of the new form, entitled "Schedule," is the declaration page for the new endorsement. The information elements required on the schedule page are the policy number, name of insured, business name of the insured, and the type of business operation. The schedule page also sets the maximum limit of liability at $100,000 per building, per occurrence and provides a section for scheduling information for each business location that is to be insured. The new endorsement is designed to provide coverage (up to a maximum of $100,000) in the event the insured sustains a loss of business income, including rental value, due to the suspension of business operations, provided the suspension is the result of a physical loss caused by windstorm or hail to property at the building(s) described on the schedule. The new endorsement will also provide coverage for the necessary extra expenses (up to a maximum amount of $10,000) that the insured incurs during the "period of restoration" that the insured would not have incurred had there been no physical loss to the insured location. The extra expenses paid under the endorsement are those expenses incurred to avoid or minimize the suspension of operations and to continue operations. The endorsement also includes a time deductible of seven days (168 hours) that must have expired before TWIA becomes liable for any losses under the endorsement. The new endorsement provides that loss of business income coverage is additional insurance, and that in no event will payment of a covered loss exceed the maximum limits of liability established by law. The business income coverage offered in the TWIA endorsement is consistent with the business income coverage offered in the voluntary market in non-catastrophe areas.

The amendments to §5.4501 adopt by reference revisions to the Manual of the Texas Windstorm Insurance Association (Manual) that are necessary to establish the procedures that govern the writing of business income coverage through the above-described endorsement. The amendments to §5.4501 also made an editorial change to the title of the section to delete the words "and Regulations." One of the Manual revisions adds Form No. TWIA-17, Business Income Coverage, to the list of endorsements that are available for attachment to the TWIA commercial policy. Another of the Manual revisions adds new Rule II-B-8, which governs the writing of the new Business Income Coverage Endorsement Form No. TWIA-17. The adopted manual rule specifies that the Form TWIA-17 may only be attached to a commercial policy and that it will only be provided at the request of the insured. The eligibility requirements for attachment of the endorsement to the Association's commercial policy are specified in Rule II-B-8 as follows: only an insured who owns or occupies a commercial risk or public building, as defined in the manual, is eligible to purchase loss of business income coverage; the Association will provide loss of business income coverage only if the Association is providing the direct coverage; and loss of business income coverage is not available on builder's risk or vacant buildings. The rule also sets the maximum limit of liability per building location, per occurrence at $100,000; specifies a time deductible of seven days (168 hours) that must expire before TWIA is liable for the loss; specifies that coinsurance is not applicable to business income coverage; specifies that loss of business income coverage is additional insurance and in no event will payment of a covered loss exceed the maximum limits of liability established by law; and specifies that the premium is fully earned when written except for cancellation of an entire policy. The adopted manual rule also establishes a rating procedure and provides a rate table to set rating factors for apartment buildings, manufacturing concerns, and other than production/manufacturing concerns. Since this is a new coverage for TWIA, it had no experience of its own on which to base the proposed rates. The Association therefore utilized rating information from ISO on comparable coverage to develop the rates. It filed with its petition an actuarial analysis prepared by its consulting actuary, PricewaterhouseCoopers, that contained the recommended rates and the actuary's justification and conclusions. This analysis, which became part of the proposal and which was made available for public review and comment, was reviewed by the department's actuarial staff. The basic premium formula is the TWIA 80 percent coinsurance building annual extended coverage rate, including the 90 percent rate adjustment factor, times a business income (BI) rate adjustment factor, times the BI limit of liability per occurrence, expressed in hundreds of dollars. The BI rate adjustment factors vary by the selected coverage options and building/occupancy characteristics. The selected coverage options are the maximum number of working days covered and the daily limit of liability per covered working day. The building/occupancy characteristics are whether the insured property contains apartments, manufacturing, or other occupancy and, if apartments, the number of apartment units in the building.

While the new rating structure is similar to that of ISO, it differs in some respects to account for differences in the two programs. In particular, TWIA offers a greater number of coverage periods than ISO; the TWIA program has a seven day deductible as compared to ISO's three day deductible; and TWIA utilizes daily limits of liability whereas ISO uses monthly limits. The TWIA BI rate adjustment factors for apartments also contain a degree of variation to reflect coverage to value. The rates themselves were determined by mapping the ISO BI rate adjustment factors to analogous TWIA coverage options. These were then adjusted to reflect the greater TWIA deductible (seven days as compared to ISO's three days) by reducing the factors by four divided by the length of the coverage period expressed in days. The resulting tables were then interpolated/extrapolated by using best actuarial judgment to obtain rate adjustment factors for the expanded number of periods of coverage offered by TWIA. Finally, adjustments were made to the rate adjustment factors for apartments to account for variations in insurance to value. In particular, the factors were increased by five percent or ten percent, depending on the perceived underinsurance to value. Minor changes have been made to both rules as proposed. A change has been made to the post office box number and ZIP code of the Association's address in §5.4201 because the Association moved to new offices. Additionally, a change has been made to §5.4201 (3)(J). The effective date of the new endorsement has been changed from April 1, 2001 to May 1, 2001. This change was made at the request of TWIA to allow the Association additional time to make arrangements for offering this new coverage. A change has been made to § 5.4501. The effective date of the adoption by reference of the Manual has been changed from April 1, 2001 to May 1, 2001. This change was made at the request of TWIA in order to give the Association additional time to arrange the administrative details of offering business income coverage.

The purpose of § 5.4201 is to adopt by reference all of the endorsements that may be attached to modify the policy forms that are used by TWIA to write windstorm and hail coverage in the catastrophe areas of the state. Section 5.4201(3) specifically lists the endorsements that are for use with the Association's commercial policy. Since the adopted business income endorsement is to be attached to a commercial policy, it was added as a new commercial endorsement to the other commercial endorsements currently listed in §5.4201(3). The purpose of §5.4501 is to adopt by reference the Manual of the Texas Windstorm Insurance Association (Manual). The purpose of the Manual is to provide policy writing rules, rating rules, and other information that is necessary for the Association to write the different coverages that it offers. The adopted amendment to §5.4501 adopts by reference the updated Manual containing the new policy writing and rating rule that has been added to the Manual that will govern the Association's writing of business income coverage.

Comment: Five commenters expressed support for the proposal as published.

Response: The department appreciates the commenters' support. Comment: One commenter expressed concern that any expanded coverage offered by TWIA would be "counterproductive to the goals of residual market depopulation and voluntary market growth."

Response: The department disagrees. No formal statutory "goal" requires depopulation of the residual market, although encouraging the highest degree of voluntary market writing in the catastrophe area is optimal. Where adequate windstorm and hail insurance is not available, however, it is the department's obligation to ensure the availability of such coverage to ensure the economic welfare of the coastal area. The department disagrees that these rules will significantly increase the number of policies written by the Association on buildings and/or their contents. It should be noted that, pursuant to Rule II-B-8, business income coverage will be provided only as an endorsement if the Association is providing insurance on the building or contents. Whether or not TWIA insures a building or its contents will not be affected by TWIA offering an optional endorsement for business income coverage.

Comment: One commenter stated that the rule proposal does not provide any indication that there is a lack of availability of business income coverage in the voluntary market; therefore, it would be inappropriate for TWIA to make such coverage available.

Response: The department disagrees. TWIA's petition, referenced in the rule proposal, cited the purpose behind Article 21.49, that there be "adequate" insurance in the Texas coastal area in order to provide "orderly growth and development." Further, during the comment period on the proposed rule, the department received written comments from an industry association stating that many businesses located in the coastal areas do not carry business income coverage due to unavailability of such coverage in the voluntary market. There was also testimony presented at the public hearing agreeing that business income coverage was not generally available in the counties along the Texas seacoast.

Comment: One commenter believes that all efforts must be made to solve both the real and perceived lack of availability problems in the voluntary market before expanded coverage is made available through TWIA.

Response: The department disagrees. As reflected in TWIA's petition, the need for business income coverage has been thoroughly deliberated by the TWIA Underwriting Committee and by the TWIA Board for the past several years. In the absence of any authority to compel voluntary writings, the department believes that the TWIA Board's decision to offer business income coverage represents the best solution to remedy the lack of available business income coverage in the voluntary market.

Comment: One commenter stated that experience has shown that insurance availability problems that emerge following a catastrophe are generally temporary and markets are generally able to adjust without legislative intervention.

Response: The department disagrees. While this observation may be valid in some instances, the department does not believe that it is relevant to the current conditions that gave rise to TWIA's decision to seek to offer, and the department's decision to authorize, business income coverage, as current unavailability of such coverage is not in response to a catastrophe.

Comment: One commenter believes that TWIA should not compete with voluntary market insurers.

Response: The department disagrees that the coverage approved by this rule allows TWIA to compete with voluntary market insurers in the sale of business income coverage. The department believes that many voluntary market insurers may not offer business income coverage in the catastrophe area; therefore, TWIA will not be in competition since it is not generally available in the voluntary market.

Comment: One commenter has suggested establishing an "actual loss sustained monthly limitation" approach in lieu of establishing a maximum daily limit of liability of $100,000 per building, per occurrence.

Response: The department disagrees with this change. It is the department's understanding that TWIA's proposal structured the coverage with a daily limit of liability in order to simplify the claims adjustment process and thus reduce the loss adjustment expenses that TWIA would incur. In addition, the department believes that providing business income coverage with an actual loss sustained limit of liability would increase TWIA's overall business income exposure more than offering such coverage with a daily limit of liability.

Comment: One commenter recommended that the department "eliminate the rule" that prohibits insurers from excluding windstorm and hail as a covered cause of loss from business income coverages, stating that this could provide an incentive for more voluntary market insurers to make coverage available, and would help minimize any overlap between their business income products and those made available by TWIA.

Response: There is no rule prohibiting insurers from excluding windstorm and hail from business income coverage. However, with the exception of business owner policies, the department pursuant to the statute has historically allowed the exclusion of windstorm and hail if the coverage was available through TWIA. Since business income coverage is not currently available through TWIA, the department believes that the exclusion of windstorm and hail from commercial business income policies sold in the voluntary market cannot be allowed because there would not be an available market to obtain business income coverage for the perils of windstorm and hail. The department believes that if the commenter's recommendation were followed, it would only address the availability of business income coverage for perils other than windstorm and hail.

Comment: One commenter stated that the Fiscal Note in the proposed rule inaccurately and inadequately addressed the fiscal implications for state or local governments.

Response: The department disagrees. As stated in the rule proposal, there will be no expected additional estimated costs to the state or local governments as a result of enforcing or administering the proposed amendments. The offering of business income coverage and the administration of the policies will only directly affect TWIA and its policyholders. While Article 21.49 allows losses in a calendar year in excess of $300 million to be credited against premium taxes, it is impossible to predict whether this will occur and the amount of tax credits that could be taken.

Comment: One commenter stated that the Public Benefit/Cost Note fails to address the adverse economic effect on licensed insurers who may be required to pay assessments to TWIA as a result of TWIA offering business income coverage.

Response: The department disagrees. The Public Benefit/Cost Note stated that the proposed rates were designed to be sufficient to cover the potential losses that the Association might be required to pay. It also stated that it is difficult if not impossible to predict any future losses that may be incurred because it is impossible to predict the frequency and severity of future windstorms and hail storms. It is anticipated that any increased costs for payable losses would over time be reflected in the premium rate paid by policyholders, which is dependent upon the types of losses and severity of losses that may be caused by hurricanes or hail storms. Whether TWIA's losses in excess of premium and other revenue in any given year would be of sufficient magnitude to trigger assessments to insurers that are members of TWIA is based on events that are so speculative that there is simply no way to quantify this risk.

Comment: One commenter believes that the rule proposal does not adequately address the additional loss adjustment expenses that TWIA will incur in adjusting losses covered by business income coverage.

Response: The department disagrees. The loss adjustment expenses for the business income coverage have been considered and have been factored into the rate structure for this coverage, as is typically done for all insurance rates.

Comment: One commenter believes that the rule would impose an adverse economic impact on small insurers, who would qualify as a small business under Texas law, if TWIA is allowed to offer business income coverage to commercial risks.

Response: The department does not agree that the rule would have an adverse economic impact on any insurer that met the definition of a small insurer. Business income coverage will only be written and administered by TWIA which, as a nonprofit entity, does not qualify as a small business. In addition, it is difficult if not impossible to predict the losses that may be incurred by individual insurers because it is impossible to predict the frequency and severity of windstorms and hail storms. Whether the excess losses in any given year would be of sufficient magnitude to trigger assessments to insurers that are members of TWIA is based on events that are so speculative that there is simply no way to quantify this risk. Further, in the event of a catastrophic loss event, Article 21.49 provides that assessments to the member insurers shall be made in the proportion that each insurer's net direct premiums written in the state during the preceding calendar year bears to the aggregate net direct premiums written by all insurers who are members of the Association. Thus, any assessment could not by law have a disproportionate effect on any insurer that met the definition of a small business.

Comment: One commenter stated that the proposed business income coverage exceeds the business income coverage available in the voluntary market because it combines different businesses and different types of business interruption coverage in the same form.

Response: The department disagrees. The TWIA business income coverage form, as proposed in TWIA's petition, is very closely patterned after the ISO business income coverage form in which the coverage is available to a combination of different types of commercial risks. The department considers the ISO form to be the industry standard in the voluntary market. In addition, unlike the ISO form, the TWIA form contains a 168 hour time deductible, a $100,000 limit of liability, and places a daily limit of liability on claim payments; therefore, the TWIA form imposes greater limitations on the coverage offered than does the ISO form.

Comment: One commenter believes that the proposed TWIA form does not contain exclusions that are similar to the policies available in the voluntary market. A law and ordinance exclusion and an exclusion for strikes were two that were cited as specific examples.

Response: The department disagrees. The TWIA business income form is an endorsement that can only be attached to the

TWIA commercial property policy; therefore, the TWIA policy exclusions, including increased cost of construction for law and ordinance, apply to the business income coverage. A separate exclusion for loss of business income due to a strike is not necessary as the TWIA business income coverage form only provides coverage for losses that result from the suspension of business operations that are caused by the named perils of windstorm or hail. Because strike is not one of the named perils, it is excluded.

Comment: One commenter has stated that the proposed TWIA business income coverage endorsement allows coverage for rental value without consideration for expenses that would not be incurred.

Response: The department disagrees that the coverage form would allow or require payment for expenses not incurred. In the definition section of the endorsement H.1., the definition of "Business Income" indicates that it covers "continuing normal operating expenses incurred." Also, in item H.11.b., the definition of "Rental Value" provides coverage for the "Amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be your obligations." These types of obligations would include continuing incurred expenses such as insurance, taxes, utilities, etc. that the tenants would be required to pay as a part of their rental payment, but may not be paying after a loss due to the uninhabitability of their rental unit due to windstorm or hail damage. Like business income, rental value is defined to only include continuing incurred expenses.

Comment: One commenter has stated that the proposed TWIA business income coverage endorsement fails to exclude coverage for rental value where the tenant continues to be legally responsible for rents under a lease agreement.

Response: The department disagrees. The TWIA business income coverage form on page 2, paragraph A., Coverage 1., provides for coverage only if the insured sustains a loss of business income or rental value. If the insured continues to collect rents under a lease, the insured would not sustain a loss and the coverage would not be triggered.

Comment: One commenter believes that the proposed TWIA business income coverage endorsement needs to clarify the coverage provided by defining the terms, "raw stock", "unfinished stock", and "finished stock."

Response: The department disagrees. These terms are not used in the TWIA business income coverage endorsement; therefore, it would serve no purpose to define them. While these terms are used in the Extended Business Income section of the ISO form, this coverage is not offered in the TWIA form.

Comment: One commenter stated that the commissioner is not authorized by Article 21.49 to establish rates for TWIA "by rule."

Response: The department disagrees. When read in context of the statutory scheme of Article 21.49, the rates for business income coverage were appropriately established. Section 8 of Article 21.49 allows the Association to file with the commissioner "every manual of classifications, rules, rates which shall include condition charges, every rating plan, and any modification of the foregoing which it proposes to use." That section further provides that each such filing "shall indicate the character and the extent of the coverage contemplated and shall be accompanied by the policies and endorsements proposed to be used..." and states that the Commissioner may, after notice and hearing, accept, modify, or reject a recommendation made by the Association under this subsection" and "Article 1.33B of this code (concerning hearings which are to be held by the State Office of Administrative Hearings) does not apply to an action taken under this subsection." Section 8 also states that the Association's annual commercial rate filing is not subject to Article 1.33B and that the open meeting at which comments on the commercial rate filing are received "is not a contested case hearing under Chapter 2001, Government Code." Finally, section 5A of Article 21.49 says that after notice and hearing, the Board (now commissioner) "may issue any orders which it considers necessary to carry out the purposes of this Act including, but not limited to, maximum rates, competitive rates, and policy forms; "that notice of such hearing must be posted with the Secretary of State; and that "Any person may appear and testify for or against the adoption of the order." The adoption of the rates, rules, and policy forms for business income coverage was thus in compliance with all procedures and requirements of Article 21.49.

Comment: One commenter stated that Article 21.49 requires TWIA to file its commercial rates and that the proposal does not contain notice that TWIA has filed the business income rates with the department for approval.

Response: The department disagrees. In the rule proposal, it was stated that "... and rating rules that will be used to govern the writing of the new loss of business income coverage has been requested by the Association in a petition filed with the department on October 3, 2000 (Ref. No. P-100-25)." The rule proposal also stated that TWIA's petition, which included the proposed rates, was available to the public from the department. It is clear from this language that notice was given that business income rates had been filed with the department for review and approval.

Comment: One commenter stated that the department did not show that the proposed rates would meet the statutory standards set forth in Article 21.49 §8 which require that rates be adequate and nonconfiscatory to any class of insurer. Another commenter expressed a general concern that the proposed rates might be inadequate, and urged the department to ensure that the proposed rates are actuarially sound.

Response: The department disagrees. The rates proposed by the Association were based on an actuarial study of rate needs prepared by the Association's consulting actuary, and adopted by the Association when it voted to make this filing with the department. Little or no data was presented to rebut the conclusions of the Association's actuary that the rates are not adequate or confiscatory to any class of insurer. Therefore, the department was entitled to rely upon the rate of the Association's own actuary.

Comment: Two commenters stated that TWIA has presented a report to the commissioner from its own actuaries indicating that TWIA's rates are inadequate within a range of from 23% to 74% and that the increased exposure from the new business income coverage would compound the problem of inadequate rates.

Response: The most recent report filed with the department concerning the adequacy of the Association's commercial rates is the Association's 2000 annual commercial rate filing. That filing contained a range of indications from plus 23% to plus 74%, depending on the assumptions used. The Office of Public Insurance Counsel recommended a large decrease in commercial rates, based on its own assumptions. After considering all of the comments made at the public hearing on commercial rates, the commissioner granted an increase in commercial rates based on his determination, upon review of all data, that this was adequate.

Comment: A commenter stated that the offering of business income coverage by TWIA is contrary to the language of Article 21.49, and that the legislative history of Article 21.49 indicates that TWIA does not have the statutory authority to offer business income coverage. The commenter cited the following in support of these assertions. In 1991, the House engrossed version of House Bill 2 contained a section that would have allowed TWIA to include business income coverage in its policy. The engrossed version of House Bill 2 also contained a section that would have mandated that a TWIA dwelling policy include coverage for indirect losses. The final version of House Bill 2 did not contain any amendments adding coverage for either residential or commercial indirect losses. In 1993, the Texas Legislature in House Bill 1461 amended Article 21.49 §3 to include the term "indirect losses" within the definition of "Texas windstorm and hail insurance;" it also added new section 8B which mandated that a TWIA dwelling policy include coverage for indirect losses. The commenter asserts that the Legislature's failure to enact the amendments pertaining to indirect losses in 1991, and the Legislature's enactment of an amendment requiring TWIA to provide indirect losses on residential property policies in 1993, demonstrates the Legislature's intent not to allow TWIA to provide indirect loss coverage (business income coverage) for commercial risks.

Response: The department disagrees that the offering of business income coverage by TWIA exceeds the statutory authority granted by Article 21.49. The offering of business income coverage by TWIA is consistent with the plain meaning of the words and terms contained in Article 21.49 §§1 and 3(d). Article 21.49 §1 requires TWIA to provide certain designated portions of the state with windstorm and hail insurance as necessary for the state's economic welfare and its orderly growth and development. Article 21.49 §3(d) defines "Texas windstorm and hail insurance" as meaning:

Deductible insurance against direct loss, and indirect losses resulting from a direct loss, to insurable property as a result of windstorm or hail, as such terms shall be defined and limited in policies and forms approved by the State Board of Insurance. (Emphasis added)

The plain meaning of the language underlined above is that the commissioner (as statutory successor to the State Board of Insurance, see Texas Insurance Code §31.007) has the discretionary authority to approve indirect coverage for commercial losses from wind and hail, including business income coverage, if he finds that approval of such coverage is necessary or beneficial to the catastrophe areas of the state. If the Legislature had intended to limit TWIA's authority to only offer coverage for indirect losses for residential risks, it would have been very simple to specify this limitation in the amended definition. The Legislature could have included the additional language "and indirect losses resulting from direct losses as specified in section 8B" to the 1993 amendment to the definition of Texas windstorm and hail insurance. Business income coverage is a type of indirect loss that is commonly understood within the insurance industry to result from a direct loss caused by a covered peril. The language in the definition of windstorm and hail insurance contains no such limitation, meaning that the Legislature has authorized TWIA to seek permission to sell indirect coverage, and has authorized the commissioner to shape the definitions and limits of that coverage through the policy form and rate approval process. In Fitzgerald v. Advanced Spine Fixation Systems, Inc., 996 S.W.2d 864, 865 (Tex. 1999) the Texas Supreme Court stated:

When interpreting statutes we try to give effect to legislative intent. Legislative intent remains the pole star of statutory construction. However, it is the cardinal law in Texas that a court construes a statute, "first, by looking to the plain and common meaning of the statute's words. If the meaning of the statutory language is unambiguous, we adopt, with few exceptions, the interpretation supported by the plain meaning of the provision's words and terms. Further, if a statute is unambiguous, rules of construction and other extrinsic aids cannot be used to create ambiguity." (citations omitted)

Thus, the Supreme Court has clearly stated in Fitzgerald that rules of construction cannot be used when the plain meaning of the statutory language is clear and unambiguous.

In the alternative, assuming for the sake of argument that Article 21.49 §3(d) is ambiguous and does require looking to legislative history for aid in construction, caselaw holds that "the unenacted bills of the Legislature cannot be considered to be a legislative interpretation of the statutes." Railroad Commission v. Houston Natural Gas Corp.,136 S.W.2d 117, 127 (Tex. Civ. App.-Austin 1945, no writ). The courts have further held that "one session of the Legislature does not have the power to declare the intent of a past session." Adams v. Baxter Healthcare Corp., 998 S.W.2d 349, 355 (Tex. App.-Austin 1999, no writ). The department reads the 1993 amendments as simply mandating that coverage for indirect losses be included in the TWIA residential property policy, while granting more discretion to the commissioner regarding policy form and rate approval for indirect losses for both commercial and residential risks.

For: Independent Insurance Agents of the Coastal Bend, Texas Building Owners and Managers Association, Inc., Texas Mini Storage Association, Inc., Texas Apartment Association, and Independent Insurance Agents of Texas. Against: American Insurance Association, The Association of Fire and Casualty Companies of Texas, Texas Farm Bureau Insurance Companies, and The Insurance Council of Texas.

DIVISION 4. ENDORSEMENTS

28 TAC §5.4201

The amendments are adopted pursuant to the Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49 §8, the Commissioner is authorized to prepare endorsements applicable to the standard policies which he has promulgated for use by the Association in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state. Article 21.49, §8 authorizes the Commissioner of Insurance to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the Association. Article 21.49, §3(d) defines "Texas Windstorm and Hail Insurance" as deductible insurance against direct loss, and indirect losses resulting from a direct loss, to insurable property as such terms shall be defined and limited in policies and forms approved by the Commissioner of Insurance. Article 21.49, §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

§5.4201. Endorsements for Use with Association Policy Forms.

The Commissioner of Insurance adopts by reference endorsements for use with the Texas Windstorm Insurance Association Policy Forms. Specimen copies of these endorsement forms are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They are also available from the Automobile and Homeowners Division, Mail Code 104-5A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. The endorsement forms are more specifically identified as follows.

(1) Endorsements for use with the Association Dwelling Policy and the Association Commercial Policy and the Association Farm and Ranch Dwelling Policy.

(A) Form No. TWIA-1, Blank Schedule Form, effective June 15, 1999.

(B) Form No. TWIA-430, Extension of Coverage--Increased Cost in Construction, effective June 15, 1999.

(2) Endorsements for use with the Association Dwelling Policy and the Association Commercial Policy and the Association Farm and Ranch Dwelling Policy and the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-12, Assignment of Interest or Change in Mortgagee or Trustee, effective June 15, 1999.

(B) Form No. TWIA-23, Cancellation Report, effective June 15, 1999.

(C) Form No. TWIA-77, General Change Endorsement, effective June 15, 1999.

(D) Form No. TWIA-112, Loss Payable Clause, effective June 15, 1999.

(E) Form No. TWIA-113, Lost Policy Voucher, effective June 15, 1999.

(F) Form No. TWIA-130, Mortgage Clause (Without Contribution), effective June 15, 1999.

(G) Form No. TWIA-151A, Premium Assignment Clause, effective June 15, 1999.

(H) Form No. TWIA-175, Sale Contract Clause, effective June 15, 1999.

(I) Form No. TWIA-195, Sworn Statement in Proof of Loss, effective June 15, 1999.

(3) Endorsements for use with the Association Commercial Policy.

(A) Form No. TWIA-18, Builders Risk--Stated Value Form, effective June 15, 1999.

(B) Form No. TWIA-21, Builders Risk--Actual Completed Value Form, effective June 15, 1999.

(C) Form No. TWIA-26, Church Form, effective June 15, 1999.

(D) Form No. TWIA-65, Large Deductible Endorsement, effective June 15, 1999.

(E) Form No. TWIA-115, Lumber Form---Specific---Retail Yard, effective June 15, 1999.

(F) Form No. TWIA-164, Replacement Cost Endorsement, effective June 15, 1999.

(G) Form No. TWIA-176, School Form, effective June 15, 1999.

(H) Form No. TWIA-280, Condominium Property Form---Additional Policy Provisions, effective June 15, 1999.

(I) Form No. TWIA-282, Condominium Property Form---Additional Policy Provisions, amended June 15, 1999.

(J) Form No. TWIA-17, Business Income Coverage, effective May 1, 2001.

(4) Endorsements for use with the Association Dwelling Policy.

(A) Form No. TWIA-310, Extensions of Coverage, amended June 15, 1999.

(B) Form No. TWIA-315, Extensions of Coverage, amended June 15, 1999.

(C) Form No. TWIA-320, Extensions of Coverage, amended June 15, 1999.

(D) Form No. TWIA-325, Extensions of Coverage, amended June 15, 1999.

(E) Form No. TWIA-326, Extensions of Coverage, amended June 15, 1999.

(F) Form No. TWIA-328, Extensions of Coverage, amended June 15, 1999.

(G) Form No. TWIA-410, Conversion to Farm and Ranch Dwelling Policy, effective June 15, 1999.

(5) Endorsements for use with the Association Dwelling Policy and the Association Farm and Ranch Dwelling Policy.

(A) Form No. TWIA-330, Extensions of Coverage, amended June 15, 1999.

(B) Form No. TWIA-335, Extensions of Coverage, amended June 15, 1999.

(C) Form No. TWIA-340, Extensions of Coverage, amended June 15, 1999.

(D) Form No. TWIA-345, Extensions of Coverage, amended June 15, 1999.

(E) Form No. TWIA-350, Extensions of Coverage, amended June 15, 1999.

(F) Form No. TWIA-365, Replacement Cost Endorsement---Personal Property, amended June 15, 1999.

(G) Form No. TWIA-400, Actual Cash Value---Roofs (One or Two Family Dwellings), effective June 15, 1999.

(H) Form No. TWIA-420, Exclusion of Cosmetic Damage to Roof Coverings Caused by Hail, effective June 15, 1999.

(6) Endorsements for use with the Association Mobile Home Policy-Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-29, Mandatory Endorsement, amended June 15, 1999.

(B) Form No. TWIA-570, Mobile Home Percentage Deductible Clause (Coastal Area), amended June 15, 1999.

(C) Form No. TWIA-575, Mobile Home Percentage Deductible Clause (Beach Area), amended June 15, 1999.

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

Filed with the Office of the Secretary of State on February 15, 2001.

TRD-200100957
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 7, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 463-6327

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DIVISION 6. MANUAL

28 TAC §5.4501

The amendments are adopted pursuant to the Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49 §8, the Commissioner is authorized to prepare endorsements applicable to the standard policies which he has promulgated for use by the Association in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state. Article 21.49, §8 authorizes the Commissioner of Insurance to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the Association. Article 21.49, §3(d) defines "Texas Windstorm and Hail Insurance" as deductible insurance against direct loss, and indirect losses resulting from a direct loss, to insurable property as such terms shall be defined and limited in policies and forms approved by the Commissioner of Insurance. Article 21.49, §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

§5.4501. Rules for the Texas Windstorm Insurance Association.

The Texas Department of Insurance adopts by reference a rules manual for the Texas Windstorm Insurance Association as amended effective, June 15, 1999. The Texas Department of Insurance adopts by reference amendments effective May 1, 2001 to the rules manual. Copies of the rules manual may be obtained by contacting the Automobile and Homeowners Division, Mail Code 104-5A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

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 15, 2001.

TRD-200100956
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 7, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.549

The Comptroller of Public Accounts adopts an amendment to §3.549, concerning taxable capital: apportionment, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12627).

In accordance with House Bill 2067, 76th Legislature, 1999, subsection (e)(13)(B) is being amended to provide a new apportionment requirement for dividends and/or interest received by a banking corporation or savings and loan association. The bill repealed §171.1031, which apportioned dividends and interest to the commercial domicile of the bank or savings and loan association. The legislation states that this new apportionment requirement applies to reports originally due on or after January 1, 2000.

Subsection (b)(9) is being added to provide a definition of "employee retirement plan."

Language is being added to subsections (c) and (e)(38) to provide reference to the Tax Code's requirements for apportioning services to qualified employee retirement plans in accordance with prior legislation.

Subsection (e)(28) is being amended to add magazines to the provision addressing advertising revenues and to clarify that all other receipts of newspapers and magazines must be apportioned in accordance with the apportionment rules set out in the section.

Subsections (b)(6), (c), (e)(1), (e)(21), (e)(22), (e)(26), (e)(27), (e)(28), (e)(30), (e)(31), (e)(38), (e)(40), and (e)(47) are being amended for clarification purposes.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.103.

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 13, 2001.

TRD-200100906
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: March 5, 2001
Proposal publication date: December 22, 2000
For further information, please call: (512) 463-4062

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SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.823

The Comptroller of Public Accounts adopts the repeal of §3.823, concerning surplus lines insurance premium tax trust funds, without changes to the proposed text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10883).

The section is being repealed because the current statute eliminates the requirement for maintaining a separate bank account for the deposit and payment of surplus lines premium tax. The current statutory provisions state that surplus lines taxes are trust funds in the hands of the agent and agents must make prepayments of taxes by the 15th day of the month following the month in which accrued taxes meet $70,000.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements the Insurance Code, Article 1.14-2, §12 and Title 2, §101.252.

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 13, 2001.

TRD-200100907
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: March 5, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 463-4062

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34 TAC §3.832

The Comptroller of Public Accounts adopts an amendment to §3.832, concerning the assessment for the Office of Public Insurance Counsel (OPIC) under Insurance Code, Article 1.35B, without changes to the proposed text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10885).

The amendment changes the assessment for life, health, and accident insurers and health maintenance organizations from $.03 per policy or certificate of coverage to $.057 per policy in compliance with statutory changes and revises the interest calculations under the Tax Code, Title 2.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Insurance Code, Article 1.35B.

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 13, 2001.

TRD-200100908
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: March 5, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 463-4062

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. STANDARDS FOR JUVENILE PRE-ADJUDICATION SECURE DETENTION FACILITIES

37 TAC §343.8, §343.9

The Texas Juvenile Probation Commission adopts amendments to §343.8 and §343.9, concerning multiple occupancy sleeping units. These sections are adopted without changes to the proposed text as published in the December 29, 2000, issue (25 TexReg 12922) and will not be republished.

TJPC adopts this rule in an effort to alleviate some of the problems associated with overcrowding in detention facilities while maintaining certain space and supervision requirements.

No public comment was received.

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

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 13, 2001.

TRD-200100918
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: March 5, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 424-6710

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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.

Agency Rule Review Plan

Texas Department of Mental Health and Mental Retardation

Title 25, Part 2

Filed: February 20, 2001

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Proposed Rule Reviews

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 1. Texas Board of Health, Subchapter S. Requests for Providing Public Information, §1.251.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting the rule continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to this rule as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200101070
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 21, 2001

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 193. Administrative Services, §§193.1 - 193.2.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200101071
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 21, 2001

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 205. Product Safety, Subchapter C. Labeling of Hazardous Substances, §§205.41 - 205.44; and Subchapter D. Inhalant Abuse, §205.51.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200101069
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 21, 2001

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 229. Food and Drug, Subchapter H. Seafood Safety, §§229.121 - 229.129.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200101072
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 21, 2001

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Texas Department of Mental Health and Mental Retardation

Title 25, Part 2

The Texas Department of Mental Health and Mental Retardation (department) will review the following subchapters in Texas Administrative Code Title 25, Part II, Chapter 401, in accordance with the requirements of the Texas Government Code, §2001.039: Subchapter C, concerning TDMHMR Rulemaking; Subchapter G, Community Mental Health and Mental Retardation Centers, §401.464, relating to Notification and Appeal Procedures; Subchapter J, concerning Standards of Care and Treatment in Psychiatric Hospitals; Subchapter K, concerning Licensure of Crisis Stabilization Units (CSUs); and Subchapter L, concerning TDMHMR In-Home and Family Support Program.

The department believes that the reasons for initially adopting the subchapters continue to exist.

Interested persons are invited to submit written comments concerning the review of these subchapters to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

TRD-200101030
Andrew Hardin
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 20, 2001

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The Texas Department of Mental Health and Mental Retardation (department) will review the following subchapters in Texas Administrative Code Title 25, Part II, Chapter 402, in accordance with the requirements of the Texas Government Code, §2001.039: Subchapter A, concerning Admissions, Transfers; Absences, and Discharges-Mental Health Facilities; Subchapter B, concerning Continuity of Services-Mental Health; and Subchapter C, concerning Determination of Manifest Dangerousness.

The department believes that the reasons for initially adopting the subchapters continue to exist.

Interested persons are invited to submit written comments concerning the review of these subchapters to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

TRD-200101031
Andrew Hardin
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 20, 2001

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The Texas Department of Mental Health and Mental Retardation (department) will review Texas Administrative Code Title 25, Part II, Chapter 403, Subchapter M, concerning Use of Departmental Facilities by Public Employee Organizations in accordance with the requirements of the Texas Government Code, §2001.039.

The department believes that the reasons for initially adopting the subchapter continue to exist.

Interested persons are invited to submit written comments concerning the review of this subchapter to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

TRD-200101032
Andrew Hardin
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 20, 2001

♦ ♦ ♦

The Texas Department of Mental Health and Mental Retardation (department) will review the following subchapters in Texas Administrative Code Title 25, Part II, Chapter 404, in accordance with the requirements of the Texas Government Code, §2001.039: Subchapter E, concerning Rights of Persons Receiving Mental Health Services, and Subchapter G, concerning Unusual Incidents Involving Persons Served by TXMHMR Facilities.

The department believes that the reasons for initially adopting the subchapters continue to exist.

Interested persons are invited to submit written comments concerning the review of these subchapters to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

TRD-200101033
Andrew Hardin
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 20, 2001

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The Texas Department of Mental Health and Mental Retardation (department) will review the following subchapters in Texas Administrative Code Title 25, Part II, Chapter 405, in accordance with the requirements of the Texas Government Code, §2001.039: Subchapter A, concerning Prescribing of Medication-Mental Health Services; Subchapter B, concerning Prescribing of Psychotropic Medications-Mental Retardation Facilities; Subchapter C, concerning Life Sustaining Treatment; Subchapter E, concerning Electroconvulsive Therapy (ECT); Subchapter F, concerning Voluntary and Involuntary Behavioral Interventions in Mental Health Programs; Subchapter H, concerning Behavior Management--Facilities Serving Persons with Mental Retardation; Subchapter I, concerning Consent to Treatment with Psychotropic Medications-Mental Retardation Facilities; Subchapter K, concerning Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers; Subchapter L, concerning Human Immunodeficiency Virus (HIV) Prevention, Testing, and Treatment; Subchapter M, concerning Mail Opening Procedures; Subchapter P, concerning Research in Departmental Facilities; Subchapter Y, concerning Rights of Mentally Retarded Persons; and Subchapter FF, concerning Consent to Treatment with Psychoactive Medication.

The department believes that the reasons for initially adopting the subchapters continue to exist.

Interested persons are invited to submit written comments concerning the review of these subchapters to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

TRD-200101034
Andrew Hardin
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 20, 2001

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The Texas Department of Mental Health and Mental Retardation (department) will review the following subchapters in Texas Administrative Code Title 25, Part II, Chapter 407, in accordance with the requirements of the Texas Government Code, §2001.039: Subchapter A, Financial Services; Subchapter C, concerning Lease of TDMHMR Surplus Property; and Subchapter D, concerning Inscription of Vehicles.

The department believes that the reasons for initially adopting the subchapters continue to exist.

Interested persons are invited to submit written comments concerning the review of these subchapters to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

TRD-200101035
Andrew Hardin
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 20, 2001

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The Texas Department of Mental Health and Mental Retardation (department) will review Texas Administrative Code Title 25, Part II, Chapter 410, Subchapter C, concerning Capital Improvements by Citizens Groups, in accordance with the requirements of the Texas Government Code, §2001.039.

The department believes that the reasons for initially adopting the subchapter continue to exist.

Interested persons are invited to submit written comments concerning the review of this subchapter to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

TRD-200101036
Andrew Hardin
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 20, 2001

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Texas Department of Transportation

Title 43, Part 1

Notice of Intention to Review: In accordance with the General Appropriations Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 30, Aviation and Chapter 31, Public Transportation.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comment or questions regarding this rule review may be submitted in writing to Margot Massey, Director, Public Transportation Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, or by phone at (512) 416-2809.

TRD-200100970

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 16, 2001

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Texas Turnpike Authority Division of the Texas Department of Transportation

Title 43, Part 2

Notice of Intention to Review: In accordance with the General Appropriation Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature, the Texas Turnpike Authority (authority) of the Texas Department of Transportation files this notice of intention to review Title 43 TAC, Part 2 Chapter 52, Project Development, Subchapter A, §§52.1-52.8, Environmental Review and Public Involvement.

The authority will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted in writing to Teresa Lemons, Director of Finance and Administration, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas, 78701-2438, or at (512) 936-0980.

§52.1. Purpose.

§52.2. Definitions.

§52.3. Projects Requiring Environmental Reviews.

§52.4. Requirements for Federally-Funded Projects; Department-Funded Projects.

§52.5. Projects Excluded from Environmental Reviews.

§52.6. Early Coordination and Public Involvement.

§52.7. Environmental Assessment.

§52.8. Environmental Impact Statements (EIS).

TRD-200100979
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: February 16, 2001

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Adopted Rule Reviews

Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission has reviewed 16 TAC Chapter 401 and readopts the 16 TAC §401.355 in accordance with the General Appropriations Act, Article IX, Section 9-10, 13, 76th Legislative, 1999 and Texas Government Code, §2001.039.

The proposed notice of intention to review 16 TAC Chapter 401 was published in the November 12, 1999 issue of the *Texas Register* (24 TexReg 10149). No comments were received regarding the review of this Chapter. Pursuant to Commission Order Number 00-0004, dated January 28, 2000, the Commission readopted rules contained within Texas Administrative Code Title 16, Chapter 401. The specific rules readopted are listed on Exhibit "A" to the Order. 16 TAC §401.355 was not one of the rules readopted pursuant to Commission Order Number 00-0004. Upon further review of 16 TAC §401.355, the agency's reason for adopting 16 TAC §401.355 continues to exist.

TRD-200101025
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 20, 2001

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Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291 (§291.23) concerning Pilot or Demonstration Research Projects, pursuant to the Appropriations Act, 76th Legislature, Section 9-10.13. The proposed rule review was published in the January 12, 2001, issue of the *Texas Register* (26 TexReg 691).

No comments were received regarding adoption of this review. The agency finds that the reason for adopting the rule continues to exist.

TRD-200100958
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: February 15, 2001

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The Texas State Board of Pharmacy adopts the review of Chapter 295 (§295.13), concerning Drug Therapy Management by a Pharmacist under Written Protocol of a Physician, pursuant to the Appropriations Act, 76th Legislature, Section 9-10.13. The proposed rule review was published in the January 12, 2001, issue of the *Texas Register* (26 TexReg 691).

No comments were received regarding adoption of this review. The agency finds that the reason for adopting the rule continues to exist.

TRD-200100959
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: February 15, 2001

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) adopts the rules review and readopts Chapter 22, Procedural Rules, pursuant to the Texas Government Code §2001.039. The notice of intention to review Chapter 22 was published in the *Texas Register* on September 29, 2000 at 25 TexReg 9966. Project Number 22067 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rules continues to exist. The commission requested specific comments on whether the reason for adopting the procedural rules

in Chapter 22 continues to exist. The commission received no comments on the proposed review of Chapter 22.

The commission finds that the reason for adopting the rules in Chapter 22 continues to exist. The rules are necessary for administrative efficiency, procedural consistency among contested and uncontested proceedings, and guidance for persons who participate in proceedings before the commission.

The commission readopts Chapter 22, Procedural Rules, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

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

Subchapter A. General Provisions and Definitions.

16 TAC §22.1. Purpose and Scope.

16 TAC §22.2. Definitions.

16 TAC §22.3. Standards of Conduct.

16 TAC §22.4. Computation of Time.

16 TAC §22.5. Suspension of Rules and Commission-Prescribed Forms.

Subchapter B. The Organization of the Commission.

16 TAC §22.21. Meetings.

16 TAC §22.22. Service on the Commission.

Subchapter C. Classification of Applications or Other Documents Initiating a Proceeding.

16 TAC §22.31. Classification in General.

16 TAC §22.32. Administrative Review.

16 TAC §22.33. Tariff Filings.

16 TAC §22.34. Consolidation and Severance.

16 TAC §22.35. Informal Disposition.

Subchapter D. Notice.

16 TAC §22.51. Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings.

16 TAC §22.52. Notice in Licensing Proceedings.

16 TAC §22.53. Notice in Regional Hearings.

16 TAC §22.54. Notice to be Provided by the Commission.

16 TAC §22.55. Notice in Other Proceedings.

16 TAC §22.56. Notice of Unclaimed Funds.

Subchapter E. Pleadings and Other Documents.

16 TAC §22.71. Filing of Pleadings, Documents and Other Materials.

16 TAC §22.72. Formal Requisites of Pleadings and Documents to be Filed with the Commission.

16 TAC §22.73. General Requirements for Applications.

16 TAC §22.74. Service of Pleadings and Documents.

16 TAC §22.75. Examination and Correction of Pleadings and Documents.

16 TAC §22.76. Amended Pleadings.

16 TAC §22.77. Motions.

16 TAC §22.78. Responsive Pleadings and Emergency Action.

16 TAC §22.79. Continuances.

16 TAC §22.80 Commission Prescribed Forms.

Subchapter F. Parties.

16 TAC §22.101. Representative Appearances.

16 TAC §22.102. Classification of Parties.

16 TAC §22.103. Standing to Intervene.

16 TAC §22.104. Motions to Intervene.

16 TAC §22.105. Alignment of Parties.

Subchapter G. Prehearing Proceedings.

16 TAC §22.121. Prehearing Conferences.

16 TAC §22.122. Interim Orders.

16 TAC §22.123. Appeal of an Interim Order.

16 TAC §22.124. Statements of Position.

16 TAC §22.125. Interim Relief.

16 TAC §22.126. Bonded Rates.

16 TAC §22.127. Certification of an Issue to the Commission.

Subchapter H. Discovery Procedures.

16 TAC §22.141. Forms and Scope of Discovery.

16 TAC §22.142. Limitations on Discovery and Protective Orders.

16 TAC §22.143. Depositions.

16 TAC §22.144. Requests for Information and Requests for Admission of Facts.

16 TAC §22.145. Subpoenas.

Subchapter I. Sanctions.

16 TAC §22.161. Sanctions.

Subchapter J. Summary Proceedings.

16 TAC §22.181. Dismissal of a Proceeding.

16 TAC §22.182. Summary Decision.

Subchapter K. Hearings.

16 TAC §22.201. Place and Nature of Hearings.

16 TAC §22.202. Presiding Officer.

16 TAC §22.203. Order of Procedure.

16 TAC §22.204. Transcript and Record.

16 TAC §22.205. Briefs.

16 TAC §22.206. Consideration of Contested Settlements.

16 TAC §22.207. Referral to State Office of Administrative Hearings.

Subchapter L. Evidence and Exhibits in Contested Cases.

16 TAC §22.221. Rules of Evidence in Contested Cases.

16 TAC §22.222. Official Notice.

16 TAC §22.223. Witnesses to be Sworn.

16 TAC §22.224. Documentary Evidence.

16 TAC §22.225. Written Testimony and Accompanying Exhibits.

16 TAC §22.226. Exhibits.

16 TAC §22.227. Offers of Proof.

16 TAC §22.228. Stipulation of Facts.

Subchapter M. Procedures and Filing Requirements in Particular Commission Proceedings.

16 TAC §22.241. Investigations.

16 TAC §22.242. Complaints.

16 TAC §22.243. Rate Change Proceedings.

16 TAC §22.244. Review of Municipal Rate Actions.

16 TAC §22.246. Administrative Penalties.

Subchapter N. Decision and Orders.

16 TAC §22.261. Proposals for Decision.

16 TAC §22.262. Commission Action After a Proposal for Decision.

16 TAC §22.263. Final Orders.

16 TAC §22.264. Rehearing.

Subchapter O. Rulemaking.

16 TAC §22.281. Initiation of Rulemaking.

16 TAC §22.282. Notice and Public Participation in Rulemaking Procedures.

16 TAC §22.283. Emergency Adoption.

16 TAC §22.284. Informal Information Gathering.

Subchapter P. Dispute Resolution.

16 TAC §22.301. Purpose

16 TAC §22.303. Mediation.

16 TAC §22.304. Voluntary Alternative Dispute Resolution.

16 TAC §22.305. Compulsory Arbitration.

16 TAC §22.306. Confidential Information.

16 TAC §22.307. Subsequent Proceedings.

16 TAC §22.308. Approval of Negotiated Agreements.

16 TAC §22.309. Approval of Arbitrated Agreements.

16 TAC §22.310. Consolidation.

Subchapter Q. Post-Interconnection Agreement Dispute Resolution.

16 TAC §22.321. Purpose.

16 TAC §22.322. Definitions.

16 TAC §22.323. Filing of Agreement.

16 TAC §22.324. Confidential Information.

16 TAC §22.325. Informal Settlement Conference.

16 TAC §22.326. Formal Dispute Resolution Proceeding.

16 TAC §22.327. Request for Expedited Ruling.

16 TAC §22.328. Request for Interim Ruling Pending Dispute Resolution.

Subchapter R. Approval of Amendments to Existing Interconnection Agreements and Approval of Agreements Adopting Terms and Conditions Pursuant to FTA96 §252(i).

16 TAC §22.341. Approval of Amendments to Existing Interconnection Agreements.

16 TAC §22.342. Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA96) §252(i).

TRD-200101049
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 20, 2001

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Texas Turnpike Authority of the Texas Department of Transportation

Title 43, Part 2

Notice of Readopted Rules: The Texas Turnpike Authority of the Texas Department of Transportation readopts without changes Title 43 TAC, Part 2 Subchapter D,§§50.41-45, Employment Practices, Subchapter E, §§50.50-54, Indemnification; and Subchapter F §§50.60-62, Public Records, Complaint Procedures and Debt Collection (collectively, "Subchapters D, E, and F"), as proposed in the December 29, 2000, issue of the *Texas Register* (25 TexReg 13012). This review was conducted in accordance with the General Appropriation Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature.

§50.41. General Policy

§50.42. Sick Leave Pool Program

§50.43. Employee Training and Education

§50.44. Termination of Employees

§50.45. Standards of Conduct

§50.50. Indemnification by the Authority

§50.51. Expenses

§50.52. Procedure

§50.53. Additional Indemnification

§50.54. Definitions

§50.60. Public Records

§50.61. Complaints Procedure

§50.62. Debt Collection

The proposed review was published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 13012).

No comments were received regarding the readoption of these rules. The Texas Turnpike Authority has reviewed these rules and determined that the reasons for adopting them continue to exist.

This concludes the review of Chapter 50, Subchapters D through F.

TRD-200100978

Phillip Russell

Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Filed: February 16, 2001

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

Chapter 373. Grants Administration

Pursuant to the notice of intent to review published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 13012), the Texas Water Development Board (board) has reviewed and considered for readoption 31 TAC, Part 10, Chapter 373, Grants Administration, in accordance with the Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continues to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the rules. This completes the board's review of Chapter 373.

TRD-200101065

Suzanne Schwartz

General Counsel

Texas Water Development Board

Filed: February 21, 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: 22 TAC §51.3(b)

PENALTIES FOR PRACTICE AND PROCEDURES VIOLATIONS

CATEGORY I Not To Exceed The Following Amounts 1st: $750 2nd: $850 3rd: $1000	
Violation	**Reference**
Unlicensed Barber School	TEX. CIV. STATUTE, ARTICLE 8407a, §9a TEX. OCC. CODE ANN.§1601.351
Enrolling Prior to Approval	TEX. CIV. STATUTE, ARTICLE 8407a, §9n TEX. OCC. CODE ANN.§1601.356
Unapproved Location Change	TEX. CIV. STATUTE, ARTICLE 8407a, §9q TEX. OCC. CODE ANN.§1601.554
Working License Revoked	TEX. CIV. STATUTE, ARTICLE 8407a, §9s
CATEGORY II Not To Exceed The Following Amounts 1st: $500 2nd: $750 3rd: $1000	
Violation	**Reference**
Registered Name/Location	TEX. CIV. STATUTE, ARTICLE 8402 TEX. OCC. CODE ANN.§1601.301
Certificate, License or Permit Required	TEX. CIV. STATUTE, ARTICLE 8407a TEX. OCC. CODE ANN.§1601.251
Unlicensed Barber Shop	TEX. CIV. STATUTE, ARTICLE 8407a, §3D TEX. OCC. CODE ANN.§1601.301
Unlawful Health Certificate	TEX. CIV. STATUTE, ARTICLE 8407a, §8 TEX. OCC. CODE ANN.§1601.252
License From Another State/Country	TEX. CIV. STATUTE, ARTICLE 8407a, §13 TEX. OCC. CODE ANN.§1601.255
Personal Affidavit Another State	TEX. CIV. STATUTE, ARTICLE 8407a, §13 TEX. OCC. CODE ANN.§1601.255
CATEGORY II Not To Exceed The Following Amounts 1st: $500 2nd: $750 3rd: $1000	
Violation	**Reference**
Barber Tech Practicing Out of Scope	TEX. CIV. STATUTE, ARTICLE 8407a, §3 TEX. OCC. CODE ANN.§1601.256
Manicurist Practicing Out of Scope	TEX. CIV. STATUTE, ARTICLE 8407a, §15 TEX. OCC. CODE ANN.§1601.257
Unlicensed Manicure Shop	TEX. CIV. STATUTE, ARTICLE 8407a,§15a TEX. OCC. CODE ANN.§1601.304
Wig Specialist Out of Scope	TEX. CIV. STATUTE, ARTICLE 8407a, §16 TEX. OCC. CODE ANN.§1601.306
Wig Instructor Out of Scope	TEX. CIV. STATUTE, ARTICLE 8407a, §17 TEX. OCC. CODE ANN.§1601.259
Unlicensed Wig Shop	TEX. CIV. STATUTE, ARTICLE 8407a, §18a TEX. OCC. CODE ANN.§1601.301
Unlicensed Wig School	TEX. CIV. STATUTE, ARTICLE 8407a, §18.1a TEX. OCC. CODE ANN.§1601.358
Gross Malpractice	TEX. CIV. STATUTE, ARTICLE 8407a, §21a1 TEX. OCC. CODE ANN.§1601.601
Knowingly Contagious Disease	TEX. CIV. STATUTE, ARTICLE 8407a, §21a2 TEX. OCC. CODE ANN.§1601.601
Employing Unlicensed Person	TEX. CIV. STATUTE, ARTICLE 8407a,§24b TEX. OCC. CODE ANN.§1601.652
Obtaining License by Fraud	TEX. CIV. STATUTE, ARTICLE 8407a, §24c TEX. OCC. CODE ANN.§1601.652
Misrepresent Enrollment	TEX. CIV. STATUTE, ARTICLE 8407a, §9a,2 TEX. OCC. CODE ANN.§1601.552
CATEGORY III Not To Exceed The Following Amounts 1st: $300 2nd: $500 3rd: $750	
Violation	**Reference**
Sleeping Quarters	TEX. CIV. STATUTE, ARTICLE 8406 TEX. OCC. CODE ANN.§1601.507
False Advertisement "Barbering"	TEX. CIV. STATUTE, ARTICLE 8407a, §2b TEX. OCC. CODE ANN.§1601.251
False Advertisement "Barber Pole"	TEX. CIV. STATUTE, ARTICLE 8407a, §2c TEX. OCC. CODE ANN.§1601.251
False Statement	TEX. CIV. STATUTE, ARTICLE 8407a, §8 TEX. OCC. CODE ANN.§1601.252
False Advertisement	TEX. CIV. STATUTE, ARTICLE 8407a, §21 TEX. OCC. CODE ANN.§1601.601
Practicing Under Wrong Name	TEX. CIV. STATUTE, ARTICLE 8407a, §21a4 TEX. OCC. CODE ANN.§1601.601
Refresher Course	TEX. CIV. STATUTE, ARTICLE 8407a, §9d TEX. OCC. CODE ANN.§1601.354
Theory Taught	TEX. CIV. STATUTE, ARTICLE 8407a, §9i TEX. OCC. CODE ANN.§1601.558
Teacher on Duty	TEX. CIV. STATUTE, ARTICLE 8407a, §9j TEX. OCC. CODE ANN.§1601.560
Qualified Instructor	TEX. CIV. STATUTE, ARTICLE 8407a, §9j TEX. OCC. CODE ANN.§1601.560
Teacher Instructor Ratio	TEX. CIV. STATUTE, ARTICLE 8404a, §9l TEX. OCC. CODE ANN.§1601.560
School Change of Ownership	TEX. CIV. STATUTE, ARTICLE 8407a, §9p TEX. OCC. CODE ANN.§1601.554
Increase/Decrease Hours	TEX. CIV. STATUTE, ARTICLE 8407a, §9e TEX. OCC. CODE ANN.§1601.558(d)
CATEGORY IV Not To Exceed The Following Amounts 1st: $200 2nd: $400 3rd: $500	
Violation	**Reference**
Stop Blood Flow	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
CATEGORY VA Not To Exceed The Following Amounts 1st: $100 2nd: $300 3rd: $500	
Violation	**Reference**
Employee with Disease	TEX. CIV. STATUTE, ARTICLE 8404 TEX. OCC. CODE ANN.§1601.505
Expired License	TEX. CIV. STATUTE, ARTICLE 8407a, §2a TEX. OCC. CODE ANN.§1601.251
Unlawful Transfer	TEX. CIV. STATUTE, ARTICLE 8407a, §15Ae

	TEX. OCC. CODE ANN.§1601.306
Proof of Requisites	TEX. CIV. STATUTE, ARTICLE 8407a TEX. OCC. CODE ANN.§1601.252
Employing Cosmetologist	TEX. CIV. STATUTE, ARTICLE 8407a, §15Af TEX. OCC. CODE ANN.§1601.406
Expired Permit	TEX. CIV. STATUTE, ARTICLE 8407a, §15Ag TEX. OCC. CODE ANN.§1601.406
Location Change	TEX. CIV. STATUTE, ARTICLE 8407a, §15Ah TEX. OCC. CODE ANN.§1601.310
School Owner Working Chair	TEX. CIV. STATUTE, ARTICLE 8407a, §24C-1 TEX. OCC. CODE ANN.§1601.652
School Owner Permitting A Person Other Than A Student To Work Chair	TEX. CIV. STATUTE, ARTICLE 8407a, §24C-1 TEX. OCC. CODE ANN.§1601.310
CATEGORY VA Not To Exceed The Following Amounts 1st: $100 2nd: $300 3rd: $500	
Violation	**Reference**
Liquied Sterilizer	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Barber School Sign	TEX. CIV. STATUTE, ARTICLE 8407a, §9h TEX. OCC. CODE ANN.§1601.553
Expired School License	TEX. CIV. STATUTE, ARTICLE 8407a, §9o TEX. OCC. CODE ANN.§1601.407
Course Outline	TEX. CIV. STATUTE, ARTICLE 8407a, §9u TEX. OCC. CODE ANN.§1601.556
Catalog	TEX. CIV. STATUTE, ARTICLE 8407a, §9v
Curriculum Content	TEX. CIV. STATUTE, ARTICLE 8407a, §9x TEX. OCC. CODE ANN.§1601.557
Student Cancellation	TEX. CIV. STATUTE, ARTICLE 8407a, §9a1 TEX. OCC. CODE ANN.§1601.562
Violation of Refund Policy	TEX. CIV. STATUTE, ARTICLE 8407a, §9a,b1 TEX. OCC. CODE ANN.§1601.563
Violate Termination Ratio	TEX. CIV. STATUTE, ARTICLE 8407a, §9a,c TEX. OCC. CODE ANN.§1601.564
Student Re-Entry	TEX. CIV. STATUTE, ARTICLE 8407a, §9d TEX. OCC. CODE ANN.§1601.564
Timely Refund	TEX. CIV. STATUTE, ARTICLE 8407a, §9a,e TEX. OCC. CODE ANN.§1601.566
Interest Paid	TEX. CIV. STATUTE, ARTICLE 8407a, §9a,e TEX. OCC. CODE ANN.§1601.566
Incomplete/Re-Entry	TEX. CIV. STATUTE, ARTICLE 8407a, §9a,g TEX. OCC. CODE ANN.§1601.565
CATEGORY VB Not To Exceed The Following Amounts 1st: $100 2nd: $200 3rd: $300	
Violation	**Reference**
Practice Unlicensed Facility	TEX. CIV. STATUTE, ARTICLE 8402, b1 TEX. OCC. CODE ANN.§1601.453
Cosmetologist Practicing in Barber Shop	TEX. CIV. STATUTE, ARTICLE 8402, b2 TEX. OCC. CODE ANN.§1601.502
Equipment	TEX. CIV. STATUTE, ARTICLE 8403 TEX. OCC. CODE ANN.§1601.504
Combs, Brushes	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
Sterilize Razor, Shears Clippers, Tweezers	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
Shave Inflamed Area	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
Dirty Finger Bowl	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
Unlawful Location Change	TEX. CIV. STATUTE, ARTICLE 8407a, §3h TEX. OCC. CODE ANN.§1601.503
16 Years Old	TEX. CIV. STATUTE, ARTICLE 8407a, §7 TEX. OCC. CODE ANN.§1601.252
CATEGORY VC Not To Exceed The Following Amounts 1st: $50 2nd: $100 3rd: $150	
Violation	**Reference**
Minimum Texas Department of Health Standards	TEX. CIV. STATUTE, ARTICLE 8407a, §15c1 TEX. OCC. CODE ANN.§1601.307
Additional Requirement	TEX. CIV. STATUTE, ARTICLE 8407a, §15c-2 TEX. OCC. CODE ANN.§1601.307
Failure to Display	TEX. CIV. STATUTE, ARTICLE 8407a, §24D TEX. OCC. CODE ANN.§1601.652
Display of Consumer Complaint	TEX. CIV. STATUTE, ARTICLE 8402, 2d TEX. OCC. CODE ANN.§1601.202
Unlaundered Towel	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
Dirty Head Rest	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
Dirty Sponge	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
No Neck Strip	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
Failure To Display	TEX. CIV. STATUTE, ARTICLE 8407a, §19 TEX. OCC. CODE ANN.§1601.451
CATEGORY VIA Not To Exceed The Following Amounts 1st: Warning 2nd: $500 3rd: $1000	
Violation	**Reference**
All Furniture, and Equipment	TEX. CIV. STATUTE, ARTICLE 8405 TEX. OCC. CODE ANN.§1601.506
CATEGORY VIB Not To Exceed The Following Amounts 1st: $Warning 2nd: $100 3rd: $150	
Violation	**Reference**
Manager on Duty	TEX. CIV. STATUTE, ARTICLE 8407a, §3g TEX. OCC. CODE ANN.§1601.502
Improper Curriculum	TEX. CIV. STATUTE, ARTICLE 8407a, §9c TEX. OCC. CODE ANN.§1601.354
Theory/Practical Instruction	TEX. CIV. STATUTE, ARTICLE 8407a, §9l

	TEX. OCC. CODE ANN.§1601.556
2800 Square Feet	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Twenty Chairs	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
One Lavatory per Two chairs	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Toilet Facilities	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
CATEGORY VIC Not To Exceed The Following Amounts 1st: $Warning 2nd: $100 3rd: $200	
Violation	**Reference**
Shop Permit on Display	TEX. CIV. STATUTE, ARTICLE 8407a, §3d TEX. OCC. CODE ANN.§1601.501
Classroom Requirements	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Library Facilities	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Drinking Fountain	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Fire Fighting Equipment	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Student Requirements	TEX. CIV. STATUTE, ARTICLE 8407a, §9d TEX. OCC. CODE ANN.§1601.260
Progress Reports	TEX. CIV. STATUTE, ARTICLE 8407a, §9e TEX. OCC. CODE ANN.§1601.561
Completion Rates	TEX. CIV. STATUTE, ARTICLE 8407a, §9e TEX. OCC. CODE ANN.§1601.561
Job Placement	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.561
Hard Surface Floor	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Lighting	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
CATEGORY VID Not To Exceed The Following Amounts 1st: $Warning 2nd: $50 3rd: $100	
Violation	**Reference**
Adequate Latherizers	TEX. CIV. STATUTE, ARTICLE 8407a, §9g TEX. OCC. CODE ANN.§1601.353
Required Forms	TEX. CIV. STATUTE, ARTICLE 8407a, §10, 1 TEX. OCC. CODE ANN.§1601.252
Photographs	TEX. CIV. STATUTE, ARTICLE 8407a, §10, 2 TEX. OCC. CODE ANN.§1601.261
Application Fee	TEX. CIV. STATUTE, ARTICLE 8407a, §10, 3 TEX. OCC. CODE ANN.§1601.261

GENERAL RULES OF PRACTICE AND PROCEDURES

CATEGORY I Not To Exceed The Following Amounts 1st: $750 2nd: $850 3rd:$1000	
Violation	**Reference**
CATEGORY II Not To Exceed The Following Amounts 1st: $500 2nd: $750 3rd:$1000	
Violation	**Reference**
Right of Access	§51.6
CATEGORY III Not To Exceed The Following Amounts 1st: $300 2nd: $500 3rd:$750	
Violation	**Reference**
Barber Advertisements (Yellow Pages)	§51.101
CATEGORY IV Not To Exceed The Following Amounts 1st: $200 2nd: $400 3rd:$500	
Violation	**Reference**
CATEGORY VA Not To Exceed The Following Amounts 1st: $100 2nd: $300 3rd:$500	
Violation	**Reference**
CATEGORY VB Not To Exceed The Following Amounts 1st: $100 2nd: $200 3rd:$300	
Violation	**Reference**
Animals Prohibited	§51.96
CATEGORY VC Not To Exceed The Following Amounts 1st: $50 2nd: $100 3rd:$150	
Violation	**Reference**
Current Address	§51.4
CATEGORY VIA Not To Exceed The Following Amounts 1st: $Warning 2nd: $500 3rd:$1000	
Violation	**Reference**
CATEGORY VIB Not To Exceed The Following Amounts 1st: $Warning 2nd: $300 3rd:$500	
Violation	**Reference**
Barber School Business Hours	§51.14
Other Business Prohibited (School or College)	§51.40
Booth Rental	§51.97
CATEGORY VIC Not To Exceed The Following Amounts 1st: $Warning 2nd: $100 3rd:$200	
Violation	**Reference**
Student Equipment	§51.16
Dress Code	§51.94
CATEGORY VID Not To Exceed The Following Amounts 1st: $Warning 2nd: $50 3rd:$100	
Violation	**Reference**
Student Certification	§51.23
Other Business Prohibited (Shop)	§51.95

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.

Automobile Theft Prevention Authority

Request for Applications under the Automobile Theft Prevention Authority Fund

Notice of Invitation for Applications:

The Automobile Theft Prevention Authority is soliciting applications for grants to be awarded for projects under the Automobile Theft Prevention Authority (ATPA) Fund. This grant cycle will be one year in duration, and will begin on September 1, 2001. One or more of the following types of projects may be awarded, depending on the availability of funds:

Law Enforcement/Detection/Apprehension Projects, to establish motor vehicle theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

Prosecution/Adjudication/Conviction Projects, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle theft offenses. Prevention, Anti-Theft Devices and Automobile Registration Projects, to test experimental equipment which is considered to be designed for auto theft deterrence and registration of vehicles in the Texas Help End Auto Theft (H.E.A.T.) Program.

Reduction of the Sale of Stolen Vehicles or Parts Projects, to provide vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen vehicles or parts.

Public Awareness and Crime Prevention/Education/Information Projects, to provide education and specialized training to law enforcement officers in auto theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

Eligible Applicants:

State agencies, local general-purpose units of government, independent school districts, nonprofit, and for profit organizations are eligible to apply for grants for automobile theft prevention assistance projects. Nonprofit and profit organizations shall be required to provide with their grant applications sufficient documentation to evaluate the credibility and the community support of the organization and the viability of the organization's existing activities in the context of providing automobile theft prevention assistance.

Contact Person:

Detailed specifications, including selection process and schedule for workshops for applicants will be made available through ATPA. Contact Agustin De La Rosa, Jr., Director, Texas Automobile Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78779, (512) 374-5101.

Application Workshops:

April 25th, South Padre Island, 10:00 a.m.- 11:30 a.m., Holiday Inn Sunspree Resort, 100 Padre Blvd., South Padre Island, Texas, (956) 761-5401

Closing Date for Receipt of Applications:

The original and three (3) copies of the proposal must be received by the Texas Automobile Theft Prevention Authority by 5 p.m., May 11, 2001 or postmarked by May 11, 2001. If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

Selection Process:

Applications will be selected according to §§57.2, 57.4, 57.7, and 57.14, as published in Title 43, Chapter 57, Texas Administrative Code. Grant award decisions by ATPA are final and not subject to judicial review. Grants will be awarded on or before September 1, 2001.

TRD-200100944
Agustin De La Rosa, Jr.
Director
Automobile Theft Prevention Authority
Filed: February 14, 2001

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Texas Bond Review Board

Biweekly Report of the 2001 Private Activity Bond Allocation Program

The information that follows is a report of the 2001 Private Activity Bond Allocation Program for the period of February 3, 2001 through February 16, 2001.

Total amount of state ceiling remaining unreserved for the $325,809,688 subceiling for qualified mortgage bonds under the Act as of February 16, 2001: $112,752,708

Total amount of state ceiling remaining unreserved for the $143,356,262 subceiling for state-voted issue bonds under the Act as of February 16, 2001: $143,356,262

Total amount of state ceiling remaining unreserved for the $97,742,906 subceiling for qualified small issue bonds under the Act as of February 16, 2001: $74,742,906

Total amount of state ceiling remaining unreserved for the $215,034,394 subceiling for residential rental project bonds under the Act as of February 16, 2001: $10,549,394

Total amount of state ceiling remaining unreserved for the $136,840,069 subceiling for student loans bonds under the Act as of February 16, 2001: $31,840,069

Total amount of state ceiling remaining unreserved for the $384,455,431 subceiling for all other issue bonds under the Act as of February 16, 2001: $10,955,431

Total amount of the $1,303,238,750 state ceiling remaining unreserved under the Act as of February 16, 2001: $384,235,770

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from February 3, 2001 through February 16, 2001, 2001:

1) Issuer: Austin HFC

User: Arbors Creekside LLC

Description: Multifamily Residential Rental Project--The Arbors at Creekside Apts.

Amount: $12,700,000

2) Issuer: TDHCA

User: TX Bluffview Villas

Description: Multifamily Residential Rental Project--Bluffview Villas

Amount: $14,100,000

Following is a comprehensive listing of applications, which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from February 3, 2001 through February 16, 2001:

1) Issuer: Brazos Higher Education Authority, Inc.

User: Eligible Borrowers

Description: Student Loan Bonds

Amount: $35,000,000

2) Issuer: Grand Prairie HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $14,903,400

3) Issuer: City of Dallas HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $25,000,000

Following is a comprehensive listing of applications, which were either withdrawn or cancelled pursuant to the Act from February 3, 2001 through February 16, 2001:

1) Issuer: San Antonio HFC

User: San Antonio Housing Development Corp.

Description: Multifamily Residential Rental Project-- Crown Meadow Apts.

Amount: $15,000,000

2) Issuer: TDHCA

User: SDC Investments

Description: Multifamily Residential Rental Project--Ewing Villas Apts.

Amount: $12,250,000

3) Issuer: Fort Bend County IDC

User: Continental Poly Bags, Inc.

Description: Qualified Small Issue Bond

Amount: $3,400,000

Following is a comprehensive listing of applications, which released a portion or their entire reserved amount pursuant to the Act from February 3, 2001 through February 16, 2001:

1) Issuer: Gulf Coast Waste Disposal Authority

User: Valero Energy Corp.

Description: All Other Issue--Texas City, Texas

Amount: $6,500,000

2) Issuer: Grand Prairie HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $39,000

For a more comprehensive and up-to-date summary of the 2001 Private Activity Bond Allocation Program, please visit the website (www.brb.state.tx.us). If you have any questions or comments, please contact Steve Alvarez, Program Administrator, at (512) 475-4803 or via email at alvarez@brb.state.tx.us.

TRD-200101050
Steve Alvarez
Program Administrator
Texas Bond Review Board
Filed: February 20, 2001

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 11, 2001, through February 1, 2001. The public comment period for these projects will close at 5:00 p.m. on March 5, 2001.

FEDERAL AGENCY ACTIONS

Applicant: Dome Petrochemical LC; Location: The project site is located on the east bank of Cedar Bayou, at 6655 West Bay Road, southeast of State Highway 146, in Baytown, Chambers County, Texas. CCC Project No.: 01-0041-F1; Description of Proposed Action: The applicant requests authorization to construct three barge slips. Each slip will be 200 feet wide, 30 feet long, and 12 feet deep. However, the slips will initially be excavated to a depth of 13 feet (1 foot maintenance overdredge). Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Veridian Information Solutions Division; Location: The project site is located at Barbour's Cut Container Terminal at the Port of Houston in Harris County, Texas. CCC Project No.: 01-0042-F2; Description of Proposed Action: The proposed project is the construction of two Vehicle and Cargo Inspection Systems (VACIS) which is to be fielded Barbour's cut Container Terminal at the Port of Houston. The VACIS is a non-intrusive inspection device that detects contraband inside trucks and cargo containers. The VACIS-II consists of two 90-foot long tacks that are placed, in parallel, 30 feet apart. Type of Application: Activity of the U.S. Customs Service.

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-200101062
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: February 21, 2001

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Comptroller of Public Accounts

Notice of Contract Awards

Notice of Award: Pursuant to Chapters 403 and 404, Texas Government Code, and Chapter 63, Texas Education Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Proposals (RFP) related to these contract awards was published in the May 12, 2000 issue of the Texas Register at 25 TexReg. 4370.

The contractors will provide investment management services for the Treasury Division of the Comptroller as described in the Comptroller's RFP.

There are sixteen contracts awarded and fully executed as of the submission of this notice to the Texas Register on February 21, 2001. There may be other awards to be announced at one or more later dates. In the paragraphs that follow, the estimates of maximum fees are based on estimated initial funding.

A contract is awarded to Banc One Investment Advisors Corporation, 1111 Polaris Parkway, Columbus, Ohio, 43240. The product is International Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $373,000. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Chicago Equity Partners, LLC, 180 N. LaSalle, Suite 3800, Chicago, Illinois, 60601. The product is Mid Cap Core Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $179,500. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Davis, Hamilton, Jackson & Associates, L.P., Two Houston Center, Suite 550, 909 Fannin, Houston, Texas, 77010. The product is Large Cap Core Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $411,250. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Enhanced Investment Technologies, Inc. (INTECH), The Harbour Financial Center, 2401 PGA Boulevard, Suite 200, Palm Beach Gardens, Florida, 33410. The product is Large Cap Growth Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $444,960. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Equinox Capital Management, LLC, 590 Madison Avenue, New York, New York, 10022. The product is Large Cap Value Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $ 176,000. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to John A. Levin & Company, Inc., 1 Rockefeller Plaza, 19th Floor, New York, New York, 10020. The product is Large Cap Value Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $432,500. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to J.P. Morgan Investment Management, Inc., 522 Fifth Avenue, New York, New York, 10036. The product is Small Cap Core Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $575,000. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to MFS Institutional Advisors, Inc., 500 Boylston Street, Boston, Massachusetts, 02116. The product is Mid Cap Growth Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $282,000. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Palladium Capital Management, 5075 Westheimer, Suite 1150 West, Houston, Texas, 77056. The product is Large

Cap Core Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $75,000. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Travelers Investment Management Company, One Tower Square, Hartford, Connecticut, 06183. The product is Large Cap Core Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $125,000. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Valenzuela Capital Partners, LLC, 1270 Avenue of the Americas, Suite 508, New York, New York, 10020. The product is Mid Cap Value Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $305,500. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Vaughn, Nelson, Scarborough & McCullough, L.P., 6300 Chase Tower, Houston, Texas 77002-3071. The product is Large Cap Growth Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $162,000. The term of the contract is October 2, 2000 through December 31, 2002.

A contract is awarded to Techxas Ventures II, L.P., a Delaware Limited Partnership, 5000 Plaza on the Lake, Suite 275, Austin, Texas 78746. The total amount of fee under the contract are based on the value of assets invested; the fee is 2.5% of the aggregate capital commitments of all of the partners of the Partnership (0.625% per fiscal quarter of the Partnership). The term of the Partnership is December 4, 2000 through March 31, 2010.

A contract is awarded to Alliance Capital Management L.P., on behalf of the Sanford C. Bernstein Company Delaware Business Trust, 767 Fifth Avenue, New York, New York 10153-0185. The product is International Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 month is $397,800. The contract is effective from January 22, 2001 until the date the Comptroller ceases to be a beneficial owner in the Trust.

A contract is awarded to Putnam Fiduciary Trust Company, on behalf of the Putnam Limited Liability Companies, One Post Office Square, Boston, Massachusetts 02109. The product is International Equities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $365,240. The contract is effective from February 15, 2001 until the date the Comptroller ceases to own shares in the Fund.

A contract is awarded to Fountain Capital Management, L.L.C., 10801 Mastin Boulevard, Suite 220, Overland Park, Kansas 66210. The product is High Yield Securities. The total amount of fees under the contract are based on the value of assets invested; the estimated maximum payments for the first 12 months is $205,000. The contract is effective from February 21, 2001 through December 31, 2002.

TRD-200101074
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 21, 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 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 02/26/01 - 03/04/01 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 02/26/01 - 03/04/01 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 03/01/01 - 03/31/01 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 03/01/01 - 03/31/01 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200101068
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 21, 2001

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Credit Union Department

Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from Montgomery Ward Credit Union (Arlington) seeking approval to merge with EECU (Fort Worth) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200101043
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 20, 2001

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Texas Education Agency

Notice of Amendments to Standard Application System Concerning Public Charter Schools

The Texas Education Agency (TEA) published Standard Application System (SAS) #A516 concerning public charter schools in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1193). The TEA is amending the Texas Register notice as follows:

(1) The TEA is amending the Dates of Project paragraph of the notice to read, "The federal Public Charter Schools Dissemination Grant Program will be implemented between May 1, 2001, and May 31, 2002. Applicants should plan for a starting date of no earlier than May 1,

2001, and an ending date of no later than May 31, 2002." This amendment reflects a change in the beginning implementation date from April 30 to May 1, 2001, and a change in the starting date from April 30 to May 1, 2001.

(2) The TEA is amending the Deadline for Receipt of Applications paragraph of the notice to read, "Applications must be received in the Document Control Center of the TEA no later than 5:00 p.m. (Central Time), Tuesday, April 3, 2001." This amendment reflects a change in the deadline from March 13 to April 3, 2001.

Further Information. For clarifying information about the SAS, contact Esther Murguia, Division of Charter Schools, TEA, (512) 463-9575.

TRD-200101059
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: February 21, 2001

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Request for Applications Concerning *Model Reading Intervention Programs for Intermediate Grades 3, 4, 5, and 6* for 2000-2002 School Years

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) # 701-01-014 from school districts, including open-enrollment charter schools, or shared services arrangements of public school districts or open-enrollment charter schools and regional education service centers applying as fiscal agents of public school districts or shared services arrangements of public school districts or open-enrollment charter schools in Texas who are eligible to apply for grants under the *Model Reading Intervention Programs for Intermediate Grades 3, 4, 5, and 6*.

Description. All activities must be limited to those designed to meet the governor's challenge of having all children reading at or above grade level by the end of third grade and remaining on grade level or above throughout their school careers. Activities must be compatible with the goal of attaining as much direct intervention with students as possible through: scientific research-based instruction, additional instructional or diagnostic reading materials, and/or provision of instructional staff or provision of related professional development of educators, including, if necessary, the acquisition of substitute instructional staff during related professional development activities.

Dates of Project. Applicants should plan for a starting date of no earlier than June 15, 2001, and an ending date of no later than August 31, 2002.

Project Amount. Approximately $12.5 million will be available for funding. It is estimated that funding will be provided for approximately 50 grants ranging from $50,000 to $400,000.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate an application based on the overall quality and validity of the proposed grant program and the extent to which the application addressed the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-01-014 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by emailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number, including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact the Office of Statewide Initiatives, TEA, (512) 463-9027.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, April 24, 2001, to be considered for funding.

TRD-200101060
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: February 21, 2001

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Employees Retirement System Of Texas

Contract Award Announcement

This contract award for an analysis and evaluation of the Employees Retirement System of Texas' (ERS) cost and cost drivers of providing retirement benefits, its administration costs based on activities, and its service levels compared to its peers, is being filed pursuant to the provisions of Tex. Gov't Code Ann. §2254.030. The contractor is Cost Effectiveness Measurement, Inc. ("CEM"), 350 Bay Street, Suite 800, Toronto, Ontario M5H. CEM will provide analysis and evaluation of the ERS costs and cost drivers of providing retirement benefits. The total cost for the contract is not to exceed $26,000.00, and the term of the contract is from January 3, 2001, until the final report is presented to the ERS Board of Trustees.

TRD-200101048
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: February 20, 2001

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Golden Crescent Regional Planning Commission

Feasibility Study Request for Proposals

The Golden Crescent Regional Planning Commission, a political subdivision of the State of Texas covering the 7 county Uniform Planning Region 17, is soliciting a request for proposal (RFP) for a feasibility study to determine the impact of direct marketing on the income of agricultural producers in the mid-Texas Gulf Coast Region to end-users in Mexico, utilizing the Port of Port Lavaca-Point Comfort. This study will include, among other things, analyzing the existing market to identify the number of people who would use the port in Calhoun County, the types of producers, and the users of the end product in Mexico; evaluating the existing infrastructure at the Port of Port Lavaca-Point Comfort and the destination facilities; evaluating how agricultural commodities are transported to the port, shipped, stored and processed at

the final delivery point; evaluating the economics of transportation taking into consideration economies of scale, handling efficiency, and the commitment of resources; and presenting findings in the form of a project cost-benefit analysis, a project risk assessment, a project beneficiaries assessment and a summary evaluation.

Potential respondents may obtain a copy of the RFP by contacting Patrick J. Kennedy, Executive Director, Golden Crescent Regional Planning Commission, P.O. Box 2028, Victoria, Texas 77902 or by calling (361) 578-1587. The deadline for RFP submission is 12:00 Noon., Tuesday, March 13, 2001.

TRD-200101061
Patrick J. Kennedy
Executive Director
Golden Crescent Regional Planning Commission
Filed: February 21, 2001

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Texas Department of Housing and Community Affairs

Housing Trust Fund and Housing Trust Fund / State Energy Conservation Office Combined Notice of Funding Availability (NOFA)

Housing Trust Fund Development Cycle NOFA

The Texas Department of Housing and Community Affairs, through its Housing Trust Fund, is pleased to announce that it will make available approximately **Four Million Nine Hundred Forty One Thousand Eight Hundred Fifty Eight dollars ($4,941,858)** to finance, acquire, rehabilitate, and develop safe, decent and affordable housing for low, very low, and extremely low income individuals and families; including persons with special needs.

The Housing Trust Fund provides gap financing to eligible single family and multifamily developments, in an effort to ensure that affordable housing providers obtain the total funding necessary for the completion of their developments. Funds will be awarded pursuant to the Department's Regional Allocation Formula as required by Section 2306.111 of the Government Code. Mixed income developments that include market rate units are encouraged, provided a portion of the units are reserved for families or individuals at or below eighty percent (80%) of Area Median Family Income and for persons with special needs.

Targeting of Extremely Low Income in 2001

In an effort to encourage the production of affordable housing for persons and families of Extremely Low Income, the Housing Trust Fund is setting a goal of directing $2,000,000 towards housing for this income group. In order to achieve our goal, at least 40% of the Housing Trust Fund development funds awarded in this cycle must be used for the development of units that serve residents earning 30% or less of the Area Median Family Income (AMFI). Therefore, the following requirements have been added to the 2001 Development Cycle:

The maximum amount of HTF dollars provided for Extremely Low Income units (30% and below of AMFI) will be capped at $70,000 per unit.

The maximum amount of HTF dollars provided for Very Low Income units (31-60% of AMFI) will be capped at $18,000 per unit.

The maximum amount of HTF dollars provided for Low Income units (61- 80% of AMFI) will be capped at $1,500 per unit.

The average cost per unit of any HTF funded units in the development cannot exceed the total cost of the development divided by the total number of units in the development.

The available funding will be allocated to each Uniform State Planning Region as required by the Department's Regional Allocation Formula. The funding available to each region is as follows:

Region 1 (Allocation Factor of 3.61%) $ 178,401

Region 2 (Allocation Factor of 2.33%) $ 115,145

Region 3 (Allocation Factor of 17.45%) $ 862,848

Region 4 (Allocation Factor of 5.42%) $ 267,849

Region 5 (Allocation Factor of 4.11%) $ 203,110

Region 6 (Allocation Factor of 21.30%) $ 1,052,616

Region 7 (Allocation Factor of 10.26%) $ 507,035

Region 8A (Allocation Factor of 9.83%) $ 485,290

Region 8B (Allocation Factor of 17.95%) $ 887,064

Region 9 (Allocation Factor of 2.58%) $ 127,500

Region 10 (Allocation Factor of 5.16%) $ 255,000

Total Available Funding $ 4,941,858

Eligible applicants, which include local units of government, nonprofit organizations, for profit entities, public housing authorities (PHAs), and community housing development organizations (CHDOs), may compete on a statewide basis for the following amounts:

$ 1,877,045 Reserved for eligible nonprofits and CHDOs

$ 3,064,813 Available to all eligible applicants

Housing Trust Fund/ State Energy Conservation Office (SECO) NOFA:

The Texas Department of Housing and Community Affairs' (TDHCA) Housing Trust Fund, in conjunction with the Comptroller of Public Accounts' State Energy Conservation Office (SECO), is please to announce the availability of **One Million Eight Hundred Thirty Eight Thousand Two Hundred Seventy Three dollars ($1,838,273)** of Exxon Oil Overcharge funds to be utilized in both single family and multifamily developments throughout the state. These funds will be made available on a dollar-for-dollar match basis and applicants may count the dollar value of in-kind contributions as matching funds.

The maximum program award amount per applicant is **Three Hundred Twenty Five Thousand dollars ($325,000) with a limit of Fifteen Hundred dollars ($1,500) per unit.** However, specific award amounts are subject to the limits established for each region by the Department's Regional Allocation Formula. The funding available to each region is as follows:

Region 1 (Allocation Factor of 3.61%) $ 66,362

Region 2 (Allocation Factor of 2.33%) $ 42,832

Region 3 (Allocation Factor of 17.45%) $ 320,963

Region 4 (Allocation Factor of 5.42%) $ 99,634

Region 5 (Allocation Factor of 4.11%) $ 75,553

Region 6 (Allocation Factor of 21.30%) $ 391,552

Region 7 (Allocation Factor of 10.26%) $ 188,607

Region 8A (Allocation Factor of 9.83%) $ 180,518

Region 8B (Allocation Factor of 17.95%) $ 329,970

Region 9 (Allocation Factor of 2.58%) $ 47,427

Region 10 (Allocation Factor of 5.16%) $ 94,855

Total Available Funding $ 1,838,273

These funds may be used to improve the energy efficiency of housing which serves individuals and families whose income is not more than eighty percent (80%) of Area Median Family Income. Applicants of HTF/SECO funding which apply and are recommended for HTF development cycle funding will receive a priority over applicants seeking HTF/SECO funding exclusively.

Eligible applicants include local units of government, nonprofit organizations, for profit organizations, public housing authorities (PHAs), and community housing development organizations (CHDOs).

General Information for both NOFAs:

Applications meeting threshold criteria will be evaluated and scored within categories including but not limited to Leveraging, Project Outline, Services & Income Targeting, Market Area, and Design Innovation & Energy Conservation. Applications will then be selected based on program scoring criteria (which is included in the combined application package), underwriting criteria, and geographic dispersion. The Housing Trust Fund desires to select a diverse group of single family and multifamily developments that will serve varied populations throughout the state.

Applicants for either or both programs are requested to download the HTF-HTF/SECO combined application package from the Housing Trust Fund web page of the TDHCA web site located at **http://www.tdhca.state.tx.us/htf.htm.** Applicants may also request a diskette or hard copy version of the combined application package. Application packages will be transmitted via first class U.S. Postal Service unless applicants request transmittal via overnight courier and provide the name and account number of their desired courier.

The Department's Board of Directors reserves the right to change the award amount, and to award less than the requested amount.

Applications must be submitted on or before 5:00 p.m., April 20, 2001.

FAXED APPLICATIONS WILL NOT BE ACCEPTED.

All interested parties with a viable single family or multifamily development are encouraged to participate in these programs.

Applications will be available on March 2, 2001.

Workshops for this application will be held at various locations throughout the state between March 15 and March 29, 2001. For additional information, time and date of workshops, or to request an application package, please call the Housing Trust Fund Office at (512) 475-1458, or e-mail your request to shiggins@tdhca.state.tx.us. Please direct your applications to:

Texas Department of Housing and Community Affairs

Housing Trust Fund - Attn: Keith Hoffpauir

Post Office Box 13941

Austin, Texas 78711-3941

Or by courier to:

507 Sabine, Suite 400

Austin, Texas 78701

TRD-200101073
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 21, 2001

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Texas Department of Human Services

Title XX Social Services Block Grant Expenditure Report

The Texas Department of Human Services has published a report describing the actual expenditures of Title XX Social Service Block Grant funds for fiscal year 2000. Free copies of the report are available to the public.

Contact Person: To obtain a copy of this report, write Bobby Halfmann, Chief Financial Officer, Texas Department of Human Services, W-421, P.O. Box 149030, Austin, Texas 78714-9030.

TRD-200101017
Paul Leche
General Counsel
Texas Department of Human Services
Filed: February 16, 2001

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Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Liberty Mutual Insurance Company proposing to use rates for commercial automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percent of +45% for Liability and +30% for Physical Damage for all territories and classifications. This overall rate change is +10.9%.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by March 21, 2001.

TRD-200101064
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 21, 2001

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Texas Department of Mental Health and Mental Retardation

Public Hearing Notice on Reimbursement Rates for Non-State Operated Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on the proposed reimbursement rates for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR). The rates will be effective March 1, 2001, through August 31, 2001. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on

proposed reimbursement rate for medical assistance programs. Payment rates are proposed to be effective March 1, 2001, as follows:

Level of Need	8 or Less Beds	9 – 13 Beds	14 + Beds
1 Intermittent	$125.52	$105.44	$ 82.11
5 Limited	$139.96	$115.88	$ 89.77
8 Extensive	$159.71	$134.89	$100.59
6 Pervasive	$195.02	$162.85	$140.80
9 Pervasive Plus	$341.24	$319.21	$310.80

Current rates are as follows:

Level of Need	8 or Less Beds	9 – 13 Beds	14 + Beds
1 Intermittent	$125.52	$105.44	$ 82.11
5 Limited	$139.96	$115.88	$ 89.77
8 Extensive	$159.71	$134.89	$100.59
6 Pervasive	$195.02	$162.85	$140.80
9 Pervasive Plus	$341.24	$319.21	$310.80

Methodology and justification: The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter D (relating to Reimbursement Methodology for the intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program), §355.451(b)(2), §355.456(c), and subsequently adjusted in accordance with §355.456(e) (relating to Rate Determination).

The public hearing will be held on Tuesday, March 20, 2001, at 1:30 p.m. in room 2-164, auditorium of TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to the Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Building 4, Austin, Texas 78751. Comments must be received by 4:00 p.m. on Tuesday, March 20, 2001.

Persons requiring an interpreter for deaf or hearing impaired or other accommodation should contact Tom Wooldridge by calling (512) 206-5753 or the TDY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the hearing.

TRD-200101063

Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 21, 2001

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding HELEN ABLES, Docket No. 1998-0582-PST-E on January 26, 2001 assessing $15,000 in administrative penalties with $14,400 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA N. PETTY, Staff Attorney at (512) 239-1738, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOM ROWNTREE DBA ROWNTREE CATTLE COMPANY, Docket No. 1999-0904-AGR-E on January 26, 2001 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting REBECCA NASH PETTY, Staff Attorney at (512) 239-1738, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EQUISTAR CHEMICALS, L.P., Docket No. 2000-0519-IHW-E on January 26, 2001 assessing $13,500 in administrative penalties with $2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE SHERMAN, Enforcement Coordinator at (713) 767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF DRISCOLL, Docket No. 2000-0884- PWS-E on January 26, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CYNTHIA SALAS, Enforcement Coordinator at (915) 834-4975, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding O. C. PROPERTY OWNERS ASSOCIATION, Docket No. 2000-0476-PWS-E on January 26, 2001 assessing $1,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BRIAN LEHMKUHLE, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST JEFFERSON COUNTY MUNICIPAL WATER DISTRICT, Docket No. 2000-0540-PWS-E on January 26, 2001 assessing $10,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409) 899-8760, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF BELLS, Docket No. 2000-0626-PWS- E on January 26, 2001 assessing $2,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MERRILEE GERBERDING, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMERICAN FREIGHTWAYS CORPORATION, Docket No. 2000-0471-MLM-E on January 26, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting LAWRENCE KING, Enforcement Coordinator at (512) 339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DJLJ CORPORATION DBA TANK WASH USA, Docket No. 2000-0587-AIR-E on January 26, 2001 assessing $3,000 administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHEILA SMITH, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BENJAMIN SANJUAN DBA GOLDEN CARRIAGE MOBILE HOME PARK, Docket No. 2000-0414-PWS-E on January 26, 2001 assessing $2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CATHERINE ALBRECHT, Enforcement Coordinator at (713) 767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DIAMOND-KOCH, Docket No. 2000-0854- AIR-E on January 26, 2001 assessing $14,000 in administrative penalties with $2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting STACEY YOUNG, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EQUILON PIPELINE COMPANY, LLC, Docket No. 2000-0412-AIR-E on January 26, 2001 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FORCENERGY, INC., Docket No. 2000-0902- AIR-E on January 26, 2001 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROL MCGRATH, Enforcement Coordinator at (361) 825-3275, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KEVIN ASHLOCK DBA RED RIVER SALES, Docket No. 2000-0778-AIR-E on January 26, 2001 assessing $375 in administrative penalties with $75 deferred.

Information concerning any aspect of this order may be obtained by contacting MELINDA HOULIHAN, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALAN RITCHEY, INCORPORATED, Docket No. 2000-0473-AIR-E on January 26, 2001 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHEILA SMITH, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRED BANKHEAD DBA GOLD NUGGET MOTOR COMPANY, Docket No. 2000-0753-AIR-E on January 26, 2001 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOSCO CORPORATION, Docket No. 2000- 0838-AIR-E on January 26, 2001 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA CERVANTES, Enforcement Coordinator at (915) 834-4965, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VARCO SHAFFER, INCORPORATED, Docket No. 2000-0563-AIR-E on January 26, 2001 assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting CARL SCHNITZ, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST TEXAS UTILITIES COMPANY, Docket No. 2000-0855-AIR-E on January 26, 2001 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting STACEY YOUNG, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DARRELL JOHNSON DBA WEATHERFORD TRUCK SALES, Docket No. 2000-0901-AIR-E on January 26, 2001 assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting WENDY COOPER, Enforcement Coordinator at (817) 588-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILLIAMS FIELD SERVICES COMPANY, Docket No. 2000-0643-AIR-E on January 26, 2001 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARCH CHEMICALS, INC., Docket No. 2000- 0321-AIR-E on January 26, 2001 assessing $83,250 in administrative penalties with $16,650 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSAN KELLY, Enforcement Coordinator at (409) 899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ADOLPHO RAMIREZ DBA RAMIREZ BODY SHOP, Docket No. 1999-1474-AIR-E on January 26, 2001 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAVID SPEAKER, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LBC PETROUNITED, INC., Docket No. 2000- 0665-IHW-E on January 26, 2001 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE SHERMAN, Enforcement Coordinator at (713) 767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EXCEL CORPORATION, Docket No. 2000- 0505-IWD-E on January 26, 2001 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GARY SHIPP, Enforcement Coordinator at (806) 796-7092, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THANH VAN NGUYEN DBA ST. MARTIN'S SEAFOOD, Docket No. 2000-0590-IWD-E on January 26, 2001 assessing $15,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting COREY M. BURKE, Enforcement Coordinator at (512) 239-5259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF GILMER, Docket No. 2000-0427- MWD-E on January 26, 2001 assessing $11,475 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, SEP Coordinator at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF MOUNT CALM, Docket No. 2000- 0380-MWD-E on January 26, 2001 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting PAMELA CAMPBELL, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF BRAZORIA, Docket No. 2000-0998- MWD-E on January 26, 2001 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CATHERINE ALBRECHT, Enforcement Coordinator at (713) 767-3612, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CYPRESS HILL MUNICIPAL UTILITY DISTRICT #1, Docket No. 2000-0681-MWD-E on January 26, 2001 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting DAVID VAN SOEST, Enforcement Coordinator at (512) 239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GREEN RIBBON ENTERPRISES, INC. DBA KWIK SERVE, Docket No. 1999-0870-PST-E on January 26, 2001 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting STEVEN LOPEZ, Enforcement Coordinator at (512) 239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRAZORIA INTERESTS INC DBA K & S JIFFY MART#1, Docket No. 2000-0477-PST-E on January 26, 2001 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TRINA K. LEWISON, Enforcement Coordinator at (713) 767-3607, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT DAVIS DBA DAVIS STORE, Docket No. 2000-0549-PST-E on January 26, 2001 assessing $5,400 in administrative penalties with $1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200101040

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: February 20, 2001

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Enforcement Orders

An agreed order was entered regarding VETROTEX CERTAINTEED CORPORATION DBA VETROTEX AMERICA, Docket No. 1998-1171-AIR-E on February 12, 2001 assessing $280,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BOOKER HARRISON, Staff Attorney at (512) 239-4113, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MUNIRA INTERESTS, INC., Docket No. 1998-1405-PST-E on February 12, 2001 assessing $9,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GEORGE PICKETT DBA JOHNNIE'S, Docket No. 1999-0645-PST-E on February 12, 2001 assessing $17,500 in administrative penalties with $16,900 deferred.

Information concerning any aspect of this order may be obtained by contacting KELLY MEGO, Staff Attorney at (713) 422-8916, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JIM WELLS COUNTY FRESH WATER SUPPLY DISTRICT NO. 1, Docket No. 2000-0296-PWS-E on February 12, 2001 assessing $3,638 in administrative penalties with $10 deferred.

Information concerning any aspect of this order may be obtained by contacting MERRILEE GERBERDING, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HARBOR GROVE WATER SUPPLY CORP, Docket No. 2000-0890-PWS-E on February 12, 2001 assessing $3,313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TERRY THOMPSON, Enforcement Coordinator at (512) 239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WESTBOUND WATER SUPPLY CORPORATION, Docket No. 2000-0844-PWS-E on February 12, 2001 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting KARA DUDASH, Enforcement Coordinator at (915) 698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EAST RIO HONDO WATER SUPPLY CORPORATION, Docket No. 2000-0499-PWS-E on February 12, 2001 assessing $5,875 in administrative penalties with $1,175 deferred.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANDY KIRKPATRICK DBA MOON RIVER BAR & GRILL, Docket No. 2000-0686-PWS-E on February 12, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (512) 239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARCOLA AVIATION, INC., Docket No. 2000- 0806-PWS-E on February 12, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KARA DUDASH, Enforcement Coordinator at (915) 698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BIG CEDAR COUNTRY CLUB, INC., Docket No. 2000-0732-PWS-E on February 12, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CLINT PRUETT, Enforcement Coordinator at (512) 239-2042, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding POLY-AMERICA, INCORPORATED, Docket No. 2000-0850-MLM-E on February 12, 2001 assessing $9,500 in administrative penalties. with $1,900 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE HANOVER COMPANY, Docket No. 2000-0815-AIR-E on February 12, 2001 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEJAS SHIP CHANNEL, LLC, Docket No. 2000-0935-AIR-E on February 12, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHEILA SMITH, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. M. COMBS DBA E. M.'S USED CARS AND TRUCKS, Docket No. 2000-0851-AIR-E on February 12, 2001 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTHWEST RECYCLING COMPANY, L.L.C., Docket No. 2000-0371-AIR-E on February 12, 2001 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NUCOR CORPORATION DBA NUCOR VULCRAFT GROUP, GRAPELAND DIVISION, Docket No. 2000-0782-AIR-E on February 12, 2001 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSAN KELLY, Enforcement Coordinator at (409) 899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WASTEQUIP, INC. DBA MAY FAB, Docket No. 2000-0950-AIR-E on February 12, 2001 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST TEXAS GAS, INC. DBA DAVIS GAS PROCESSING CO., Docket No. 2000-0949-AIR-E on February 12, 2001 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915) 655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST TEXAS GAS, INC. DBA NELEH GAS SYSTEM, Docket No. 2000-0948-AIR-E on February 12, 2001 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915) 655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CANYON PIPELINE CORPORATION, Docket No. 2000-1039-AIR-E on February 12, 2001 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915) 655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DIAMOND FIBERGLASS FABRICATORS, INC., Docket No. 2000-0939-AIR-E on February 12, 2001 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIXTURE EXCHANGE CORPORATION, Docket No. 2000-0775-AIR-E on February 12, 2001 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting WENDY COOPER, Enforcement Coordinator at (817) 588-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUNBELT FRESHWATER SUPPLY DISTRICT, Docket No. 1999-1332-MWD-E on February 12, 2001 assessing $6,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting REBECCA NASH PETTY, Staff Attorney at (512) 239-1738, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF KENDLETON, Docket No. 1999- 1398-MWD-E on February 12, 2001 assessing $10,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. DEPARTMENT OF THE INTERIOR SANTA ANA NATIONAL WILDLIFE REFUGE, Docket No. 1999-1530-MWD-E on February 12, 2001 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PORT MANSFIELD PUBLIC UTILITY DISTRICT, Docket No. 2000-0325-MWD-E on February 12, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An amended agreed order was entered regarding ANDREWS TRANSPORT, INC., Docket No. 2000-0004-PST-E on February 12, 2001.

Information concerning any aspect of this order may be obtained by contacting DAN JOYNER, Staff Attorney at (512) 239-6366, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200101041
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 20, 2001

♦ ♦ ♦

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

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 2, 2001**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 2, 2001**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Acton Municipal Utility District; DOCKET NUMBER: 2000-0731-MWD-E; IDENTIFIER: Expired Water Quality Permit Numbers 11208-001 and 11415-001, Expired National Pollutant Discharge Elimination System (NPDES) Permit Numbers TX0105163 and TX0105155; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2) and NPDES Permit Number TX0105163, by failing to apply for a Texas Pollutant Discharge Elimination System (TPDES) permit prior to the April 30, 1999 expiration of NPDES Permit Numbers TX0105163 and TX0105155 and the January 9, 2000 expiration date of Water Quality Permit Number 11208-001 and the December 12, 1999 expiration date of Water Quality Permit Number 11415-001; and the Code, §26.121, by continuing to discharge wastewater to the waters in the state; PENALTY: $15,980; ENFORCEMENT COORDINATOR: Jayme Brown, (512) 239-1683; REGIONAL OFFICE: 1104 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2) COMPANY: Mr. David Davis dba Agnes Dairy; DOCKET NUMBER: 2000-1142-AGR-E; IDENTIFIER: Water Quality Permit Number 03071; LOCATION: Springtown, Parker County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a), Water Quality Permit Number 03071, and the Code, §26.121, by failing to prevent the discharge of wastewater from a waste storage pond; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Melinda Houlihan, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3) COMPANY: Alliance Riggers and Constructors Ltd.; DOCKET NUMBER: 2000-1442-AIR-E; IDENTIFIER: Air Account Number EE-2011-B; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: steel erection and crane service; RULE VIOLATED: 30 TAC §115.252(2) and the Code, §382.085(b), by allowing the transfer of gasoline from a storage vessel with a Reid Vapor Pressure greater than 7.0 pounds per square inch absolute; PENALTY: $600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Jon A. Friend dba Besaw's Caf,; DOCKET NUMBER: 2000-0755-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1011039; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and (e)(2), §290.103(5), and the Code, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and provide public notice of the failure to collect and submit routine monthly bacteriological samples; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: The City of Boyd; DOCKET NUMBER: 2000-0989-MWD-E; IDENTIFIER: TPDES Permit Number 10131 001; LOCATION: Boyd, Wise County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10131-001, and the Code, §26.121, by failing to comply with the permitted limits; PENALTY: $3,000; ENFORCEMENT COORDINATOR: David VanSoest, (512) 239-0468; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6) COMPANY: Bright Star Transport LLC; DOCKET NUMBER: 2000-1278-PST-E; IDENTIFIER: Enforcement Identification Number 15604; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: retail motor fuel dispensing station; RULE VIOLATED: 30 TAC §115.221 and the Code, §382.085(b), by failing to control the displaced vapors from the gasoline storage tank system during the transfer of gasoline; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Judy Fox, (817) 469-6750; REGIONAL OFFICE: 1104 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(7) COMPANY: Vincent Bustamante; DOCKET NUMBER: 2000-0791-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0056693; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: underground storage tank; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove or upgrade any existing underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2), and the Code, §26.3475, by failing to monitor for releases of the UST system; 30 TAC §334.49(a) and the Code, §26.3475, by failing to protect the UST system from corrosion; 30 TAC §334.93(a) and (b), by failing to demonstrate financial responsibility; and 30 TAC §334.10(b)(1)(A), by failing to develop and maintain at the station all UST records; PENALTY: $20,000; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Champion Window, Inc.; DOCKET NUMBER: 2000-1094-PWS-E; IDENTIFIER: PWS Number 1013073; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(b)(1), by failing to install mechanical chlorination equipment; 30 TAC §290.39(j), by

failing to provide written notification prior to placing well number two into service; 30 TAC §290.46(f) and (n)(2), (formerly 30 TAC §290.46(f)(2) and (n)), by failing to maintain a chlorine residual log and provide an adequate and up-to-date distribution system map; 30 TAC §290.41(c)(1)(F), (3)(A), (J), (K), and (M), by failing to provide a sanitary easement, provide well completion data, provide well number two with a concrete sealing block, provide well number two with a screened casing vent, and provide a suitable sampling cock on the discharge pipe; 30 TAC §290.109(c)(2) and (g), and 30 TAC §290.122, (formerly 30 TAC §290.106(a)(1) and (e), and 30 TAC §290.103(5)), and the Code, §341.033(d), by failing to collect and submit routine monthly bacteriological samples and provide public notice of the bacteriological sampling violations; PENALTY: $3,813; ENFORCEMENT COORDINATOR: Jayme Brown, (512) 239-1683; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Continental Cabinets Manufacturing, Inc.; DOCKET NUMBER: 2000-0040-AIR-E; IDENTIFIER: Air Account Number DB-0621-J; LOCATION: Lancaster, Dallas County, Texas; TYPE OF FACILITY: cabinet manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and the Code, §382.085(b), by failing to maintain proper records; and 30 TAC §106.4(c) and the Code, §382.085(b), by failing to properly maintain air pollution control devices; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 469-6750; REGIONAL OFFICE: 1104 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(10) COMPANY: Mr. Kemo Haddad dba Danny's Mart-Conoco; DOCKET NUMBER: 2000-0760-PST-E; IDENTIFIER: PST Facility Identification Number 0027517; LOCATION: Bedford, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC § 115.245(2) and the Act, §382.085(b), by failing to conduct the annual pressure decay test; 30 TAC §115.246(1), (5), and (6), and the Act, §382.085(b), by failing to maintain a copy of the California Air Resource Board Executive Order for the Stage II vapor recovery system (VRS), maintain a record of the results of testing conducted at the station, and maintain a daily inspection log; 30 TAC 115.248(1) and the Act, §382.085(b), by failing to ensure that at least one station representative received training and instruction in the operation and maintenance of the Stage II VRS; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change; 30 TAC §334.48(c), by failing to conduct inventory volume measurements; 30 TAC §334.49(e), by failing to maintain the required corrosion protection records; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III) and (ii), and the Code, §26.3475, by failing to ensure that all tanks are monitored for releases, test a line leak detector and have each pressurized line tests or monitored for releases; and 30 TAC §334.93(a) and (b), by failing to demonstrate financial responsibility; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(11) COMPANY: Enron Methanol Company; DOCKET NUMBER: 2000-1081-AIR-E; IDENTIFIER: Air Account Number HG-0713-S; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: methanol production; RULE VIOLATED: 30 TAC §101.6(b) and the Code, §382.085(b), by failing to list individual compounds or mixtures of contaminants and their estimated quantities in a non-reportable upset event; 30 TAC §113.120, 40 Code of Federal Regulations (CFR) Part 63, Subpart G, §63.152(c)(2)(ii)(B)(1), and the Code, §382.085(b), by failing to limit excursions to six excused occurrences; and 30 TAC §116.115(c), Air Permit Number 7694, Special Condition One, and the Code, §382.085(b), by failing to maintain carbon monoxide emissions and comply with the permitted limits for carbon monoxide and oxides of nitrogen; PENALTY: $20,325; ENFORCEMENT COORDINATOR: Faye Liu, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Foam Fabricators, Inc.; DOCKET NUMBER: 2000-1177-AIR-E; IDENTIFIER: Air Account Number TA-0809-H; LOCATION: Keller, Tarrant County, Texas; TYPE OF FACILITY: foam molding packaging material; RULE VIOLATED: 30 TAC §116.115(b) and (c), Air Permit Number 35668, and the Code, §382.085(b), by failing to submit a report concerning the construction interruption of more than 45 days, failing to remove the rain caps from the vents, not venting pentane emissions to the boiler and not installing a temperature monitor on the combustion chamber, and perform stack tests; PENALTY: $4,840; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(13) COMPANY: Grimes County Municipal Utility District Number 1; DOCKET NUMBER: 2000-1195-PWS-E; IDENTIFIER: PWS Number 0930020; LOCATION: Navasota, Grimes County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a recorded sanitary control easement on all land within 150 feet diameter of the well; PENALTY: $125; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: City of Hamlin; DOCKET NUMBER: 2000-1235-PWS-E; IDENTIFIER: PWS Number 1270002; LOCATION: Hamlin, Jones County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(b), (formerly 30 TAC §290.105(b)), by exceeding the maximum contaminant level (MCL) for total coliform bacteria; 30 TAC §290.122(b), (formerly 30 TAC §290.103(5)), by failing to provide public notice for exceeding MCL for total coliform bacteria; and 30 TAC §290.109(c)(3), (formerly 30 TAC §290.106(b)(1)); PENALTY: $3,125; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(15) COMPANY: Mr. Zaki Niazi dba King Mart #4; DOCKET NUMBER: 2000-0520-PST-E; IDENTIFIER: PST Facility Identification Number 0028534; LOCATION: Porter, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control; 30 TAC §334.49(a), by failing to protect the UST system from corrosion; 30 TAC §334.50(b)(1)(A) and (2), and the Code, §26.3475(c)(1), by failing to monitor USTs for release and provide proper release detection for the piping; 30 TAC §334.93(a) and (b), by failing to demonstrate financial responsibility; 30 TAC §115.241 and the Code, §382.085(b), by failing to install a Stage II VRS; and 30 TAC §334.22(a), by failing to pay outstanding UST and associated late fees; PENALTY: $13,750; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Lane Supply Company Incorporated; DOCKET NUMBER: 2000-0977-AIR-E; IDENTIFIER: Air Account Number TA-2084-T; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: structures for gasoline station manufacturing; RULE VIOLATED: 30 TAC § 116.110(a), §106.433(6)(A), Agreed Order Docket Number 96-1269-AIR-E, and the Code, §382.085(b) and §382.0518(a), by failing to obtain a permit or to meet the requirements for a Permit by Rule; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(17) COMPANY: Matbon, Incorporated; DOCKET NUMBER: 2000-1107-AIR-E; IDENTIFIER: Air Account Number 94-4825-R; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: sand and gravel operation; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.085(b) and 382.0518(a), by failing to obtain a permit prior to beginning operations; and 30 TAC §101.20 and the Code, §382.085(b), by failing to conduct initial testing as required by 40 CFR §§60.8, 60.11 and 60.672; PENALTY: $6,500; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1104 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(18) COMPANY: The City of Menard; DOCKET NUMBER: 2000-0810-MWD-E; IDENTIFIER: Water Quality Permit Number 0010345-001; LOCATION: Menard, Menard County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), the Code, §26.121, and Water Quality Permit Number 0010345-001, by exceeding the daily average biochemical oxygen demand (BOD), individual grab sample, and the dissolved oxygen concentration limit and failing to calibrate the automatic flow measuring device; 30 TAC §319.11(b) and (c), Water Quality Permit Number 0010345-001, and 30 TAC §305.125(1), and 40 CFR Part 136 §136.3(e), by failing to refrigerate BOD5 and total suspended solid samples and provide for flow measurements, equipment, installation, and procedures that conform to those prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(19) COMPANY: The City of Mexia; DOCKET NUMBER: 2000-1012-MWD-E; IDENTIFIER: TPDES Permit Number 10222-001; LOCATION: Mexia, Limestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10222-001, and the Code, §26.121, by failing to comply with permitted effluent limits for flow, ammonia-nitrogen, and total suspended solids; PENALTY: $3,750; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Mary Morrow dba Monticello Mobile Home Park; DOCKET NUMBER: 2000-0707-PWS-E; IDENTIFIER: PWS Number 1840118; LOCATION: Springtown, Parker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(iv) and the Code, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement covering; 30 TAC §290.46(m), (n), (p) and (w), by failing to initiate a maintenance program to facilitate cleanliness, provide a map of the distribution system, inspect the ground storage and pressure tanks and provide a legible sign at each production, treatment, and storage facility; 30 TAC §290.42(e)(2) and (i), by failing to locate the point of chlorination ahead of the ground storage tank, ensure that all chemicals used in treatment of water conform to American National Standards Institution/National Sanitation Foundation Standard 60 and 61 for direct additives; 30 TAC §290.43(c)(3) and (4), (d)(9), and (e), by failing to provide the ground storage tank with a water level indicator, ensure that no more than three pressure tanks are installed at any one site, and a properly designed overflow pipe and enclose pump house with an intruder-resistant fence; and 30 TAC §290.41(c)(3)(J) and (K), by failing to provide well number one with a concrete sealing block and properly seal wellhead number two; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 1104 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(21) COMPANY: Overwraps Packaging, L.P.; DOCKET NUMBER: 2000-0684-AIR-E; IDENTIFIER: Air Account Number DB-1740-Q; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: flexographic printing and packaging; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 18182, and the Code, §382.085(b), by failing to operate the thermal oxidizer during normal operations of the plant; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(22) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2000-0097-AIR-E; IDENTIFIER: Air Account Number HG-0192-D; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(a), Air Permit Number 35280, and the Code, §382.085(b), by failing to maintain a maximum filling rate of 3,500 gallons per hour for each of the methanol tanks and maintain a maximum filling rate of 1,000 gallons per hour for the filling of drums; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Pioneer Natural Resources USA, Incorporated; DOCKET NUMBER: 2000-1388-AIR-E; IDENTIFIER: Air Account Number BE-0013-Q; LOCATION: Pawnee, Bee County, Texas; TYPE OF FACILITY: natural gas treating plant; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit the Title V compliance certifications; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Recycled Materials, Incorporated; DOCKET NUMBER: 2000-1109-AIR-E; IDENTIFIER: Air Account Number 94-4826-P; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: recycled crushing operation; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.085(b) and §382.0518(a), by failing to obtain a permit to construct the plant and continuing to operate; and 30 TAC §101.20 and the Code, §382.085(b), by failing to conduct initial testing of the plant; PENALTY: $8,125; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1104 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(25) COMPANY: Riderville Water Supply Corporation; DOCKET NUMBER: 2000-0943-PWS-E; IDENTIFIER: PWS Number 1830019; LOCATION: Carthage, Panola County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (f)(4), by failing to meet the required total storage capacity of 200 gallons per connection and meet the minimum water system capacity requirement of 0.6 gallons per minute per connection; 30 TAC §290.46(j), by failing to perform customer service inspections; 30 TAC §290.46(d), (f)(2) and (3), and (i), by failing to maintain records of waterworks operations, record and maintain chlorine residual tests, maintain records of annual ground storage tank and pressure storage tank inspections, and adopt an adequate service agreement; and 30 TAC §290.43(c), by failing to provide the ground storage tank with a ladder; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(26) COMPANY: Conrado Rivas; DOCKET NUMBER: 2000-0742-MSW-E; IDENTIFIER: Municipal Solid Waste Unauthorized Site Number 455150017; LOCATION: Santa Elena, Starr

County, Texas; TYPE OF FACILITY: ranch land with unauthorized sludge disposal site; RULE VIOLATED: 30 TAC §330.5(a)(1), §312.4(a), and the Code, §26.121(a), by allowing the discharge of waste into or adjacent to waters in the state by allowing liquid waste to be deposited on his property; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(27) COMPANY: Silica Products, Inc.; DOCKET NUMBER: 2000-0919-IWD-E; IDENTIFIER: TPDES Permit Number 03969 (Expired); LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: synthetic fused silica manufacturing; RULE VIOLATED: 30 TAC §305.125(1) and (2), TPDES Permit Number 03969, and the Code, §26.121, by failing to renew TPDES Permit Number 03969; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Speedy Stop Food Stores, Ltd.; DOCKET NUMBER: 2000-1056-PST-E; IDENTIFIER: PST Facility Identification Number 26371; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(2), by failing to report unusual operating conditions of the UST; 30 TAC §334.74, by failing to conduct a release investigation and confirmation steps; 30 TAC §334.77(b), by failing to submit a report after release confirmation summarizing the initial abatement steps taken; 30 TAC §334.78, by failing to assemble and submit information for an initial site characterization; 30 TAC §334.80, by failing to conduct an investigation of a release; 30 TAC §334.7(f), by failing to provide adequate information; and the Code, §26.121, by failing to control the unauthorized discharge of gasoline; PENALTY: $22,000; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(29) COMPANY: Tejas Gas Pipeline, L.P.; DOCKET NUMBER: 2000-1115-AIR-E; IDENTIFIER: Air Account Number RG-0037-U; LOCATION: Refugio, Refugio County, Texas; TYPE OF FACILITY: gas compressor station; RULE VIOLATED: 30 TAC §§101.20(1), 116.110(a)(4), 106.512(3)(B), 40 CFR §60.8(a) and §60.335(b), and the Code, §382.085(b), by failing to properly conduct performance tests; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(30) COMPANY: Ms. Un Kyung Park dba Times Market #5; DOCKET NUMBER: 2000-0762-PST-E; IDENTIFIER: PST Identification Number 33841; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration; 30 TAC §334.10(b)(1)(B), by failing to have legible copies of all required records pertaining to the UST system; 30 TAC §334.48(c), by failing to conduct inventory control procedures; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475, by failing to provide overfill prevention equipment; and 30 TAC §334.47(a)(2), by failing to permanently remove any existing UST system that was not brought into timely compliance; PENALTY: $6,800; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(31) COMPANY: Topsey Water Supply Corporation; DOCKET NUMBER: 2000-1058-PWS-E; IDENTIFIER: PWS Number 0500005; LOCATION: Copperas Cove, Coryell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §.290.46(d)(2)(B), (formerly 30 TAC §290.46(f)(1)(B)), by failing to maintain an adequate chlorine residual; 30 TAC §290.45(f)(2), by failing to meet the agency's Minimum Water System Capacity Requirements; and 30 TAC §291.76, by failing to pay regulatory assessment fees; PENALTY: $613; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(32) COMPANY: Gary Lucas dba Turf Estates Water System; DOCKET NUMBER: 2000-0888-PWS-E; IDENTIFIER: PWS Number 0710034; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.120(e)(2), by failing to conduct reduced monitoring tap sampling for lead and copper; PENALTY: $313; ENFORCEMENT COORDINATOR: Rebecca Cervantes, (512) 239-6095; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(33) COMPANY: Weatherford Aerospace, Incorporated; DOCKET NUMBER: 2000-0779-AIR-E; IDENTIFIER: Air Account Number PC-0077-R; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: chemical milling job shop; RULE VIOLATED: 30 TAC §§113.100, 113.380, 113.190, 116.115(c), 40 CFR §§63.4, 63.6, 63.7, 63.9, 63.347(c)(1) and (e)(4), 63.743(b), 63.749(h)(2), and 63.753(a)(2), Air Permit Number 17473, and the Code, §382.085(b), by failing to provide a notification of compliance status, keep records of maintaining a final startup, shutdown, and malfunction plan, and perform initial performance testing for the carbon adsorption control system; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Melinda Houlihan, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(34) COMPANY: Westwood Water Supply Corporation; DOCKET NUMBER: 2000-0947-MWD-E; IDENTIFIER: Wastewater Permit Number 11337-001; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (5), and (11)(A) and (B), by failing to properly operate and maintain the wastewater treatment facility, accurately perform measurements on the staff gauge at the weir, comply with permitted effluent limitations, maintain records of sludge disposal, and report effluent violations; PENALTY: $5,125; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200101028
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 20, 2001

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Notice of Water District Applications

Petitioner filed a petition for creation of BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 23 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the land to be included in the proposed district ; (3) the proposed District will contain approximately 542.817 acres located within Brazoria County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Pearland, Texas, and is

not within such jurisdiction of any other city. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $19,700,000.

Petitioners filed a petition for creation of GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 39 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioners are owners of a majority in value of the land to be included in the proposed District; (2) the petitioner states that The Chase Manhattan Bank (formerly known as Chase Bank of Texas) as trustee for the Peter Montgomery Frost Irrevocable Trust is the only lienholder on the property to be included in the proposed district; (3) the proposed District will contain approximately 503.409 acres located within Galveston County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the city of League City, Texas, and is not within such jurisdiction of any other city. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $21,600,000.

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, Texas 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-200101039
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 20, 2001

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Notice of Water Rights Applications

MICHAEL AND FAYE HORTON, HORTON RANCH, P.O. Box 108, Mound, Texas, 76558, applicant, seeks a permit pursuant to Texas Water Code (TWC) §11.143, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicants seek to divert and use not to exceed 60 acre-feet of water per annum at a maximum rate of 1.8 cfs (800 gpm) from the Leon River, Brazos River Basin for direct irrigation or diversion to an existing domestic and livestock reservoir for subsequent irrigation use. The reservoir has a surface area of 7.3 acres and a normal operating capacity of 48 acre-feet of water. Applicant seeks to irrigate 85 acres out of a 332.7 acre tract of land located in the Morris Moore Survey, Abstract No. 730, Coryell County, approximately 8 miles southeast of Gatesville, Texas and 2 miles northeast of Mound in Coryell County, Texas. Ownership of the land to be irrigated by the applicants is evidenced by a Warranty Deed recorded in Volume 595, Page 704, in the Official Records of Coryell County. The water will be diverted from the left bank of the Leon River from a point bearing S 35° W, 1800 feet from the northeast corner of the aforesaid survey, also being Latitude 31.65°N and Longitude 97.62°W.

ANTON BRANDL, JR. AND DOROTHY BRANDL, Route 3, Box 146A, El Campo, Texas 77437, applicants, seek 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 applicants seek authorization to divert and not to exceed 104.4 acre-feet of water per annum from a point on the west, or right bank of West Mustang Creek, tributary of Mustang Creek, tributary of the Navidad River, tributary of the Lavaca River, Lavaca River Basin, at a maximum diversion rate of 1.4 cfs (613 gpm), for irrigation of 72 acres of land out of two tracts totaling 98.6 acres in the Frank Page Survey, Abstract No. 479 and the H.A. Rogers Survey, Abstract No. 323, Wharton County. Ownership of the land to be irrigated is evidenced by a Warranty Deed recorded in Volume 615, page 749 of the Wharton County Deed Records. The diversion point is located S 69.7°E, 2903 feet from the northwest corner of the aforesaid Rogers Survey, also being 29.24°N Latitude and 96.35°W Longitude. Water diverted but not consumed will be returned to West Mustang Creek at a point located S 76°E, 2791 feet from the northwest corner of the aforesaid Rogers Survey, also being 29.245°N Latitude and 96.35°W Longitude. Applicants were the owners of Water Use Permit No. 4298 (A-4583) which expired on December 31, 1995 and authorized the diversion and use of 104.4 acre-feet of water per annum from the west, or right bank of West Mustang Creek at a maximum diversion rate of 1.4 cfs (613 gpm) for irrigation of 72 acres of land out of two tracts totaling 98.6 acres in Wharton County. The permit contained a special condition stating that water diverted but not consumed would be returned to West Mustang Creek. The applicants are included in a Compromise Settlement Agreement among the Lavaca Navidad River Authority (LNRA) and the Texas Water Development Board (TWDB), the owners of the water right for Lake Texana, and 16 other water right holders in the Lavaca

River Basin upstream from Lake Texana. The agreement includes a statement that LNRA would not protest the conversion of applicants' term permit to a perpetual permit subject to the following conditions: 1. Diversion of water authorized under the permit is limited to those times when the level of Lake Texana is at or above 43.0 msl; and 2. Prior to initiating diversions, permittees must contact the South Texas Watermaster to verify the level of Lake Texana. Subsequent to the development of the settlement agreement, the Texas Natural Resource Conservation Commission staff determined that applications to convert term permits to perpetual water rights in the Lavaca River Basin upstream of Lake Texana should be accompanied by a demonstration that an alternate water supply source is available for irrigation use. The applicants have demonstrated that they have access to groundwater wells that could produce a total of 650 gallons of water per minute.

LAKESIDE COUNTRY CLUB, 100 Wilcrest Drive, Houston, Texas 77042, applicant seeks to amend Water Use Permit No. 5257, as amended, pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §295.1, et seq. Water Use Permit No. 5257, as amended, authorizes Permittee to impound water in eight existing, interconnected off-channel reservoirs (referred to as Pond Nos. 1, 2, 3, 4, 5, 7, 8, and 9). Pond Nos. 1, 2, 3, 7, 8, and 9 are in the Christiana Williams Survey, Abstract No. 834; and Pond No. 5 is in the H. K. Lewis Survey, Abstract No. 42; and Pond No. 4 is in both of the aforementioned surveys in Harris County, Texas. Permittee is authorized to divert and use not to exceed 175 acre-feet of water per annum from Buffalo Bayou, tributary of the San Jacinto River, San Jacinto River Basin for in-place use in the authorized off-channel reservoirs and for subsequent diversion from Pond 9 to irrigate 70 acres of land out of several tracts totaling 211.61 acres in the aforesaid surveys located 14.5 miles west of Houston, Harris County, Texas. The priority date for this use is September 13, 1989. Permittee is also authorized to divert 160 acre- feet of water per annum from Buffalo Bayou for non-consumptive use to provide flow within an unnamed tributary of Buffalo Bayou for recreation (aesthetic) purposes. The priority date for this use is May 31, 1991. The diversion point on Buffalo Bayou is located on the east, or right bank of Buffalo Bayou, and is N 06.001°W, 9,003 feet from the southwest corner of the Fort Smith Survey, Abstract No. 1307, at maximum diversion rate of 2.67 cfs (1,200 gpm) in Harris County, Texas. The return flow for the non-consumptive use is located at a point on Buffalo Bayou, N 2°W, 10,000 feet from the southwest corner of the Fort Smith Survey, Abstract No. 1307, Harris County. This point is approximately 1,000 feet downstream of the authorized diversion point. Lakeside Country Club seeks to amend Water Use Permit No. 5257, as amended, to divert and use an additional 175 acre-feet of water per annum for irrigation use. The applicant is not requesting a change in the place of use, diversion point, or diversion rate.

WILLIAMS TERMINALS HOLDINGS, L. P., 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, San Jacinto River Basin, Harris County, 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, Harris County; and at a 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.

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-200101038
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 20, 2001

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Texas Department of Protective and Regulatory Services

Request for Proposal - Community Youth Development Fiscal Agents

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals for contractors to act as fiscal agents in providing educational, recreational, leadership, and enrichment services to at risk youth in 15 specified zip codes, through the Community Youth Development (CYD)

program. The Request for Proposal (RFP) will be released on or about March 2, 2001.

Brief Description of Services: Services solicited under this RFP encompass the following: working closely with the local CYD Steering Committee, including attending regularly scheduled Steering Committee meetings; providing a program overview of monthly participation and expenditure status at regularly scheduled steering committee meetings; overseeing and facilitating, while working closely with the Steering Committee, the procurement of service providers (subcontractors); drawing up and finalizing subcontracts (which are subject to the approval of PRS); ensuring eligibility of participants and timely submittal of client registration forms to PRS; monitoring subcontractors fiscally and programmatically and ensuring quality services; working with the statewide CYD Training and Technical Assistance provider; providing a program project coordinator to facilitate communication between PRS, the Steering Committee, the Youth Advisory Committee (YAC), and service providers/subcontractors; collaborating with the Steering Committee to develop an effective community program with an array of services (which may or may not include direct service provision by the fiscal agent); and administration of the CYD program in a designated zip code(s).

The goal of the program is to prevent juvenile delinquency in selected communities with high occurrences of juvenile crime.

Mandatory Offerors' Conference: A representative or representatives of entities that intend to submit a bid for this service must attend one of the Offerors' Conferences listed below. It is strongly recommended that both the entity director/chief officer, along with the entity accountant or fiscal officer, attend the conference. The conferences are: Arlington, March 13, 2001; El Paso, March 14, 2001; Plainview, March 15, 2001; Austin, March 16, 2001; Houston, March 19, 2001; Harlingen, March 20, 2001.

Critical information will be provided at these conferences, and an offeror's proposal will not be accepted if a representative fails to attend one of the conferences listed above. For information regarding the specific times and locations of the offerors' conferences, please contact Jacqueline Gomez at 512-438-3253 or Marilyn Eaton at 512-821-4727.

Eligible Applicants: Eligible offerors include private, nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Business and Women's Enterprises, and Small Businesses are encouraged to submit proposals.

Limitations: Funding of the selected proposals will be dependent upon available federal and/or state appropriations. PRS reserves the right to fund no proposal, or to fund successful proposals at a lesser dollar amount than the amounts indicated below. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due April 17, 2001, at 2:00 p.m. The effective dates of contracts awarded under this RFP will be September 1, 2001, through August 31, 2002, at a maximum amount of $500,000 per designated zip code for the period. The bulk of the contract funds will be used for direct service delivery via subcontracts with local service providers. If contracts are renewed, funding will be reviewed annually with prescribed maximum funding levels each year.

Contact Person: Potential offerors may obtain a copy of the RFP on or about March 2, 2001. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Marilyn Eaton, Mail Code E-541; c/o Jacqueline Gomez; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-438-2031.

TRD-200101067
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: February 21, 2001

♦ ♦ ♦

Public Utility Commission of Texas

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

On February 15, 2001, DVC Telecom filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60204. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of DVC Telecom for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23687.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than March 7, 2001. You may contact the commission's Customer Protection Division at (512) 936-7150. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7003. All correspondence should refer to Docket Number 23687.

TRD-200100977
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 2001

♦ ♦ ♦

Notice of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 12, 2001, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Docket Number: Application of Web Fire Communications, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Docket Number 23674.

The Application: Web Fire Communications, Inc. (Web Fire) filed a proposed plan for implementing intraLATA equal access in the areas of the state in which the company is certified to provide local exchange service as required by order of the Federal Communications Commission and pursuant to P.U.C. Substantive Rule §26.275. Web Fire holds Service Provider Certificate of Operating Authority (SPCOA) Number 60276.

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 on or before March 12, 2001. Hearing

and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference docket number 23674.

TRD-200100973
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 2001

♦ ♦ ♦

Notice of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 12, 2001, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Docket Number: Application of ETEX Telecom for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Docket Number 23675.

The Application: ETEX Telecom (ETEX) filed a proposed plan for implementing intraLATA equal access in the areas of the state in which the company is certified to provide local exchange service as required by order of the Federal Communications Commission and pursuant to P.U.C. Substantive Rule §26.275. ETEX holds Service Provider Certificate of Operating Authority (SPCOA) Number 60403.

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 on or before March 12, 2001. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference docket number 23675.

TRD-200100974
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 2001

♦ ♦ ♦

Notice of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 12, 2001, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Docket Number: Application of WESTEX Telecom for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Docket Number 23676.

The Application: WESTEX Telecom (WESTEX) filed a proposed plan for implementing intraLATA equal access in the areas of the state in which the company is certified to provide local exchange service as required by order of the Federal Communications Commission and pursuant to P.U.C. Substantive Rule §26.275. WESTEX holds Service Provider Certificate of Operating Authority (SPCOA) Number 60271.

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 on or before March 12, 2001. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 23676.

TRD-200100975
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 2001

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Notice of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 12, 2001, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Docket Number: Application of FEC Communications, L.L.P. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Docket Number 23677.

The Application: FEC Communications, L.L.P. (FEC) filed a proposed plan for implementing intraLATA equal access in the areas of the state in which the company is certified to provide local exchange service as required by order of the Federal Communications Commission and pursuant to P.U.C. Substantive Rule §26.275. FEC holds Service Provider Certificate of Operating Authority (SPCOA) Number 60318.

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 on or before March 12, 2001. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference docket number 23677.

TRD-200100976
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 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 application on February 15, 2001, for waiver of requirements in P.U.C. Substantive Rule §26.34, Telephone Prepaid Calling Services.

Docket Title and Number: Application of Qwest Communications Corporation (Qwest) for Good Cause Waiver of Certain Requirements in P.U.C. Substantive Rule §26.34. Docket Number 23698.

The Application: P.U.C. Substantive Rule §26.34(e)(6) requires that prepaid service providers must be capable of providing customers certain call detail information upon verbal or written request. Qwest seeks waiver of §26.34(e)(6)'s requirement that it provide this information upon verbal request. Qwest states that because the information listed in P.U.C. Substantive Rule §26.34(e)(6) so significantly impacts the customer's privacy and property, and because Qwest operates in so many

markets, and because prepaid cards are so easily transported from state to state, the only viable way to protect the privacy and property of its cardholders is through requiring written requests.

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 23698.

TRD-200101027
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 20, 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 14, 2001, for waiver of certain requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of MCIMetro Access Transmission Services, Inc (MCIm) for Temporary Waiver of Certain Provisions of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23684.

The Application: Rule §26.25 requires all certificated telecommunications utilities to comply with the bill format changes required by the rule on or before February 15, 2001. MCIm seeks a temporary waiver of P.U.C. Substantive Rule §26.25(e)(2) in so far as it requires that subtotals for basic local, optional local, and taxes for local service be on the first page or in a subsequent section dealing with local exchange telephone service. MCIm requests that the commission allow the company additional time to effect certain of the changes required by the rule and ensure complete compliance.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 23684.

TRD-200101051
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 20, 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 16, 2001, for waiver of certain requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. (Guadalupe Valley) for Temporary Waiver of Certain Provisions of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23700.

The Application: Rule 26.25 requires all certificated telecommunications utilities to comply with the bill format changes required by the rule on or before February 15, 2001. Guadalupe Valley seeks a temporary waiver of P.U.C. Substantive Rule §26.25(e)(8) regarding billing format for basic local service and optional local service categories. Guadalupe Valley requests that the commission allow the cooperative until May 1, 2001, to effect certain of the changes required by the rule and ensure complete compliance. Due to technical delays the cooperative has experienced with the contracted vendor, the cooperative has determined that it will not be able to complete the necessary billing system changes in order to properly calculate and populate the surcharges as required by the rule. Guadalupe Valley believes that the billing scheduled for May 1, 2001 will be correct and in compliance with 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 23700.

TRD-200101058
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 20, 2001

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Public Notice of Amendment to Interconnection Agreement

On February 15, 2001, Southwestern Bell Telephone Company and Diamond Telco-Your Home Telephone Store, 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 23692. 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 23692. 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 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23692.

TRD-200101018
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 2001

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Public Notice of Amendment to Interconnection Agreement

On February 15, 2001, Southwestern Bell Telephone Company and Reitz Rentals, Inc. doing business as Southwest Teleconnect, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23693. 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 23693. 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 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23693.

TRD-200101019
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 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. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Maintenance of Service Charge for Private Line and Intrastate Access Services Pursuant to P.U.C. Substantive Rule §26.215 on or after February 26, 2001, Docket Number 23697.

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 23697. 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-200101020
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 2001

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Texas Department of Transportation

Notice of Public Hearing

Notice of Public Hearing: Pursuant to the Texas Coastal Waterway Act, Transportation Code, §51.006, the Texas Transportation Commission will conduct a public hearing to receive data, evidence, comments, views, and testimony concerning the acquisition, by donation, purchase, or condemnation, of property or an interest in property environmentally suitable for use as disposal sites for materials dredged from the main channel of the Gulf Intracoastal Waterway.

The location of the proposed site to be considered by the commission is more specifically described as follows:

Galveston County - one site of 215 acres more or less out of the Port Bolivar Townsite, in the Samuel Parr Survey, Abstract 162 and being out of that certain tract or parcel of land conveyed in the Trustee's Deed record under Film Code No. 014-48-2290 in the Office of the County Clerk.

The public hearing will be held at 9:00 A.M. on Thursday, March 29, 2001, in the First Floor Hearing Room, Dewitt C. Greer Building, 125 E. 11th Street, Austin, Texas. Any interested person may appear and offer comments or testimony, either orally or in writing. However, questioning of speakers or witnesses will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content.

Maps, environmental documentation, and other displays concerning the proposed site will be exhibited at the public hearing. Prior to the public hearing, information about the proposed site will be on file and available for inspection at the Texas Department of Transportation, Transportation Planning and Programming Division, 150 East Riverside Drive, Austin. To inspect this information, please contact Raul Cantu, Jr., P.E., at (512) 416-2344.

Information concerning benefits and services available to displacees under the Texas Department of Transportation's Relocation Assistance Program, and information about the site acquisition process are available at the Texas Department of Transportation, Right of Way Division, 118 East Riverside Drive, Austin, Texas. Please contact James Hutchinson at (512) 416-2837 for this information.

For further information, please contact Alvin R. Luedecke, Jr., P.E., Director of Transportation Planning and Programming, P.O. Box 149217, Austin, Texas 78714-9217, (512) 486-5000; or James Randall, P.E., Deputy Division Director, Transportation Planning and Programming, at (512) 486-5004.

TRD-200101044
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 20, 2001

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Public Notice

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site - http://www.dot.state.tx.us - click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200100969
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 16, 2001

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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).

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

Update service should be in ❑ printed format ❑ 3 1/2" diskette

Texas Workers Compensation Commission, Title 28

❑ Update service $25/year

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