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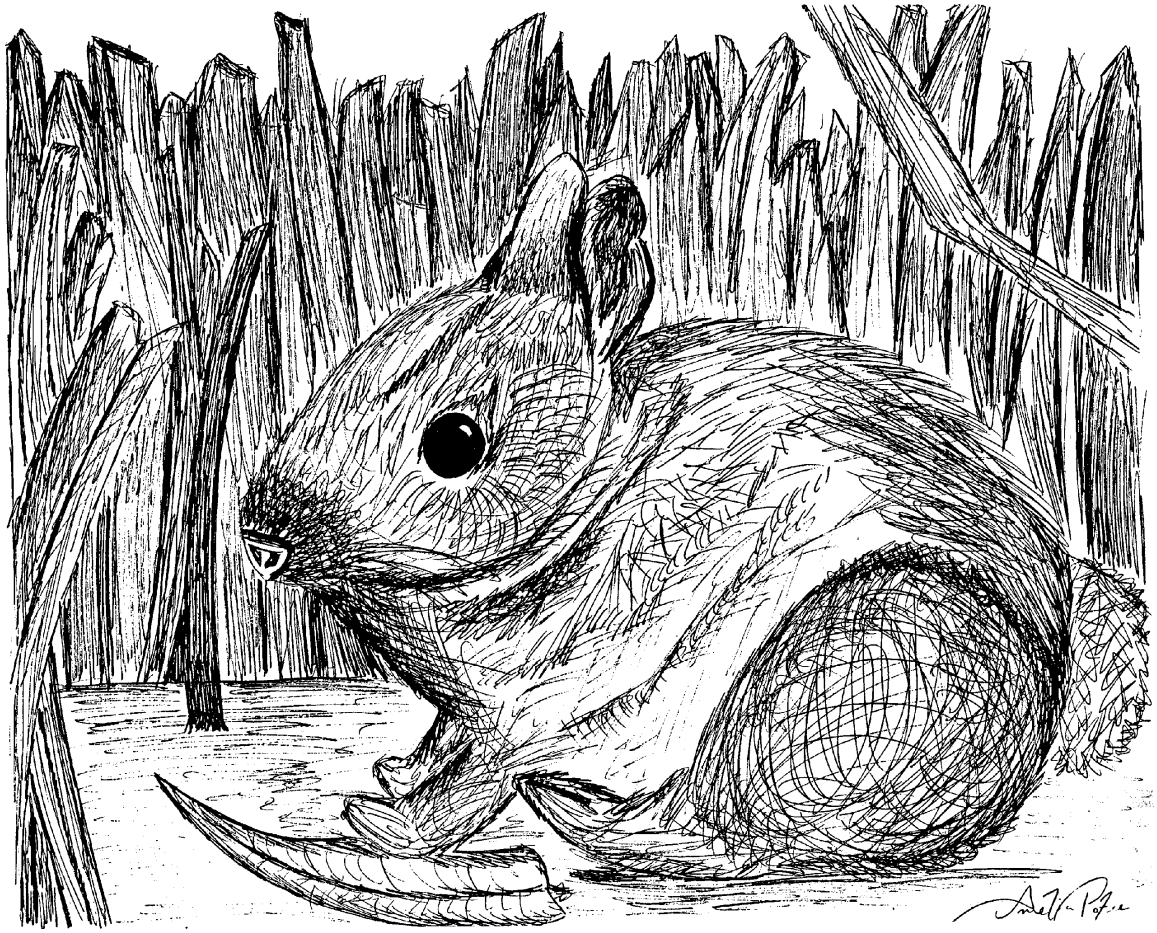

This month's front cover artwork:

Artist: *Amelia Potee*
12th grade
Rockwall 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.

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

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ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.texas.gov/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

THE GOVERNOR

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

Office of the Governor

Appointments

Appointments for February 19, 2001.

Appointed to be Commissioner of the Texas Transportation Commission for a term to expire February 1, 2007, Ric Williamson of Weatherford (replaced David Laney of Dallas whose term expired).

Appointments for February 22, 2001.

Appointed to the On-Site Wastewater Treatment Research Council for terms to expire September 1, 2002, Barry D. Bedwell of Amarillo (reappointed), Karen Berryman of Pflugerville (replaced Glenn Turner of Beaumont who resigned), John Robert Blount of Houston (reappointed), Teri Hada Mathis of Rosenberg (reappointed), Charles Montel Rutledge of College Station (replaced Maurice Short of Texarkana who resigned).

Appointed to be Judge of the 159th Judicial District Court, Angelina County, until the next General Election and until his successor shall be duly elected and qualified, Paul E. White of Lufkin (replaced Gerald Goodwin who resigned).

TRD-200101994
Rick Perry
Governor

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0360

Mr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711

Re: Whether a community college district may voluntarily reduce its adopted tax rate in the same tax year (RQ-0300-JC)

S U M M A R Y

After adopting a tax rate higher than the rollback rate under section 26.05 of the Tax Code, a community college district may not voluntarily reduce its adopted tax rate in the same tax year. There is no express statutory authority for it to do so, and such authority may not be implied. The only method by which the Tax Code authorizes a community college district to reduce a tax rate that exceeds the rollback rate is an election timely initiated by a valid voter petition.

Opinion No. JC-0361

The Honorable Jack Skeen, Jr., Smith County Criminal District Attorney, Smith County Courthouse, 100 North Broadway, 400, Tyler, Texas 75702

Re: Authority of the district judges of Smith County to amend the salaries of the county auditor's office, and related questions (RQ-0302-JC)

S U M M A R Y

Provided the appropriate public hearing is held, the necessary statutory procedures are followed, and the salary amendments at issue do not "require county expenditures in excess of anticipated revenue" for the budget year, Tex. Att'y Gen. Op. No. JM-49 (1983) at 2, the district judges of Smith County may amend the salaries of the auditor and assistant auditors of the county despite the fact that the new budget year has begun. Any salary increases must be prospective, and are effective only upon the adoption by the commissioners court of the necessary budget amendments.

Opinion No. JC-0362

The Honorable David Sibley, Chair, Business and Commerce Committee, Texas State Senate, P. O. Box 12068, Austin, Texas 78711

Re: Whether the City of Port Arthur Economic Development Corporation may "grant" sales tax funds for a "rehabilitation and job training/educational facility" (RQ-0288-JC)

S U M M A R Y

The City of Port Arthur Economic Development Corporation is authorized to expend sales and use tax proceeds to finance the Port Cities Rescue Mission's "rehabilitation and job training/educational facility" only if the Corporation's board of directors reasonably finds that such a facility promotes business development and otherwise complies with the Development Corporation Act of 1979, article 5190.6 of the Revised Civil Statutes. The Act does not expressly authorize a "grant" for the Mission's facility. Instead, any sales tax expenditure for such a facility must be made pursuant to a contract or other arrangement that ensures that the funds will be used for the authorized purpose and otherwise be in compliance with the Act.

Opinion No. JC-0363

The Honorable Tom Ramsay, Chair, County Affairs Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether an individual may simultaneously hold the offices of mayor and director of a hospital district board that has condemned property in the mayor's city (RQ-0307-JC)

S U M M A R Y

An individual may not simultaneously hold the offices of mayor and director of a hospital district that has condemned property within the mayor's city.

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

TRD-200102086
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: April 11, 2001

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Request for Opinions

RQ-0367-JC

Mr. Randall S. James, Banking Commissioner, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294

Re: Constitutionality of permitting system for sellers of prepaid funeral benefits, particularly with regard to religious organizations (RQ-0367-JC)

Briefs requested by May 6th, 2001

Note: The above request was previously published as RQ-311-JC, in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12025). However, because of the constitutional issues raised by the original request and the desire to submit additional briefing on those issues, the Opinion Committee closed the file on the original request, RQ-0311-JC, and opened a new file, RQ-0367-JC, in order to give all interested parties, the opportunity to submit additional briefing on these broader issues.

RQ-0368-JC

The Honorable David Counts, Chair, Natural Resources Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Determination of "actual costs" a hospital district must charge non-indigent county residents: Clarification of JC-0220 (2000) (RQ-0368-JC)

Briefs requested by May 4, 2001

RQ-0369-JC

The Honorable Jose R. Rodriguez, El Paso County Attorney, 500 East San Antonio, Room 203, El Paso, Texas 79901

Re: Whether the board of trustees of the Risk Pool for the El Paso County Health Benefits Programs may meet in executive session to consider a complaint regarding administration (RQ-0369-JC)

Briefs requested by May 4, 2001

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

TRD-200102085
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: April 11, 2001

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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

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

4 TAC §20.22

The Texas Department of Agriculture (the department) proposes an amendment to §20.22, concerning cotton stalk destruction requirements. The amendment changes the stalk destruction deadline for Zone 2 Areas 1 and 2 from September 15 to September 1 and for Zone 2 Area 3 from September 25 to September 1. The change is proposed to establish a uniform date for all of Zone 2, which will allow the department and producers to better coordinate stalk destruction activities in the zone.

Ed Gage, Coordinator for Pest Management/Citrus, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section, as amended. There will be no fiscal implications for local government as a result of enforcing or administering the section, as amended.

Mr. Gage has also determined that for each of the first five years the section, as amended, is in effect the public benefit will be that the change in cotton stalk destruction dates for Zone 2, Areas 1, 2, and 3 will allow for greater coordination of stalk destruction in the area as well as compliment the efforts of producers to achieve boll weevil eradication. There is no anticipated cost to small businesses or to persons required to comply with the proposal.

Comments on the proposal may be submitted to Ed Gage, Coordinator for Pest Management/Citrus, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed in accordance with the Texas Agriculture Code, §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests.

The code affected by this proposal is the Texas Agriculture Code, Chapter 74, Subchapter A.

§20.22. Stalk Destruction Requirements.

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

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

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 April 9, 2001.

TRD-200102017
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §66.51

The Texas Education Agency (TEA) proposes an amendment to 19 TAC §66.51, concerning instructional materials purchased by the state. The section establishes requirements that must be met by publishers that offer instructional materials for adoption by the State Board of Education. The section also specifies requirements for publishers of non-adopted instructional materials selected and purchased by school districts.

The proposed amendment to §66.51 would require publishers to certify that persons listed as contributors to a published work did, in fact, contribute to the work. The proposed amendment also deletes the "per-student" terminology when referencing the state maximum cost reflected in proclamations.

Specific revisions include the following. Language in subsection (a)(4) has been removed to delete the specific "per student" cost configuration. This change will expand the maximum cost determination to include other configurations such as per classroom, per teacher, or site license per school or school district. Also, new subsection (a)(7) has been added which requires publishers to submit to TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of a textbook contributed to the development of the textbook.

Ann Smisko, associate commissioner for curriculum, assessment, and technology, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Smisko and Criss Cloudt, associate commissioner for accountability reporting and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide a guarantee to school districts and to the public that persons listed as contributors to a textbook did, in fact, contribute to the development of the textbook. The public will also benefit from the availability of expanded configurations of instructional materials. There is no anticipated economic cost to persons required to comply with the section as proposed. Publishers will incur some additional cost in preparing affidavits certifying that individuals listed as contributors to a textbook did, in fact, contribute to the development of the textbook. The cost of preparing the affidavit will vary from publisher to publisher. There may be an effect on small businesses since costs would be similar for small and large publishers.

Comments on the proposal may be submitted to Criss Cloudt, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §31.003, which authorizes the State Board of Education to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendment implements the Texas Education Code, §31.003.

§66.51. Instructional Materials Purchased by the State.

(a) Instructional materials offered for adoption by the State Board of Education (SBOE).

(1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).

(2) The official bid price of an instructional material submission shall not exceed the price included with the official sample filed under §66.54 of this title (relating to Samples).

(3) A teacher's component submitted to accompany student instructional materials under consideration for adoption shall be part of the publisher's official bid and shall be provided for the duration of the original contract and any contract extensions at no cost to every teacher that uses the adopted student materials in a school district or open-enrollment charter school.

(4) Under the Texas Education Code, §31.025, the official bid price for an instructional material submission may exceed the maximum cost [~~per student~~] to the state that is established in the proclamation. The state shall only be responsible for payment to the publisher in an amount equal to the maximum cost. A school district ordering instructional materials is responsible for the portion of the cost that exceeds the state maximum.

(5) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with official samples and in the official bid.

(6) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period.

(7) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of a textbook contributed to the development of the textbook. The affidavit shall also state in general terms each author's involvement in the development of the textbook.

(8) [~~(7)~~] Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. The cost of such consumables to the state for the entire contract period shall not exceed the maximum cost established in the proclamation.

(9) [~~(8)~~] On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. Correlations shall be submitted in a format approved by the commissioner of education.

(b) Non-adopted instructional materials. A publisher of non-adopted instructional materials selected and purchased by school districts or open-enrollment charter schools under §66.104(c)-(f) of this title (relating to Selection of Instructional Materials by School Districts) shall meet all applicable requirements of the Texas Education Code, §31.151.

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 April 9, 2001.

TRD-200102021
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 463-9701

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 241. PRINCIPAL CERTIFICATE

19 TAC §241.15

On January 5, 2001, the State Board for Educator Certification (SBEC) proposed an amendment to 19 Texas Administrative Code §241.15, relating to the standard principal certificate. This amendment was inadvertently omitted from the submission to §§241.5, 241.10, 241.20, 241.25, 241.30, and 241.40 which appeared in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2473).

These proposed amendments are designed to eliminate unnecessary barriers to candidates seeking the standard principal certificate and to remove unduly prescriptive language in the rules. The proposed amendments would remove unnecessarily prescriptive language and allow preparation entities the full authority to set admission criteria, assessments and benchmarks, and coursework and other training for candidates for the standard principal certificate. These amendments will make Chapter 241 consistent with the guidance contained in SBEC's rules at 19 Texas Administrative Code Chapters 227 and 228, which generally governing educator preparation programs. Deleting the requirement for employment on a conditional certificate before receiving the standard certificate would allow candidates to proceed to full certification more expeditiously without unduly compromising their preparation. The proposed amendments allow candidates to complete all requirements and then be recommended for the standard principal certificate. In lieu of the conditional certificate, the amendments offer guidance for school districts in establishing induction programs to help newly certified principals succeed during their initial employment as such in Texas. The induction program amendment would become effective September 1, 2002.

No fiscal impact is anticipated for the new standard principal certificate. SBEC did not change the fee for issuing the principal certificate. There will be no effect on state or local government.

Barry Alaimo, Director of Accounting and Financial Operations, was responsible for preparing this fiscal-impact note.

The public would benefit from the revisions to the principal certification rules by allowing certified principals to assume their duties more expeditiously without unduly compromising their preparation. The public should incur no additional costs as a result of the implementation of the proposed rules. There will be no effect on small businesses.

Dan Junell, General Counsel, was responsible for preparing this public benefits and costs note.

Interested persons wishing to comment on the proposed rules must submit their comments in writing to Dan Junell, General Counsel, State Board for Educator Certification, 1001 Trinity, Austin, Texas 78701-2603, within the 30-day comment period, which begins on the date of publication of this issue of the *Texas Register.* The comments should contain the following title or reference: "Comments on proposed amendments to 19 TAC Chapter 241, relating to the standard principal certificate."

The amendments relating to the standard principal certificate were proposed under the authority of the following sections of the Texas Education Code: §21.040(4), which requires the Board to appoint for each class of educator certificate an advisory committee composed of members of that class to recommend standards for that class to the Board; §21.041(b)(2)-(4), which requires the Board to specify the classes of certificates to be issued, specify the period of validity for each class of educator certificate, and specify requirements for the issuance and renewal of an educator certificate; §21.046, which specify the minimum qualifications for certification as a principal; and §21.054, which requires the Board to establish a process for identifying continuing education courses and programs that fulfill continuing education requirements, including an individual assessment of a principal's knowledge, skills, and proficiencies.

No other statute, code, or article is affected by these proposed amendments.

§241.15. Standards for the Principal Certificate.

(a) The knowledge and skills identified in this section must be used by educator preparation programs in the development of curricula and coursework and will be used by the State Board for Educator Certification as the basis for developing the assessments required to obtain the [~~Provisional and~~]Standard Principal Certificate [~~Certificates~~]. These standards must also serve as the foundation for the individual assessment, professional growth plan, and continuing professional education activities required by §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate).

(b) Learner-Centered Values and Ethics of Leadership. A principal is an educational leader who promotes the success of all students by acting with integrity and fairness, and in an ethical manner. At the campus level, a principal understands, values, and is able to:

(1) model and promote the highest standard of conduct, ethical principles, and integrity in decision making, actions, and behaviors.

(2) implement policies and procedures that encourage all campus personnel to comply with Chapter 247 of this title (relating to Code of Ethics and Standards Practices for Texas Educators).

(3) model and promote the continuous and appropriate development of all learners in the campus community.

(4) promote awareness of learning differences, multicultural awareness, gender sensitivity, and ethnic appreciation in the campus community.

(5) articulate the importance of education in a free democratic society.

(c) Learner-Centered Leadership and Campus Culture. A principal is an educational leader who promotes the success of all students and shapes campus culture by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. At the campus level, a principal understands, values, and is able to:

(1) create a campus culture that sets high expectations, promotes learning, and provides intellectual stimulation for self, students, and staff.

(2) ensure that parents and other members of the community are an integral part of the campus culture.

(3) utilize strategies to ensure the development of collegial relationships and effective collaboration of campus staff.

(4) respond appropriately to the diverse needs of individuals within the community in shaping the campus culture.

(5) utilize emerging issues, trends, demographic data, knowledge of systems, campus climate inventories, student learning data, and other information to develop a campus vision and plan to implement the vision.

(6) facilitate the collaborative development of a shared campus vision that focuses on teaching and learning.

(7) facilitate the collaborative development of a plan in which objectives and strategies to implement the campus vision are clearly articulated.

(8) align financial, human, and material resources to support the implementation of the campus vision.

(9) establish processes to assess and modify the plan of implementation to ensure achievement of the campus vision.

(10) support innovative thinking and risk-taking efforts of everyone within the school community and view unsuccessful experiences as learning opportunities.

(11) acknowledge, recognize, and celebrate the contributions of students, staff, parents, and community members toward the realization of the campus vision.

(d) Learner-Centered Human Resources Leadership and Management. A principal is an educational leader who promotes the success of all students by implementing a staff evaluation and development system to improve the performance of all staff members, selects and implements appropriate models for supervision and staff development, and applies the legal requirements for personnel management. At the campus level, a principal understands, values, and is able to:

(1) collaboratively develop, implement, and revise a comprehensive and on-going plan for professional development of campus staff which addresses staff needs and aligns professional development with identified goals.

(2) facilitate the application of adult learning and motivation theory to all campus professional development, including the use of appropriate content, processes, and contexts.

(3) ensure the effective implementation of the professional development plan by allocation of appropriate time, funding, and other needed resources.

(4) implement effective, legal, and appropriate strategies for the recruitment, selection, assignment, and induction of campus staff.

(5) utilize formative and summative evaluation processes to further develop the knowledge and skills of campus staff.

(6) diagnose and improve campus organizational health and morale through the implementation of strategies designed to provide on-going support to campus staff members.

(7) engage in on-going, meaningful, professional growth activities to further develop necessary knowledge and skills, and to model lifelong learning.

(e) Learner-Centered Communications and Community Relations. A principal is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources. At the campus level, a principal understands, values, and is able to:

(1) demonstrate effective communication through oral, written, auditory, and nonverbal expression.

(2) utilize effective conflict management and group consensus building skills.

(3) implement effective strategies to systematically gather input from all campus stakeholders.

(4) develop and implement strategies for effective internal and external communications.

(5) develop and implement a comprehensive program of community relations which utilizes strategies that will effectively involve and inform multiple constituencies, including the media.

(6) provide varied and meaningful opportunities for parents to be engaged in the education of their children.

(7) establish partnerships with parents, businesses, and other groups in the community to strengthen programs and support campus goals.

(8) respond to pertinent political, social, and economic issues that exist in the internal and external environment

(f) Learner-Centered Organizational Leadership and Management. A principal is an educational leader who promotes the success of all students through leadership and management of the organization, operations, and resources for a safe, efficient, and effective learning environment. At the campus level, a principal understands, values, and is able to:

(1) implement appropriate management techniques and group processes to define roles, assign functions, delegate authority, and determine accountability for campus goal attainment.

(2) gather and organize information from a variety of sources for use in creative and effective campus decision making.

(3) frame, analyze, and creatively resolve campus problems using effective problem solving techniques to make timely, high quality decisions.

(4) develop, implement, and evaluate change processes for organizational effectiveness.

(5) implement strategies that enable the physical plant, equipment, and support systems to operate safely, efficiently, and effectively to maintain a conducive learning environment.

(6) apply local, state, and federal laws and policies to support sound decisions while considering implications related to all school operations and programs.

(7) acquire, allocate, and manage human, material, and financial resources according to district policies and campus priorities.

(8) collaboratively plan and effectively manage the campus budget.

(9) utilize technology to enhance school management.

(10) utilize effective planning, time management, and organization of work to maximize attainment of district and campus goals.

(g) Learner-Centered Curriculum Planning and Development. A principal is an educational leader who promotes the success of all

students by facilitating the design and implementation of curricula and strategic plans that enhance teaching and learning; alignment of curriculum, curriculum resources, and assessment; and the use of various forms of assessment to measure student performance. At the campus level, a principal understands, values, and is able to:

(1) use emerging issues, occupational and economic trends, demographic data, student learning data, motivation theory, learning theory, legal requirements, and other information as a basis for campus curriculum planning.

(2) facilitate the use of sound research-based practice in the development and implementation of campus curricular, co-curricular, and extracurricular programs.

(3) facilitate campus participation in collaborative district planning, implementation, monitoring, and revision of curriculum to ensure appropriate scope, sequence, content, and alignment.

(4) facilitate the use and integration of technology, telecommunications, and information systems to enrich the campus curriculum.

(5) facilitate the effective coordination of campus curricular, co-curricular, and extracurricular programs in relation to other district programs.

(h) Learner-Centered Instructional Leadership and Management. A principal is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a campus culture and instructional program conducive to student learning and staff professional growth. At the campus level, a principal understands, values, and is able to:

(1) facilitate the development of a campus learning organization that supports instructional improvement and change through an on-going study of relevant research and best practice.

(2) facilitate the implementation of sound, research-based instructional strategies, decisions, and programs in which multiple opportunities to learn and be successful are available to all students.

(3) implement special campus programs to ensure that all students are provided quality, flexible instructional programs and services to meet individual student needs.

(4) utilize interpretation of formative and summative data from a comprehensive student assessment program to develop, support, and improve campus instructional strategies and goals.

(5) facilitate the use and integration of technology, telecommunications, and information systems to enhance learning.

(6) facilitate the implementation of sound, research-based theories and techniques of classroom management, student discipline, and school safety to ensure an environment conducive to teaching and learning.

(7) facilitate the development, implementation, evaluation, and refinement of student activity programs to fulfill academic, developmental, social, and cultural needs.

(8) acquire and allocate sufficient instructional resources on the campus in the most equitable manner to support and enhance student learning.

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 April 9, 2001.

TRD-200102015
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.9

The Texas State Board of Examiners of Psychologists proposes amendments to §463.9 Licensed Specialist in School Psychology. The amendments are being proposed in order to correct wording which was omitted when this rule was re-organized during rule review.

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 rule easier for the general public and licensees to follow and understand. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments are 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 amendments do not affect other statutes, articles, or codes.

§463.9. Licensed Specialist in School Psychology.

(a) (No change.)

(b) Training Qualifications. Candidates for licensure as a specialist in school psychology who hold a currently valid National Certified School Psychologist (NCSP) certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training and internship qualifications. All other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, no more than 12 of which may be internship hours. All 60 hours do not have to be obtained prior to the conferral of the graduate degree and the applicant need not be formally

enrolled in a psychology program to obtain graduate hours after the degree date. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must submit evidence of graduate level coursework as follows:

(1) - (7) (No change.)

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State, on April 5, 2001.

TRD-200101982
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 305-7700

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22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.11, Licensed Psychologist. The amendments are being proposed to update requirements, consistent with current licensing procedures and consistent with Attorney General Ruling.

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 rule easier for the general public and licensees to follow and understand. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Kourtney D. McDonald, 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.

§463.11. Licensed Psychologist.

(a) Application Requirements by Provisional Licensure. This application is provided free of charge to the applicant who has taken the oral examination. Upon passage of the oral examination, the applicant may submit the licensed psychologist application. An application for licensure as a psychologist includes, in addition to the requirements set forth in §463.5(1) of this title (relating to Application File Requirements):

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

(3) Documentation of two years of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal year must be documented by the Director of Internship Training.

(b) (No change.)

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years, for full-time experience.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A)-(K) (No change.)

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules in effect during the supervision experience [~~regardless of setting~~].

(M) (No change.)

(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist may use this title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.

(O) (No change.)

(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:

(A) (No change.)

(B) The successful completion of an organized internship meeting all of the following criteria:

(i)-(ii) (No change.)

(iii) The internship agency must have two or more full-time [~~equivalent~~] licensed psychologists on the staff as primary supervisors.

(iv)-(ix) (No change.)

[(x) ~~The internship level psychology trainees must have titles such as "intern", "resident", "fellow", or other designation of trainee status.~~]

(x) [~~(xi)~~] The internship agency must inform prospective interns about [~~have a written statement or brochure which describes~~] the goals and content of the internship, as well as the [~~stated clear~~] expectations for quantity and quality of trainee's work [~~and must be made available to prospective interns~~]; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i)-(viii) (No change.)

(ix) The internship site shall inform interns concerning [~~The internship must be memorialized by a written contractual~~

~~agreement specifying~~] the period of the internship and the training objectives of the program.

(x)-(xiii) (No change.)

(3) (No change.)

(d) (No change.)

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

Filed with the Office of the Secretary of State, on April 5, 2001.

TRD-200101988
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 305-7700

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22 TAC §463.14

The Texas State Board of Examiners of Psychologists proposes amendments to §463.14 Written Examinations. The amendments are being proposed in order to change the passing rate on the Jurisprudence Examination from 70% to 90% to accommodate the conversion of this exam to open-book format.

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

Ms. Lee 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 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 costs to persons who are required to comply with the rules as proposed.

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

The amendments are 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 amendments do not affect other statutes, articles, or codes.

§463.14. Written Examinations.

(a) Jurisprudence Examination. All applicants for licensure by the Board are required to pass the Jurisprudence Examination prior to licensure. [~~Applications for licensure by reciprocity may take the Jurisprudence Examination at times mutually agreed upon between them and the Board's office. All other applicants must take the examination at the times regularly scheduled by the Board.~~]

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

(f) Cutoff Scores. The minimum acceptable score for the EPPP is seventy percent (70%) of questions scored for psychologist licensure applicants and fifty-five percents (55%) of questions scored for psychological associate licensure applicants on the pencil and paper version of the test. For computer-delivered EPPP examinations, the cutoff scaled scores are 500 and 450 respectively. All applicants, both doctoral and masters level, must receive a minimum score of ninety [~~seventy~~] percent (90%) [~~(70%)~~] of questions scored on the Board's Jurisprudence Examination. The exam score of applicants for licensure who have already taken the EPPP must satisfy the requirements of the Board as of the date of application to the Board.

(g) (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 April 5, 2001.

TRD-200101981
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.6

The Texas State Board of Examiners of Psychologists proposes amendments to §465.6 Listings, Public Statements, Solicitations, and Specialty Titles. The amendments are being proposed in order to address changing practices within the profession.

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

Ms. Lee 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 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 costs to persons who are required to comply with the rules as proposed.

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

The amendments are 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 amendments do not affect other statutes, articles, or codes.

§465.6. Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles.

(a) (No change.)

(b) Public Statements and Advertisements.

(1) (No change.)

[(2) A licensee's authorization of or use in any advertising or listing for the practice of psychology of the term "Board Certified" or "Board Approved" or any similar words or phrases calculated to convey the same meaning shall constitute misleading or deceptive advertising, unless the licensee discloses the complete name of the specialty board which conferred the aforementioned certification. A licensee may not use the term "Board Certified" or "Board Approved" or any similar words or phrase calculated to convey the same meaning if the claimed board certification has expired and has not been removed at the time the advertising in question was published or broadcast.]

(2) [(3)]Licensees who learn of false or deceptive statements about their practices of psychology or their status as providers of psychological services make reasonable efforts to correct such statements.

(c) Solicitation of Testimonials and/or Patients.

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

(d) Specialty Titles. A psychologist may use a specialty title only when one of the following criteria have been met:

(1) Doctorate in the area of specialization;

[(2) Diplomat status in that area from the American Board of Professional Psychology;]

(2) [(3)]Retraining under the American Psychological Association retraining guidelines of 1977;

(3) [(4)]Documentation that the title has been used for five years and documentation of academic course work and relevant applied experience, if an individual was matriculated in a doctoral program in psychology in 1977 or before;

[(5) Certificate of proficiency from the American Psychological Association's College of Professional Psychology.]

(4) Certification or approval or diplomat status has been granted by a professional refereed board, provided that the licensee indicates the name of the board which granted the title and that the individual's status with the specialty board is current and in good standing. Use of the term "Board Certified" or "Board Approved" or any similar words or phrases calculated to convey the same meaning shall constitute misleading or deceptive advertising, unless the licensee discloses the complete name of the specialty board that conferred the aforementioned specialty title, certification, approval, or diplomat status.

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

Filed with the Office of the Secretary of State, on April 5, 2001.

TRD-200101983
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 305-7700

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22 TAC §465.38

The Texas State Board of Examiners of Psychologists proposes amendments to §465.38 Psychological Services in Schools. The amendments are being proposed in order to clarify contracting allowed by non-LSSPs in the public schools.

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 rule easier for the general public and licensees to follow and understand. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments are 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 amendments do not affect other statutes, articles, or codes.

§465.38. Psychological Services in the Schools.

This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(1) Definition.

(A) (No change.)

(B) A licensed specialist in school psychology means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students [including the assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures]. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs.

(C) (No change.)

(2) (No change.)

(3) Providers of School Psychological Services. School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include licensed specialists in school psychology, and interns or trainees as defined in §463.9 of this title (relating to Licensed Specialist in School Psychology). Nothing in this rule prohibits public schools from contracting with [retaining] licensed psychologists and licensed psychological associates who are not licensed specialists in school psychology to provide psychological services, other than school psychology,

in their areas of competency. School districts may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, which are not within the competency of or which are not readily available from the licensed specialists in school psychology employed by the school district. Such contracting must be on a short term or part time basis and cannot involve the broad range of school psychological services listed in paragraph (1) (B) of this section.

(4) - (7) (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 April 5, 2001.

TRD-200101984
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 305-7700

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CHAPTER 470. ADMINISTRATIVE PROCEDURES

22 TAC §470.21

The Texas State Board of Examiners of Psychologists proposes amendments to §470.21 Disciplinary Guidelines. The amendments are being proposed in order to assign specific disciplinary actions for certain violations

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

Ms. Lee 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 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 costs to persons who are required to comply with the rules as proposed.

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

The amendments are 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 amendments do not affect other statutes, articles, or codes.

§470.21. Disciplinary Guidelines.

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

(c) Revocation. The Board shall revoke the license of any licensee if the Board determines that the continued practice of psychology by the licensee poses a harm to the public. Licensees who violate the following Board rules shall be subject to revocation without reference to subsections (e) through (i) of this section:

(1) 465.13(b)(3) and (b)(6) pertaining to certain forms of sexual impropriety with current patients;

(2) 465.33(d) as it pertains to sexual relations, defined in 465.33(c), with current patients; and

(3) 469.7(d)(5), (d)(8), and (d)(10) pertaining to certain felony convictions and judgments.

(d) The rules enumerated above are not intended to be exhaustive. The Board may recommend revocation for licensees who violate one or more Board rules that are not listed above.

(e) [~~(d)~~] Disciplinary Sanctions. If the Board does not revoke the license of a licensee as part of a disciplinary matter, it may impose the following disciplinary sanctions which are listed in descending order of severity:

(1) Suspension for a definite period of time;

(2) Suspension plus probation of any or all of the suspension period;

(3) Probation of the license for a definite period of time;

(4) Reprimand for a definite period of time.

(f) [~~(e)~~] Additional conditions. As terms of any sanction imposed by the Board upon a licensee pursuant to a disciplinary matter the Board may, at its discretion, impose any additional conditions and/or restrictions upon the license of the licensee that the Board deems necessary to facilitate the rehabilitation and education of the licensee and to protect the public, including but not limited to:

(1) Consultation with the licensee on matters of ethics rules, laws and standards of practice by a licensed psychologist approved by the Board;

(2) Restrictions on the licensee's ability to provide certain types of psychological services or to provide psychological services to certain classes of patients;

(3) Restrictions on the licensee's supervision of others in the practice of psychology;

(4) Completion of a specified number of continuing education hours on specified topics approved in advance by the Board in addition to any minimum number required of all licensees as a condition of licensure;

(5) Taking and passing with the minimum required score of any examination required by the Board of a licensee;

(6) Undergoing a psychological and/or medical evaluation by a qualified professional approved in advance by the Board and undergoing any treatment recommended pursuant to the evaluation;

(7) Writing a research paper on a specific topic;

(8) Any other condition reasonably related to the rehabilitation and education of the licensee.

(g) [~~(f)~~] The length of the sanction period shall be determined by the Board taking into account the time reasonably required to complete the required terms and conditions set forth in the order imposing the sanction.

(h) [~~(g)~~] Aggravation. The following may be considered as aggravating factors so as to merit more severe or restrictive sanction or action by the Board:

(1) Patient harm and the type and severity thereof;

(2) Economic harm to any individual or entity and the severity thereof;

(3) Increased potential for harm to the public;

(4) Attempted concealment of misconduct;

(5) Premeditated conduct;

(6) Intentional misconduct;

(7) Prior written warnings or written admonishments from any supervisor or governmental agency or official regarding statutes or regulations pertaining to the licensee's practice of psychology;

(8) Prior misconduct of a similar or related nature;

(9) Disciplinary history;

(10) Likelihood of future misconduct of a similar nature;

(11) Violation of a Board order;

(12) Failure to implement remedial measures to correct or alleviate harm arising from the misconduct;

(13) Lack of rehabilitative potential;

(14) Motive; and,

(15) Any relevant circumstances or facts increasing the seriousness of the misconduct.

(i) [~~(h)~~] Extenuation and Mitigation. The absence of the circumstances listed as subsection (g)(1)-(10) of this section, as well as the presence of the following factors, may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive sanctions or actions by the Board:

(1) Self-reported and voluntary admissions of misconduct;

(2) Implementation of remedial measures to correct or mitigate harm arising from the misconduct;

(3) Motive;

(4) Rehabilitative potential;

(5) Prior community service;

(6) Relevant facts and circumstances reducing the seriousness of the misconduct; and,

(7) Relevant facts and circumstances lessening responsibility for the misconduct.

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 April 5, 2001.

TRD-200101985
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 1. TEXAS BOARD OF HEALTH

SUBCHAPTER U. ASSIGNMENT AND USE OF AGENCY VEHICLES IN THE STATE VEHICLE FLEET MANAGEMENT PLAN

25 TAC §1.401

The Texas Department of Health (department) proposes new §1.401 concerning the assignment and use of agency vehicles in the State Vehicle Fleet Management Plan.

The rule proposes to adopt by reference Texas Government Code, Chapter 2171, Travel and Vehicle Fleet Services, §2171.1045 concerning the assignment and use of agency vehicles in order to comply with §2171.1045, which requires each agency to adopt rules consistent with the management plan adopted under Texas Government Code, §2171.104 relating to the assignment and use of agency vehicles. The rules must require that each agency vehicle, with the exception of a vehicle assigned to a field employee, be assigned to the agency motor pool and be available for checkout. Furthermore an agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency.

The department, according to the rules and in accordance with the vehicle fleet policies and procedures, will maintain the requirements.

Gabriel Piña, Manager, Bureau of Resource Management, has determined that for the first five-year period the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Mr. Piña has also determined that for each of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing and administrating the proposed section will be to ensure compliance of the state vehicle fleet management plan in Texas Government Code, §2171.104. There will be no costs to small businesses or micro-businesses resulting from compliance with this section, as the section deals only with internal agency policies and procedures and does not affect any private sector enterprise. There are no anticipated economic costs to persons who are required to comply with the section proposed. There is no anticipated impact on local employment.

Comments on the proposed section may be submitted to Gabriel Piña, Manager, Bureau of Resource Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7111, extension 3642. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new section is proposed under Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health; and Texas Government Code, Chapter 2171, which mandates the adoption of these rules.

The proposed new section affects the Texas Government Code, Chapter 2171.

§1.401. Assignment and Use of Agency Vehicles in the State Vehicle Fleet Management Plan.

The Texas Department of Health (department) proposes to adopt by reference the state statute, Texas Government Code, §2171.1045, concerning the assignment and use of agency vehicles.

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 April 6, 2001.

TRD-200102010
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 458-7236

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CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§97.1 - 97.4, 97.6

The Texas Department of Health (department) proposes amendments to §§97.1-97.4 and 97.6 concerning the diseases in animals that are notifiable by veterinarians. The proposed sections will enable veterinarians to more clearly identify the conditions and diseases that must be reported, define the minimal reportable information on these conditions and diseases, and describe the procedures for reporting to the department.

Specifically, the amendments to §97.1 add the term "animal" to the definition of "case" and "contact," and add definitions for "research facility" and "veterinarian." Minor changes in §97.2 define the term patient to mean person or animal. Amendments to §97.3 add to the list of reportable conditions the following clinically diagnosed or laboratory-confirmed animal cases: anthrax, arboviral encephalitis, *Mycobacterium tuberculosis* infection in animals other than those housed in research facilities, plague, and psittacosis. It also adds a requirement that all non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas be reported; all non-negative rabies tests performed in Texas be reported by the laboratory conducting the testing; and, in addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means. Amendments to §97.3 also define the minimal information that shall be reported for each disease as species and number of animal(s) affected, disease or condition, and the veterinarian's name and phone number. Minor corrections were made in §97.3 and §97.4 by italicizing the genus and species names for bacteria. Amendments to §97.4 and §97.6 outline the procedures for reporting a notifiable condition in animals.

Jane C. Mahlow, DVM, MS, Director of the Zoonosis Control Division, has determined that for each year of the first five years, because the language merely clarifies the diseases that are reportable by veterinarians, there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Dr. Mahlow has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of amending the sections will be improved reporting of these diseases, leading to early detection and subsequent prevention of human disease. The proposed changes do not involve major adaptation from current practice; therefore, there is no anticipated additional cost to small businesses or microbusinesses nor to persons who may be required to comply with the sections as proposed. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Jane C. Mahlow, DVM, MS, Texas Department of Health, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7454, jane.mahlow@tdh.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, §81.004, which provides the Board of Health with the authority to adopt rules concerning communicable diseases; §81.041 which requires the board to identify reportable diseases; §81.044 which requires the board to prescribe the form and method of reporting communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments affect Health and Safety Code Chapter 81.

§97.1. Definitions.

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

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

(4) Case--As distinct from a carrier, the term "case" is used to mean a person or animal in whose tissues the etiological agent of a communicable disease is lodged and which usually produces signs or symptoms of disease. Evidence of the presence of a communicable disease may also be revealed by laboratory findings.

(5) - (6) (No change.)

(7) Contact--A person or animal that has been in such association with an infected person or animal or a contaminated environment so as to have had opportunity to acquire the infection.

(8) - (22) (No change.)

(23) Research facility--A facility that is licensed by the United States Department of Agriculture to use vertebrate animals for research purposes and is in compliance with the federal Animal Welfare Act (7 U.S.C., Chapter 54).

(24) [~~(23)~~] School Administrator --The city or county superintendent of schools or the principal of any school not under the jurisdiction of a city or county board of education.

(25) [~~(24)~~] Significant risk--A determination relating to a human exposure to an etiologic agent for a particular disease, based on reasonable medical judgments given the state of medical knowledge, relating to the following:

(A) nature of the risk (how the disease is transmitted);

(B) duration of the risk (how long an infected person may be infectious);

(C) severity of the risk (what is the potential harm to others); and

(D) probability the disease will be transmitted and will cause varying degrees of harm.

(26) [~~(25)~~] Specimen Submission Form G-1--A multipurpose laboratory specimen submission form available from the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas, 78756-3199.

(27) [~~(26)~~] Vancomycin resistant *Enterococcus* species--*Enterococcus* species with a vancomycin MIC greater than 16 micrograms per milliliter (µg/mL) or a disk diffusion zone of 14 millimeters or less. Vancomycin intermediate *Enterococcus* (e.g., *Enterococcus casseliflavis* and *Enterococcus gallinarum*) with a vancomycin MIC of 8 µg/mL - 16 µg/mL do not need to be reported.

(28) [~~(27)~~] Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species--*Staphylococcus aureus* or a coagulase negative *Staphylococcus* species with a vancomycin MIC of 8 µg/mL or greater.

(29) Veterinarian--A person licensed by the Texas State Board of Veterinary Medical Examiners to practice veterinary medicine in Texas.

§97.2. Who Shall Report.

(a) A physician, dentist, veterinarian, chiropractor, advanced practice nurse, physician assistant, or person permitted by law to attend a pregnant woman during gestation or at the delivery of an infant shall report, as required by these sections, each patient (person or animal) he or she shall examine and who has or is suspected of having any notifiable condition, and shall report any outbreak, exotic disease, or unusual group expression of illness of any kind whether or not the disease is known to be communicable or reportable. An employee from the clinic or office staff may be designated to serve as the reporting officer. A physician, dentist, veterinarian, or chiropractor who can assure that a designated or appointed person from the clinic or office is regularly reporting every occurrence of these diseases or health conditions in their clinic or office does not have to submit a duplicate report.

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

(e) Any person having knowledge that a person or animal is suspected of having a notifiable condition should notify the local health authority or the department and provide all information known to them concerning the illness and physical condition of such person or persons.

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

§97.3. What Condition To Report and What Isolates To Report or Submit.

(a) Humans.

(1) Identification of notifiable conditions.

(A) [~~(1)~~] The most current edition of the Texas Department of Health's (department) publication titled "Identification, Confirmation, and Reporting of Notifiable Conditions" [~~should~~] shall be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Copies are filed in the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for public inspection during regular working hours.

(B) [~~(2)~~] Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(2) [~~(b)~~] Notifiable conditions or isolates.

(A) [~~(1)~~] Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism-adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; Creutzfeldt-Jakob disease (CJD); cryptosporidiosis; cyclosporiasis; dengue; diphtheria; ehrlichiosis; encephalitis (specify etiology); *Escherichia coli*, enterohemorrhagic infection; gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, B, D, E, and unspecified (acute); hepatitis C (newly diagnosed infection, effective 1/1/00); hepatitis B, (chronic) identified prenatally or at delivery as described in §97.135 of this title (relating to Serologic Testing during Pregnancy and Delivery; human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (rubeola); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; Q fever; rabies [~~in man~~]; relapsing fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease, invasive (group A or B); syphilis; tetanus; trichinosis; tuberculosis; tularemia; typhus; *Vibrio* infection, including cholera (specify species); viral hemorrhagic fevers; yellow fever; and yersiniosis.

(B) [~~(2)~~] In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(C) [~~(3)~~] The following organisms shall be reported: *Enterococcus* [~~Enterococcus~~] species; vancomycin resistant *Enterococcus* [~~Enterococcus~~] species; vancomycin resistant *Staphylococcus aureus* [~~Staphylococcus aureus~~]; vancomycin resistant coagulase negative *Staphylococcus* [~~Staphylococcus~~] species; *Streptococcus pneumoniae* [~~Streptococcus pneumoniae~~]; and penicillin-resistant *Streptococcus pneumoniae* [~~Streptococcus pneumoniae~~].

(3) [~~(c)~~] Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) [~~(1)~~] AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with §§97.132-97.135 of this title (relating to Sexually Transmitted Diseases, including AIDS and HIV infection);

(B) [~~(2)~~] for tuberculosis - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, antibiotic susceptibility results, initial antibiotic therapy, and any change in antibiotic therapy;

(C) [~~(3)~~] for hepatitis B, (chronic and acute) identified prenatally or at delivery - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, estimated delivery date (for prenatal diagnoses), name of baby and location of delivery (for diagnoses made at delivery), physician or other person in attendance, disease, type of diagnosis, date of onset, address, telephone number;

(D) [~~(4)~~] for all other notifiable conditions listed in subsection (b)(1) of this section - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number;

(E) [~~(5)~~] for all isolates of *Enterococcus* species and all isolates of *Streptococcus pneumoniae* regardless of resistance patterns - numeric totals at least quarterly; and

(F) [~~(6)~~] for vancomycin resistant *Enterococcus* species; penicillin resistant *Streptococcus pneumoniae*; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase

negative *Staphylococcus* species, - name, city of submitter, date of birth or age, sex, anatomic site of culture, and date of culture.

(4) [~~(d)~~] Diseases requiring submission of cultures. For all *Neisseria meningitides* [~~Neisseria meningitides~~] from normally sterile sites, all vancomycin resistant *Staphylococcus aureus* [~~Staphylococcus aureus~~], and vancomycin resistant coagulase negative *Staphylococcus* [~~Staphylococcus~~] species-pure cultures shall be submitted accompanied by a Specimen Submission Form G-1.

(b) Animals.

(1) Clinically diagnosed or laboratory-confirmed animal cases of the following diseases are reportable: anthrax, arboviral encephalitis, *Mycobacterium tuberculosis* infection in animals other than those housed in research facilities, plague, and psittacosis. Also, all non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas shall be reported; all non-negative rabies tests performed in Texas will be reported by the laboratory conducting the testing. In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(2) The minimal information that shall be reported for each disease includes species and number of animals affected, disease or condition, and the veterinarian's name and phone number.

§97.4. When To Report a Condition or Isolate; When To Submit an Isolate; Where to Report a Condition or Isolate.

(a) Humans.

(1) [~~(a)~~] The following notifiable conditions are public health emergencies and suspect cases shall be reported immediately by phone to the local health authority or the regional director of the Texas Department of Health (department): anthrax; botulism, foodborne; diphtheria; *Haemophilus influenzae* type b infection, invasive; measles (rubeola); meningococcal infection, invasive; pertussis; poliomyelitis, acute paralytic; plague; rabies [~~in man~~]; smallpox; viral hemorrhagic fevers; yellow fever. Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species shall be reported immediately by phone to the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, Austin at (800) 252-8239.

(2) [~~(b)~~] The following notifiable conditions shall be reported within one working day of identification as a suspected case: brucellosis, hepatitis A (acute), Q fever, rubella (including congenital), tularemia, tuberculosis, and *Vibrio* infection (including cholera).

(3) [~~(c)~~] AIDS, chancroid, *Chlamydia trachomatis* [~~Chlamydia trachomatis~~] infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with §§97.132 - 97.135 of this title (relating to Sexually Transmitted [~~transmitted~~] Diseases including AIDS and HIV infection);

(4) [~~(d)~~] Tuberculosis antibiotic susceptibility results should be reported by laboratories no later than one week after they first become available.

(5) [~~(e)~~] For all other notifiable conditions not listed in subsections (a)-(c) of this section, reports of disease shall be made no later than one week after a case or suspected case is identified.

(6) [~~(f)~~] For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; and penicillin-resistant *Streptococcus pneumoniae* - reports shall be made no later than the last working day of March, June, September, and December.

(7) [~~(g)~~] All *Neisseria meningitides* [~~Neisseria meningitides~~] from normally sterile sites, all vancomycin resistant *Staphylococcus aureus* [~~Staphylococcus aureus~~], and all vancomycin resistant coagulase negative *Staphylococcus* [~~Staphylococcus~~] species shall be submitted as pure cultures to the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas 78756-3199 as they become available.

(b) Animals.

(1) Reportable conditions affecting animals shall be reported within one working day following the diagnosis.

(2) Reportable conditions in animals shall be reported to either the appropriate Texas Department of Health regional zoonosis control office or the Zoonosis Control Division office in Austin.

(3) Conditions in animals that are reportable to both the Texas Department of Health and the Texas Animal Health Commission can be reported to either one of the agencies which will forward the information to the other agency.

§97.6. Reporting and Other Duties of Local Health Authorities and Regional Directors.

(a) (No change.)

(b) Those notifiable conditions identified as public health emergencies in §97.4 (a) of this title (relating to When to Report a Condition or Isolate; When to Submit an Isolate; Where to Report a Condition or Isolate) shall be reported immediately to the department by telephone.

(c) - (h) (No change.)

(i) Persons reporting notifiable conditions in animals shall be referred to the central office or the appropriate regional office of the department's Zoonosis Control Division.

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 April 9, 2001.

TRD-200102020
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 458-7236

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CHAPTER 181. VITAL STATISTICS

The Texas Department of Health (department) proposes amendments to §§181.1 - 181.11, 181.13, 181.14, 181.21, 181.23 - 181.32, and 181.41 - 181.47; repeal of §§181.22, 181.48 and 181.49; and new §181.22 for administrative procedures, issuance of vital records events and statistical information, and the Central Adoption Registry of the Bureau of Vital Statistics.

Specifically, the amendments cover the following: Subchapter A clarifies key vital statistics words and terms; provides instructions and requirements for the preservation, transportation, and final disposition of dead bodies; set requirements regarding access, confidentiality and filing of supplemental birth certificates, fetal death certificates, and requests for personal data; and defines the form and content of birth, death, and fetal death certificates. Subchapter B provides instructions,

sets requirements, and fees for issuance of certified copies, and registration of birth and death records; defines who can prescribe the form and context of the marriage application form; sets minimum requirements for adoption reporting and index access; and establishes notification, maintenance, and preservation requirements for out-of-business child-placing agencies' records. Subchapter C establishes rules for notifying adoptive parents about the Central/Voluntary Adoption Registry; defines the duties, responsibilities and fees associated with the voluntary adoption registries; and provides guidelines pertaining to the confidentiality, notification and the release of information. The repeals cover Confidentiality of Records Maintained by Each Registry and Fee Requirement for the Central Adoption Registry. The new section proposed covers Fees Charged for Vital Records Services.

The Government Code §2001.039 requires state agencies to review all rules that became final prior to September 1, 1997, pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Title 25 Texas Administrative Code (TAC), Chapter 181, Rules §§181.1 - 181.11, 181.13, 181.14, 181.21 - 181.32, and 181.41 - 181.49 has been reviewed in its entirety, and the department has determined that the rules should continue to exist.

A Notice of Intention to Review for §§181.1 - 181.11, 181.13, 181.14, 181.21 - 181.32, and 181.41 - 181.49 was published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11528). No comments were received as a result of the publication of this notice.

As a result of the review, the department is amending its existing rules located at Title 25, Chapter 181 to satisfy the requirements of Government Code §2001.039; to clarify existing language; to consolidate similar requirements, i.e., fees charged; to add formal hearing requirements; and to delete language that is no longer necessary.

Debra F. Owens, Chief and State Registrar, Bureau of Vital Statistics has determined that for each year of the first five years, there will be no fiscal implications to state or local government as a result of administering the sections as proposed. There will no adverse economic effect on micro-businesses, small businesses or to persons who are required to comply the sections as proposed. This was determined by interpretation of the rules, which address only access of individual persons rather than micro-businesses or small businesses to vital records, and which afford applicants for hearings the practical options of obtaining less costly legal services than might be required in a contested case hearing before the State Office of Administrative Hearings, or electing to proceed without counsel. Furthermore, the proposed sections require no actions for compliance by micro-businesses or small businesses.

Ms. Owens has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of administering the section as proposed will be an increased protection of vital records events and statistical information. There will be no fiscal implications to local employment as a result of administering the sections as proposed.

Comments on the proposed rules may be submitted to Debra F. Owens, Chief and State Registrar, Bureau of Vital Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3191, (512) 458-7366. Public comments will be accepted for 60 days after publication in the *Texas Register*.

SUBCHAPTER A. MISCELLANEOUS PROVISIONS

25 TAC §§181.1 - 181.11, 181.13, 181.14

The amendments are proposed under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health.

The proposed sections affect Health and Safety Code, §191.003.

§181.1. Definitions.

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

(1) Applicant--A person who requests a service pertaining to a record of birth or death, verification of marriage or divorce, or release of personal data. (Also, see [~~See~~] definition for properly qualified applicant) [~~See~~].

(2) (No change.)

(3) Bureau of Vital Statistics (Bureau)--The office within the Texas Department of Health charged with the implementation of the Texas Vital Statistics Act [~~Law~~].

(4) Certification--A certified statement, form, or letter, of the facts stated on the form or document as filed in the Bureau of Vital Statistics, certified by the state registrar or [~~his~~] duly appointed designee, over the [~~his~~] respective signature and may bear [~~bearing~~] the seal of the Bureau of Vital Statistics.

(5) Certified copy--An abstract or [~~exact~~] photocopy of the original record issued [~~on a special form and paper~~] as filed with the Bureau of Vital Statistics, and issued on a designated form or security paper which shall bear [~~bearing~~] the seal of the State of Texas, the Texas Department of Health-Bureau of Vital Statistics or the seal of their office, and the facsimile signature of the state registrar or the local registration official.

(6) Dead body--A lifeless human body or such parts of the human body or the bones thereof from the state of which it may be reasonably concluded that death [~~recently~~] occurred.

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

(12) Identification of applicant--Each applicant must present a current form of photo identification along with his or her application. If the applicant is unable to present a current form of photo identification, two valid supporting forms of identification may be presented, one of which bears the applicant's signature.

[~~(12) Identification required of applicant--A picture ID such as drivers license, state/city/county ID card, student ID, employment badge or card, or military ID; or two documents, without a picture, one of which must bear the signature of the applicant in place prior to submission.~~]

(13) (No change.)

(14) Indexes--An index to or listing of birth records, death records, applications for marriage licenses, and reports of divorce or annulment of marriage.

(A) Consolidated indexes--These indexes are vital records consisting of more than one event year. Consolidated indexes may be prepared for any vital event at the discretion of the State Registrar in the form prescribed.

(B) General birth and death indexes--These indexes are maintained or established by the bureau of vital statistics or a local registration official which shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, the state or local file number, the name of the father, the maiden name of the mother, and sex of the registrant.

(C) Summary birth and death index--These indexes are maintained or established by the bureau of vital statistics or a local registration official which shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, and sex of the registrant.

(15)-(17) (No change.)

(18) Non-institutional Birth--A birth occurring outside a hospital or birthing center licensed by the Texas Department of Health.

(19) [~~(18)~~] Person in charge of interment--Any person who places or causes to be placed a fetus, [~~stillborn child or~~] dead body or the ashes, after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes thereof.

(20) [~~(19)~~] Properly qualified applicant (qualified applicant)--The registrant, or immediate family member either by blood or marriage, his or her guardian, or his or her legal agent or representative. Local, state and federal law enforcement or governmental agencies and other persons may be designated as properly qualified applicants by demonstrating a direct and tangible interest in the record when the information in the record is necessary to implement a statutory provision or to protect a personal legal property right. A properly qualified applicant may also be a [~~any~~] person who has submitted an application for a request to release personal information and has been approved as outlined in §181.11 of this title (relating to Requests for Personal Data).

(21) [~~(20)~~] Registrant--The individual named on the certificate of birth, death, or fetal death; application for marriage license; or report of divorce or annulment of marriage.

(22) [~~(21)~~] Research copy--A plain paper noncertified reproduction of the complete original document or a portion of the original document. This is only available through the Bureau's Committee on Requests for Personal Data (See §181.11).

(23) [~~(22)~~] Search--The act of examining the files and/or indexes maintained by the Bureau of Vital Statistics for a specific record or information as identified by a qualified applicant or his/her agent.

(24) [~~(23)~~] Signature--The name of a person written with his or her own hand; or by an electronic process approved by the State Registrar [~~the act of signing one's own name~~].

(25) [~~(24)~~] State Registrar [~~registrar~~]--The Chief, [~~of the~~] Bureau of Vital Statistics, Texas Department of Health.

(26) Supplemental Birth Certificate--A new birth certificate prepared and filed by the Bureau of Vital Statistics, which is based upon a paternity determination, or adoption. This new birth certificate replaces the original certificate of birth.

(27) [~~(25)~~] Verification--A noncertified statement only of facts and information stated on the document filed with the Bureau of Vital Statistics.

(28) [~~(26)~~] Vital statistics--The registration, preparation, transcription, collection, compilation, distribution and preservation of data pertaining to births, adoptions, paternity determinations [~~legitimations~~], deaths, fetal deaths, suits affecting parent child relationship, court of continuing jurisdiction, marital status, and such other data as deemed necessary by the department [~~data incidental thereto~~].

(29) [~~(27)~~] Vital Statistics Act--The Health and Safety Code, Title 3.

§181.2. Disposition of Bodies.

(a) The funeral director, or person acting as such, who first assumes custody of a dead body or fetus shall within 24 hours either mail or otherwise transmit a report of death to the local registrar of the district in which the death occurred or in which the body was found. The report of death form shall be prescribed and furnished by the [~~State~~] Department [~~of Health,~~] and a copy of such report shall serve as authority to transport or bury the body or fetus within this state.

(b) If a dead body or fetus is to be removed from this state, transported by common carrier within this state, or cremated, the funeral director, or person acting as such, shall obtain a burial-transit permit from the local registrar of the district in which the death occurred or in which the body was found. The local registrar shall not issue a burial-transit permit until a certificate of death, completed in so far as possible, has been presented (See §181.6) [~~filed~~].

(c) The funeral director, or person acting as such, shall furnish the sexton or other person in charge of a cemetery with the information required for the cemetery records. Note: The report for death form shall be prescribed and furnished by the [~~State~~] Department [~~of Health, 1100 West 49th Street, Austin, Texas 78756~~].

§181.3. Transportation of Dead Bodies.

(a) Bodies shipped by common carrier.

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

(3) Shipping containers and requirements for the shipping of dead bodies must meet or exceed any requirement imposed by the shipping company, the receiving state[~~,~~] or foreign country.

(4) (No change.)

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

§181.4. Preservations of Bodies.

No human body may be held in any place or be in transit more than 24 hours after death and pending final disposition unless either maintained at a temperature within the range of 34 degrees -40 degrees Fahrenheit, or is embalmed by a licensed embalmer in a manner approved by the Texas Funeral Service Commission, or by an embalmer licensed to practice in the state where death occurred[~~,~~] or is encased in a container which insures against seepage of fluid and the escape of offensive odors.

§181.5. Embalming and Standards of the Funeral Industry.

(a) The department adopts by reference the rules of the Texas Funeral Service Commission in 22 TAC §203.13, covering minimum standards for embalming.

(b) (No change.)

§181.6. Disinterment.

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

(f) The disinterment permit issued by the state registrar shall serve as the authority to disinter, transport by means other than a common carrier, and reinter a body within this State. (See §181.2 of this title relating to Disposition of Bodies).

(g)-(h) (No change.)

(i) The licensed funeral director or embalmer requesting a disinterment permit shall be responsible for obtaining the written consent of the cemetery, the owner of the plot, and the deceased's next-of-kin.

(j) The licensed funeral director or embalmer requesting a disinterment permit shall be responsible for obtaining a written consent order from the county judge to disinter a body from a grave when the cemetery, plot owner, and the deceased's next-of-kin are unknown.

§181.7. Fetal Death (Stillbirth) [~~Stillbirths~~]

(a) A certificate of fetal death [~~stillbirth (fetal death)~~] shall be filed for any fetal death [~~stillbirth (fetal death)~~] if the period of gestation is 20 completed weeks or more.

(b) A certificate of fetal death [~~death or of stillbirth (fetal death)~~] shall be considered properly filed:

(1) (No change.)

(2) when the certificate has been presented for filing to the local registrar of the registration district in which the fetal death (stillbirth) occurred or the fetus [~~body~~] was found. A certificate of fetal death (stillbirth) [~~death or of stillbirth (fetal death)~~] shall be filed with the local registrar within five days after the date of fetal death (stillbirth) [~~death or stillbirth (fetal death)~~].

§181.8. Supplemental Birth Certificates.

(a) When a supplemental certificate of birth is prepared and filed based on adoption or paternity determination, a copy of the supplemental birth [~~new~~] certificate shall be forwarded to each local registration official in whose office is recorded the original birth record of such child.

(b) Wherever possible, the local registration official shall remove from his or her files the original birth record and forward it to the bureau [~~State Bureau of Vital Statistics~~]. Where it is not possible to remove the original birth record, the local registration official shall cancel such record in such manner as to preclude the disclosure of any information contained therein. In its place he or she shall substitute the supplemental certificate of birth.

(c) A certificate of adoption for a child born outside the State of Texas shall, when received by the bureau [~~State Bureau of Vital Statistics,~~] be forwarded to the proper registration official of the state or territory in which such birth occurred. (For foreign adoptions, see §181.29 of this title relating to Foreign Adoptions).

(d) Where application is made for the filing of a supplemental certificate based on paternity, the applicant shall submit to the bureau an Application for Amended Birth Certificate Based on Paternity (VS-166) signed by both parents in the presence of a Notary Public, and :

(1) a certified copy of the certificate of marriage indicating the subsequent marriage of the parents; or

(2) an Acknowledgment of Paternity (VS-159.1) if an Acknowledgment of Paternity is not already in the bureau files; or

(3) a certified copy of the court decree establishing paternity if the information concerning the court decree is not already in the bureau files. If a court decree is in the bureau files, the Application for Amended Birth Certificate Based on Paternity only has to be signed by one of the parents in the presence of a Notary Public.

(e) Voluntary Paternity must have a written consent of both parents.

[~~(d) Where application is made for the filing of a supplemental certificate based on paternity, the applicant shall submit to the State Bureau of Vital Statistics a certified copy of the certificate of marriage indicating the subsequent marriage of the parents, an acknowledgment of paternity prepared on a form prescribed by the Texas Department of Health, or a certified copy of the court decree if the information concerning the court decree is not already in the bureau files.~~]

§181.9. Access to Paternity Files.

(a) After the supplemental [~~supplementary~~] certificate of birth based on paternity is filed, any information disclosed from the record shall be made from the supplemental certificate, and access to the original certificate of birth and related documents [~~and to the documents filed upon which the supplemental certificate is based~~] shall not be authorized except upon order of a court of competent jurisdiction.

(b) The bureau [~~Bureau of Vital Statistics~~] shall notify the Office of the Attorney General, the Title IV-D agency for the State of Texas, in a manner agreed by both agencies of any supplemental birth records based upon acknowledgement of paternity.

§181.10. Availability of Birth Records to Ensure Confidentiality of Adoption Placement [~~Confidentiality of Birth Records Covering Adoption Placement~~].

[~~(a)~~] This section establishes requirements governing the control of public accessibility to birth records and [~~covering adoption placements and~~] indexes of such records in order to ensure [~~insure~~] the confidentiality of adoption placements.

(1) [~~(b)~~] Availability of birth records generally.

(A) [~~(1)~~] Copies of birth records are available to the public for searching or inspection on or after the 50th anniversary of the date of birth as shown on the record filed with the bureau [~~of vital statistics~~] or the local registration official. Original birth records shall not be made available to the public in the interest of preservation of the records.

(B) [~~(2)~~] The local registration official, upon receipt of a record of birth based on adoption must either forward the birth [~~original~~] record filed at the time of the event to the state registrar for enclosure in a sealed file, or delete or expunge such record.

(2) [~~(c)~~] Availability of indexes or listings of birth records.

(A) [~~(1)~~] General birth indexes, summary birth indexes, or listings of birth records are not available to the public for searching or inspection if the fact of adoption or paternity determination can be revealed or broken or if the index contains specific identifying information relating to the biological parents of the child who is the subject of an adoption placement.

(B) [~~(2)~~] The bureau [~~of vital statistics~~] and local registration officials shall expunge or delete any state or local file numbers included in any general birth index made available to the public because such file numbers may be used to discover information concerning specific adoptions, paternity determinations, or the identity of the parents of children who are the subjects of adoption placements.

(C) [~~(3)~~] A summary birth index shall be in alphabetical order by surname of the registrant. The index shall consist of the last, first, and middle name, if any, of the registrant, the date of the event, the county in which the event occurred, and the sex of the registrant.

(D) [~~(4)~~] If the record falls into the open record category, a general index may be made available for public use. This index shall include the last, first, and middle name, if any, of the registrant; date of birth; county of birth; the parents' names; and the sex of the registrant.

§181.11. Requests for Personal Data.

(a) Purpose. The purpose of this section is to describe:

(1) the criteria that the Committee on Requests for Personal Data will use in reviewing and recommending disposition when an application for personal data is received;

(2) The Commissioner and/or his designee shall appoint a Committee on Requests for Personal Data (Committee) that serves in an advisory capacity. The committee reviews and makes recommendations regarding requests for personal data to be used for research purposes or for the official use of governmental agencies.

[(2) the requirement for a standard application and its general content.]

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

[(1) Applicant-Any person, organization, firm, or governmental agency requesting access to personal data.]

[(2) Application-A standard form prepared by the committee which must be completed by each applicant. A copy of the standard form may be obtained from the Bureau of Vital Statistics.]

[(3) Bureau of Vital Statistics-The office, within the Texas Department of Health, charged with the implementation of the Texas Vital Statistics Law, Texas Civil Statutes, Article 4477.]

[(4) Committee-Committee on Requests for Personal Data. The committee serves in an advisory capacity to the commissioner of health or his designee. The committee reviews and makes recommendations regarding requests for personal data to be used for research purposes or for the use of governmental agencies.]

[(5) Follow back-Contacting any person, institution, or agency identified on the record.]

[(6) Personal data-Any data that permits the identification of a particular individual.]

[(7) Vital record research copy-A copy of any record of birth, death, or fetal death filed in the Bureau of Vital Statistics.]

(b) [(c)] Procedures.

(1) If the department receives a request for personal data, the release of which has been determined to be legally discretionary, and there is a question as to whether the data should be released, the request shall be referred to the committee for its review and recommendation. The committee will review the request and make a recommendation regarding release to the commissioner or his designee.

(2) The committee will require each applicant for personal data to complete the application form as prescribed by the committee [defined in subsection (b) of this section].

(3) If the personal data is released, a copy of the final project report, any publication, or presentation must be furnished to the committee. The Department [Texas Department of Health] will be given credit as the source of the data.

(4) It is department policy to disapprove applications involving contact with any person, institution, or agency identified on the record [follow back] unless the committee determines that there are substantial overriding reasons for the contact [follow back].

(5) It is department policy to disapprove applications involving research that does not serve a valid scientific or public health purpose.

(6) [(5)] The Bureau [bureau] shall charge the statutory fee for each vital record research copy as provided in Health and Safety Code, §191.005 and §192.006 [Texas Civil Statutes, Article 4477, §54a].

§181.13. Birth Certificate Form and Content.

(a) The [Commissioner of Health in coordination with the] State Registrar shall determine the items of information to be contained on certificates of birth. The format of the items will be designated on Department forms, [a Texas Department of Health Form Number] VS-111 and VS-111.1 entitled "Certificate of Birth."

(b) The department shall prescribe two versions of the Certificate of Birth. One version (VS-111) shall contain all information required to be collected as determined by the State Registrar. [Commissioner of Health]. The alternate form (VS-111.1) shall not include the section titled "For Medical and Health Use Only" and shall contain only the demographic information relating to the birth, the mother's marital status, the immunization registry consent question, the child's social security number request question, the social security numbers of the parents, and the signature of parent [the parents' signatures, and the parents' social security numbers].

(c) (No change.)

(d) The bureau may discontinue the hospital's or licensed birthing center's authorization to use the alternate form (VS-111.1) for failure to transmit information within the time limit as described in subsection (c)(3) of this section.

§181.14. Death and Fetal Death Certificate Form and Content.

(a) (No change.)

(b) Funeral [Only funeral] directors or persons in charge of interment or in charge of removal of a body from a registration district for disposition may prepare and file Certificate of Death form (VS-112) and the Certificate of Fetal Death form (VS-113) [the certificate of death and fetal death on the forms VS-112 and VS-113].

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 April 9, 2001.

TRD-200102024
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 458-7236

♦ ♦ ♦

SUBCHAPTER B. VITAL RECORDS

25 TAC §§181.21 - 181.32

The amendments and new section are proposed under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health.

The proposed sections affect Health and Safety Code, §191.003.

§181.21. Refusal To Issue Certified Copies of Records of Birth, Death , or Fetal Death.

(a) Purpose. The purpose of this section is to describe:

(1) the criteria that the State Registrar [~~state registrar of vital statistics~~] will use in refusing to issue a certified copy of a record of birth, death, or fetal death when [~~he has received~~] information is received that may contradict the information shown in such record; and

(2) (No change).

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

[~~(1) Applicant-Any person who applies for a certified copy of a record of birth, death, or fetal death.~~]

[~~(2) Bureau-Bureau of Vital Statistics, Texas Department of Health.~~]

[~~(3) Certified copy-Certified copy of a birth, death, or fetal death record.~~]

[~~(4) Department-Texas Department of Health.~~]

[~~(5) State registrar-The chief of the Bureau of Vital Statistics, Texas Department of Health, in charge of issuing certified copies of birth, death, or fetal death records.~~]

(b) [~~(c)~~] Criteria for refusal. The criteria for refusal to issue a certified copy of a record are based on information which the state registrar receives which may contradict the information shown in the record, such as:

(1) an order issued by a court of competent jurisdiction finding that the information shown in a record is false;

(2) a copy of an original record showing that the event in question occurred in a jurisdiction other than the State of Texas;

(3) affidavits executed by registrants, parents, attendants, or persons authorized to administer oaths attesting to the falsification of information in a record.

(c) [~~(d)~~] Hearing procedures.

(1) If the State Registrar proposes [~~state registrar intends~~] to refuse to issue a certified copy, the applicant shall receive written notification of the refusal, the reason for the refusal and his or her right to request [~~he or she shall notify the applicant in writing and give the applicant an opportunity for~~] a hearing before the department to determine if there is evidence to support the State Registrar's [~~state registrar's~~] proposed action. [~~The notice shall state the reason for the proposed refusal.~~]

(2) If the applicant wants a hearing, he or she shall submit a written request for a hearing to the State Registrar [~~state registrar~~] within 20 days [~~10 working days~~] after receiving the notice of refusal to issue a certified copy.

(3) The State Registrar [~~state registrar~~], upon receiving the written request for hearing, shall request the department's office of general counsel to initiate a hearing procedure [~~as soon as possible~~] in accordance with the department's [~~fair~~] hearing procedures, contained in §§1.51-1.55 of this title [~~(relating to Fair Hearing Procedures)~~].

(4) The State Registrar, [~~state registrar~~] shall notify the applicant in writing when [~~that~~] the hearing request has been sent to the office of general counsel. The notice shall include a copy of the department's [~~fair~~] hearing procedures.

§181.22. Fees Charged for Vital Records Services.

(a) The fee for a certified or research copy of a birth record shall be $9.00. Additional copies shall be $9.00 for each copy requested.

(b) The fee for a certified or research copy of a death certificate shall be $9.00 for the first or only copy requested, and $3.00 for each additional copy of the same record requested in the same request.

(c) A surcharge of $2.00 shall be added to the fee for searching and issuing each certified copy of a certificate of birth, or conducting a search for a certificate of birth, as mandated by the Health and Safety Code, §191.0045.

(d) The fee for issuing each heirloom certificate of birth, or gift certificate for such, shall be $25.00. If a record is not found, $14.00 of the fee shall be returned to the applicant for service not performed.

(e) The fee to search for any record or information on file within the Bureau shall be $9.00, regardless of whether a certified copy is issued or not. This fee shall include the cost of one certified copy of the birth, death, or fetal death record requested.

(f) The fee for a search to verify the existence of a birth or death record shall be $9.00 with no copy issued.

(g) The fee for a search to verify a marriage or divorce record shall be $9.00. Only a plain copy of the record as filed in the bureau shall be issued to the requester.

(h) The fee for a search and identification of the court which granted an adoption shall be $9.00.

(i) The fee for filing an amendment to an existing certificate of birth or death on file with the bureau shall be $15. An amendment to a certificate includes adding information to a record to make it complete and changing information on a record to make it correct. An additional fee is required to issue a certified copy of the amended record.

(j) The fee for filing an amendment based on a court ordered name change shall be $15.

(k) The fee for a new birth record based upon adoption, or paternity determination shall be $25.

(l) The fee for filing a delayed record of birth shall be $25.

(m) The fee for a search of the Paternity Registry shall be $9.00. The fee includes a certification stating whether or not the requested information is located in the Registry.

(n) The fee for a search of the Acknowledgment of Paternity Registry shall be $9.00. The fee includes a certified copy of the Acknowledgement of Paternity, if found.

(o) Each person applying to the Central Adoption Registry shall pay a registration fee of $20, which includes the $5.00 fee for determining if an agency that operates its own registry was involved in the adoption. (Also see §181.44 relating to the inquiry through the Central Index).

(p) The fee charged for expedited service shall be $5.00 per request in addition to any other fee required. Expedited service is any service requested via fax or overnight mail service The expedited fee is nonrefundable if a record or the information requested is not found.

(q) The fee for the processing and issuance of a disinterment permit shall be $25. The fee is to be paid by the applicant for the permit, and must be submitted with the application.

§181.23. Indexes for Vital Records.

(a) The state registrar shall establish and maintain an index to all vital records filed within the Bureau of Vital Statistics. Local registration officials shall establish and maintain an index of all vital records filed within their local registration area.

(b) (No change.)

(c) Death indexes.

(1) (No change.)

(2) A general death index is public information and available to the public to the extent the index relates to a death record that is public on or after the 25th anniversary of the date of death as shown on the record [unless the fact of an adoption or paternity determination can be revealed or broken or if the index contains specific identifying information relating to the parents of the child who is the subject of an adoption placement. The bureau of vital statistics and local registration officials shall expunge or delete any state or local file numbers included in any general death index made available to the public because such file numbers may be used to discover information concerning specific adoptions, paternity determinations, or the identity of the parents of children who are the subjects of adoption placements].

(3) (No change.)

(d) Indexes to marriage and divorce records shall be cross-referenced by the names of the husband and wife and include the [event] date of the event and county of occurrence.

(e) Consolidated indexes are indexes of vital records consisting of more than one event year. Consolidated indexes may be prepared for any vital event at the discretion of the State Registrar [state registrar] in the form prescribed [he may prescribe].

(f) Please refer to §181.10(c) of this title (relating to Confidentiality of Birth Records Covering Adoption Placement) for additional information relating to birth and death [general] indexes including information concerning adoptions, paternity determinations, or the parents of a child who is the subject of an adoption placement [and summary indexes of births and deaths].

§181.24. Abused, Misused, or Flagged Records.

(a) Abused birth record.

(1) Any birth record that has had 10 [or more] certifications issued since the original date of filing shall be considered as an abused record. Such a notation shall be made on the birth record.

(2) Local registrars shall notify the bureau's Fraud Prevention Program of such notation and shall issue no additional certifications. Requests for additional certifications shall be made to the bureau.

(3) [(2)] When the state registrar receives a request for an abused birth record, he/she shall refuse to issue any additional certifications until the qualified applicant [registrant] has satisfactorily explained, under oath, or at a hearing, the reason for the additional request(s).

(b) Misused record.

(1) A misused record is any birth or death record that has been used by any person [other than the registrant or qualified applicant] for any fraudulent or illegal purpose. [Any birth record used by the registrant for any fraudulent or illegal purpose shall be considered as a misused record.]

(2) (No change.)

(c) Flagged record.

(1) A flagged record is any record with a notation [by the state registrar] that a request was received to not issue the record or to which an addendum, based on evidence of contradictory birth facts, has been attached. The registrant, registrant's parents or legal guardian can request that no further copies of the record be released except to a minor's qualified parent not excluded by law. After such request, the State Registrar can place a flag on the record [Any record with a flag or an addendum attached thereto shall be considered as a flagged record].

(2) Missing children records are also flagged. If Law Enforcement or the Missing Persons Clearinghouse notifies the bureau of a missing child who is under the age of eleven, the bureau will flag the record.

(3) [(2)] When a record has a [flag,] notation, or addendum, the state and local registrar shall refuse to issue such a record until the conditions as stated on the [flag,] notation, or addendum have been satisfied [carried out] and the registrant or the requesting party has been notified.

(d) A hearing [An administrative hearing] may be requested as provided in §181.21(d) of this title (relating to Refusal To Issue Certified Copies of Records of Birth, Death, or Fetal Death) to determine if flagged, abused, misused or records with an addendum or notation should be issued.

§181.25. Application for Marriage License.

(a) The bureau [Bureau of Vital Statistics (bureau)] shall furnish application forms for a marriage license to each county clerk [throughout the state] in the format as prescribed by the State Registrar [board].

(b) The application form shall contain at a minimum the items and information prescribed in the Texas Family Code, §2.004 [§1.03].

(c) When reproduced locally by the county clerk, the form shall be identical in content, format, and size as prescribed by the bureau.

[(d) The form shall be in the format and size as follows. Figure: 25 TAC §181.25(d)]

§181.26. Filing of Birth Certificates for Infants Born Outside of [in] a Licensed [Nonlicensed] Institution [or Delivered at Home by a Documented (Identified) Midwife or Individual].

(a) All certificates of birth shall be filed as required by the Health and Safety Code [(the Code)], §192.001. [Licensed institutions include hospitals or birthing centers licensed by the Texas Department of Health.]

(1) Births occurring in a licensed institution shall be filed as required by the Health and Safety Code, §192.003. Licensed institutions include hospitals and birthing centers licensed by the Texas Department of Health.

(2) Births occurring outside licensed institutions shall be filed as described in this section.

(b) [(c)] The signature on the certificate of the registered, [or] certified, or documented health care provider shall serve as prima facie evidence of the essential elements of proof required in subsection (c) [(b)] of this section. The local registrar may accept certificates by mail when the signature of the registered, certified, or documented health care provider is on file with that registrar's office.

(c) [(b) When a birth occurs at any place other than a licensed institution, the certificate of birth must be filed with the local registrar of the registration district in which the birth occurred.] The essential elements to register [file] a noninstitutional birth [certificate] are [proof that]:

(1) proof of pregnancy in the following order of preference: [the woman who is presenting herself as the mother was pregnant;]

(A) an affidavit from a licensed, registered, or certified health care provider who is qualified to determine pregnancy as part of the scope of his/her license or registration, or certification; or

(B) an affidavit from one person, other than the parents, having knowledge of the pregnancy/birth.

(2) that there was an infant born alive; and

(3) proof of the mother's presence in the registration district on the date of the birth if the birth occurred outside the locale of the mother's primary place of residence. Such proof shall consist of an affidavit from a person having knowledge of the mother's presence in the registration district in which the birth occurred on the date of the birth. If the birth occurred in the mother's primary place of residence, proof shall be presented in the following order of preference:

(A) a utility, telephone, or other bill which includes the mother's name and address;

(B) a rent receipt or agreement which includes the mother's name and address, and the printed name, address, and signature of the mother's landlord;

(C) a driver's license, or state issued identification card, which includes the mother's current residence on the face of the license/card;

(D) an envelope addressed to the mother at her place of residence, and postmarked prior to the date of the birth; or

(E) an affidavit attesting to the mother's place of residence from a person, other than the father, who was either living with the mother at the time of the alleged birth, or has other knowledge of the mother's residency.

[(3) the infant was born in this registration district; and]

(4) the infant's birth occurred on the date stated.

(d) A birth [certificate] as described in subsection (c) [(b)] of this section shall only be filed upon personal presentation of the following evidence by the individual responsible for the preparation and registering [filing] of the certificate. [The local registrar may accept certificates by mail when the signature of the registered, certified, or documented health care provider is on file with that registrar's office.]

[(1) Proof of pregnancy shall be presented in the following order of preference:]

[(A) an affidavit shall be presented from a licensed, registered, or certified health care provider who is qualified to determine pregnancy as part of the scope of his/her license or registration, or certification; or]

[(B) an affidavit shall be presented from one person, other than the parents, having knowledge of the pregnancy/birth.]

[(2) Proof shall be presented of the mother's presence in the registration district on the date of the birth if the birth occurred outside the locale of the mother's primary place of residence. Such proof shall consist of an affidavit from a person having knowledge of the mother's presence in the registration district in which the birth occurred on the date of the birth.]

[(3) Proof shall be presented of the mother's residence in the registration district if the birth occurred in the mother's primary place of residence, in the following order of preference:]

[(A) a utility, telephone, or other bill which includes the mother's name and address;]

[(B) a rent receipt which includes the mother's name and address, and the printed name, address, and signature of the mother's landlord;]

[(C) a driver's license, or state issued identification card, which includes the mother's current residence on the face of the license/card;]

[(D) an envelope addressed to the mother at her place of residence, and postmarked prior to the date of the birth; or]

[(E) an affidavit attesting to the mother's place of residence from a person, other than the father, who was either living with the mother at the time of the alleged birth, or has other knowledge of the mother's residency.]

[(4)] An identifying document, with photograph, shall be presented [by the individual(s) personally presenting the evidence required to file the certificate,] in the following order of preference:

(1) [(A)] a passport or certificate of naturalization;

(2) [(B)] a military service or military dependent identification card;

(3) [(C)] a United States government identification card, or national identification card issued by another country;

(4) [(D)] a current driver's license or other state identification card;

(5) [(E)] an alien registration receipt card [(Form I-551);] or

(6) [(F)] an employee or student identification card, with photograph.

(e) (No change.)

(f) If the required or supplemental evidence described in this section is not available and the registrar is otherwise unable to verify the circumstances of the birth, the birth [will be considered as a delayed registration and] may only be filed upon order of a court of competent jurisdiction [as prescribed in the Code, §192.027].

(g) A certificate of birth concerning a child who is between one and four years of age may only be filed by the office of the state registrar. The state registrar shall require the same proof and documentation as previously mentioned in this section and, in addition, an affidavit of the parents and the attendant, if any, as to why the certificate was not timely filed. If the proof and documentation are not available, the certificate may only be filed as prescribed by the Health and Safety Code, §192.027.

(h) (No change.)

(i) Blank birth certificate forms shall only be issued to licensed institutions, certified nurse midwives, documented [(identified)] midwives, and individuals by the local registrar or the state registrar in reasonable amounts. No blank birth certificate forms shall be distributed by mail to any one other than a registered, certified, or documented health care provider.

(j) (No change.)

§181.27. Memorandum of Understanding with the Texas Funeral Service Commission.

(a) Purpose. The purpose of this section is to implement Texas Civil Statutes, Article 4582b, now codified as Texas Occupations Code, Chapter 651, 76th Legislature, 1999 [as amended by Senate Bill 284,

72nd Legislature, 1991;] and Health and Safety Code, Chapters 193 and 195. In an effort to better protect the public health, safety and welfare, it is the legislative intent of the laws for the Texas Department of Health (department) and the Texas Funeral Service Commission (TFSC) to adopt by rule a memorandum of understanding to facilitate cooperation between the agencies by establishing joint procedures and describing the actual duties of each agency for the referral, investigation, and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments.

(b) Scope.

(1) The Memorandum of Understanding (MOU) [MOU] includes the respective responsibilities of the department and the TFSC in regulating any person or entity under the Health and Safety Code, Chapters 193 and 195, concerning the completion and filing of death records.

(2) (No change.)

(3) The department and the TFSC will implement the cooperative procedure described in this MOU in order to notify the other agency of violations of Health and Safety Code, Chapters 193 and 195; and Texas Occupations Code, Chapter 651 [Texas Civil Statutes, Article 4582b], by funeral directors and funeral establishments, and to assist and encourage funeral directors, embalmers and funeral establishments to conform their activities relating to the completion and filing of death records.

(4) (No change.)

(c) (No change.)

(d) Delegation of responsibilities. The department and TFSC agree that the agencies shall have the following responsibilities.

(1) (No change.)

(2) The Texas Funeral Service Commission (TFSC) shall have primary responsibility for the enforcement of the laws, rules, and policies governing the licensing of funeral directors and funeral establishments. Except as may be otherwise provided by law, the TFSC has authority:

(A) (No change.)

(B) after a hearing in accordance with Texas Occupations Code Chapter 651 [Texas Civil Statutes, Article 4582b], to reprimand, assess an administrative penalty, revoke, suspend, or probate the suspension of a license, impose any combination of the sanctions against a licensed funeral director or funeral establishment if the licensee has violated Chapter 193 of the Code;

(3) Referral, investigation, and resolution of complaints.

(A) If the department receives a complaint that alleges conduct by a funeral director or a funeral establishment that constitutes possible violations of Texas Occupations Code Chapter 651 [Texas Civil Statutes, Article 4582b] or the rules adopted by TFSC under authority of Texas Occupations Code Chapter 651 [Article 4582b] the department may [shall immediately] refer the complaint to the TFSC for investigation and disposition; however, if the complaint describes conduct by any person or entity licensed under Texas Occupations Code Chapter 651 [Article 4582b] that constitutes possible violations of Chapters 193 and 195 of the Code, the department may [shall] retain jurisdiction over the subject matter of the complaint, investigate the complaint, and if valid, may [shall immediately] file a complaint with TFSC.

(B)-(D) (No change.)

(E) To the extent allowed by law, each agency shall cooperate and assist the other in the investigation and resolution of complaints. The following actions may be taken where indicated in the other's enforcement actions.

(i)-(ii) (No change.)

(iii) Any information obtained by the TFSC [TSFC] as a result of a complaint investigation is not subject to public disclosure under the Government Code, §552.101, by virtue of Texas Occupations Code Chapter 651, §651.203 [Texas Civil Statutes, Article 4582b, §6.D.d].

(iv) (No change.)

(e) (No change.)

§181.28. Instructions and Requirements for Issuance of Certified Copies of Vital Records by the State Registrar, Local Registrar, or County Clerk.

(a) Birth certificates.

(1) The state registrar, local registrar, or county clerk shall issue only two types of certified copies [records for births]:

(A) (No change.)

(B) an abstract [or certification] of birth facts, taken from the original record. Probate [except for probate] records and delayed records which may not be abstracted. An abstract [or certification of birth facts] shall be issued in one of four styles:

(i) a standard certified abstract [or certification;];

(ii) a wallet-sized certified abstract [or certification];

(iii) a typewritten certified abstract prepared in accordance with [Title 3,] Health and Safety Code, §192.005 or [and] §192.011, or when the condition of the original record does not permit full reproduction; or

(iv) an heirloom style certified abstract which may only be issued by the State Registrar [or certification].

(2) (No change.)

(3) All certified copies [or abstracts] of birth records shall include at a minimum the following information, if known:

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

(J) date certified copy issued;

(K)-(M) (No change.)

(b) Death certificates.

(1) The state registrar, local registrar, or county clerk shall issue only two types of certified copies [death certificates]:

(A) (No change.)

(B) a certified [certification or] abstract of death facts, taken from the original record.

(2) All certified copies [certifications or abstracts] of death records shall include as a minimum:

(A)-(H) (No change.)

(I) date certified copy issued;

(J)-(L) (No change.)

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

§181.29. Foreign Adoptions.

(a) (No change.)

(b) Certificate of birth. The state registrar shall prepare a new certificate of birth for a person born in a foreign country, and adopted under the laws of a foreign country or under the laws of this state, [adopted under the laws of a foreign country] when the state registrar receives the following from a resident of this state:

(1) a request by the resident adoptive parent(s) to file a new certificate of birth in the adoptive parent(s') names;

(2) an official certificate of adoption prepared and filed in accordance with the laws of this state by the court which grants or validates the adoption;

(3) a certified copy of the decree of adoption granted in a foreign country and information with translation into the English language relating to the adoptive parent(s) and adoptee should be submitted to a court of competent jurisdiction of this state for validation. It is the responsibility of the applicant(s) to have all required documents translated into the English language. An official certificate of adoption must be prepared and submitted to the Bureau by the clerk of the court validating the foreign adoption;

[(1) an official certificate of adoption prepared and filed in accordance with the laws of the country in which the adoption occurred;]

[(2) a certified copy of the decree of adoption granted in that country that has been authenticated by a court of competent jurisdiction (district court) of this state;]

[(3) documentation and information with translation into the English language relating to the adoptive parents and the adoptee sufficient to prepare a new certificate. It is the responsibility of the applicants to have all required documents translated into the English language;]

[(4) a request by resident adoptive parents to file a new certificate of birth in the adoptive parent(s') name(s); and]

(4) [(5)] payment of all applicable fees.

(c) Guidelines. The state registrar shall use the following guidelines when preparing a new certificate of birth.

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

(3) As prescribed in the Health and Safety Code, §192.008, used to prepare the new certificate of birth [the decree of adoption, original certificate of birth, and] all documentation shall be placed in a sealed file and accessed by an applicant only upon presentation of a certified copy of an order from the [of a] court of competent jurisdiction.

(4) (No change.)

(d) Exceptions. The guidelines, as stated in subsection (c) of this section, do not apply if a child was born in a foreign country and was a citizen of the United States at the time of birth. This [as this] record may only be processed by the United States Department of State.

§181.30. Instructions and Requirements for Filing of Amendments to Medical Certification of Certificate of Death with a Local Registrar.

(a) An amending certificate (medical amendment) may be filed with the appropriate local registrar to complete or correct medical certification information on a certificate of death that is incomplete or inaccurate. The medical amendment must be on Form VS- 174 as [a form] prescribed by the department.

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

(d) If the medical amendment is incomplete or unsatisfactory, the local registrar shall call attention to the error and/or omission [defects] in the return.

(e)-(f) (No change.)

(g) The local registrar shall forward the original, properly filed medical amendment to the state registrar within 10 [ten] days of filing.

§181.31. Minimum Requirements for Adoption Reporting.

(a) The [In complying with the Texas Family Code, §108.003, the] court that renders a decree of adoption shall send to the Texas Department of Health, Bureau of Vital Statistics a certificate [certified report] of adoption on Form VS-160. The clerk of the court shall send the form not later than the 10th day of the first month after the month in which the court renders the adoption decree. The certificate [report] shall include, the information as prescribed in Texas Family Code, §108.003. [but not be limited to, the following:]

[(1) the name of the adopted child after adoption;]

[(2) the birth date of the adopted child;]

[(3) the docket number of the adoption suit;]

[(4) the identity of the court rendering the adoption;]

[(5) the date of the adoption order;]

[(6) the name and address of each parent, guardian, managing conservator or other person whose consent to adoption was required or waived under the Texas Family Code, Chapter 159, or whose parental rights were terminated in the adoption suit;]

[(7) the identity of the licensed child placing agency, if any, through which the adopted child was placed for adoption; and]

[(8) the identity, address, and telephone number of the voluntary adoption registry though through which the adopted child may register as an adult adoptee in addition to registering with the central registry.]

(b) (No change.)

§181.32. Maintenance of Out-of-Business Child-Placing Agency [Agencies] Records and Health, Social, Educational and Genetic History Reports.

(a) At or prior to the time a child-placing agency ceases to function as a child-placing agency, it shall notify the Texas Department of Health-Bureau of Vital Statistics, where its adoption records shall be kept for permanent safe-keeping. [The bureau receives notice on behalf of the Texas Department of Protective and Regulatory Services (PRS) so that the notice to the bureau meets the requirements of the Human Resources Code, §42.045.]

(b) The bureau maintains many records of closed adoption agencies [on behalf of PRS] and is one entity a child-placing agency may designate to preserve its adoption records. An agency may also designate another licensed child-placing agency to preserve its records.

(c) If a child-placing agency designates the bureau to house its records, the agency shall assume the responsibility of shipping the records to a designation specified by the bureau. The agency must ensure that the records are free from insects and rodents, and mildew-free and dry. The records shall be shipped in sturdy cardboard boxes (no larger than 12 inches x 15 inches) via an insured carrier. [Each birth mother's file, adoptive parents' file, and the child's file shall be together.]

(1) Each record series shall be alphabetized by the birth mother's maiden name, if known, or the birth mother's name at the time of relinquishment. The adoptive parents' file and the child's file

shall be placed behind the birth mother's file. Staples, paper clips and brackets shall be removed.

(2) The agency must provide two index cards for each adoption file, one that cross-references the birth mother's name with the adoptive parents' and adoptee's name, and one cross-referencing the adoptive parents' names with the birth mother's and adoptee's name. Each card must include the date of birth of each child and the child's adoptive name. The information may also be provided electronically in a format compatible or acceptable to the bureau's standards [~~on a word processing or spreadsheet document(s) compatible with the bureau's word processing software~~].

(d) (No change.)

(e) If a birth parent, birth sibling, birth grandparent, or other birth relative provides post-adoption medical or social information [~~to the bureau and the bureau houses the records of the closed child- placing agency, the bureau shall place the information with the original file~~].

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

(f) If the original health, social, education and genetic history Health, Social, Educational and Genetic History (HSEGH) file does not exist, the updated medical and social information submitted by a birth relative shall be filed with the HSEGH record series by the date it is received.

(1) Upon the request of a qualified requestor under Texas Family Code, §162.006, the information will be prepared and redacted or de-identified for release to that person.

(2) The bureau shall make a diligent effort to locate the last known address of the adoptive parents and attempt to inform them of their right to examine the redacted or de-identified portion of the records.

(g) As described in the Texas Family Code, §§162.005-162.008, when an adoption is independent of the involvement of a child-placing agency and the adoptive parents are biologically unrelated to the adoptee, a HSEGH report shall be submitted to the bureau for certification prior to the court's consummation of the adoption. The bureau shall provide certification to the adopting attorney that the report was received. The report shall become part of the HSEGH record series. The contents of the report shall include, but may not be limited to the specifications, as described in the Texas Family Code §162.007.

(1) If an adoption was originally consummated in the foreign country where the child was born, the HSEGH shall include the country's adoption documents, along with the appropriate translation.

(2) The HSEGH report shall be legible and ready for microfilming or scanning.

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 April 9, 2001.

TRD-200102025
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 458-7236

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25 TAC §181.22

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

The repeal is proposed under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health.

The proposed section affects Health and Safety Code, §191.003.

§181.22. Fees Charged for Vital Records Services.

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

Filed with the Office of the Secretary of State, on April 9, 2001.

TRD-200102026
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 458-7236

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SUBCHAPTER C. CENTRAL ADOPTION REGISTRY

25 TAC §§181.41 - 181.47

The amendments are proposed under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health.

The proposed sections affect Health and Safety Code, §191.003.

§181.41. Mutual Consent Voluntary Adoption Registries.

(a) (No change.)

(b) The bureau [~~Bureau of Vital Statistics of the Texas Department of Health (department)~~] shall operate a Central Adoption Registry in compliance with the Texas Family Code, §§162.401-162.422.

(c) (No change.)

§181.42. Adoption Information by the Courts or Child-Placing Agencies.

(a) At the time an adoption order is rendered, the district court that grants the adoption shall provide to the adoptive parents information provided by the bureau [~~Bureau of Vital Statistics~~] describing the functions of voluntary adoption registries. If the adopted child is 14 years of age or older, the court shall provide the information to the child.

(b) A licensed child-placing agency shall provide to each of the adopted child's known biological parents[~~,~~] similar information when the parent signs an affidavit of relinquishment of parental rights, an affidavit of status of child, or an affidavit of waiver of interest in a child.

(c) (No change.)

§181.43. Requirement to Send [~~Duplicate~~] Information to the Central Adoption Registry and the Coordination of the Release of Identifying Information with an Associated Registry

(a) An authorized voluntary adoption registry shall send to the [~~Texas Department of Health - Bureau of Vital Statistics'~~] Central Adoption Registry (CAR) duplicate information of all registrant information it maintains in its registry. This includes all registrant file information and Bureau of Vital Statistics Form BVS - 2271. The child-placing agency's adoption case files are not needed, unless the information contained in those files provides information to benefit or aid the match process. Registrant information shall also include proof of age and identity of each registrant, and all known names, dates of birth, and places of birth of each person for whom the registrant is searching, if known. Subsequent documentation including address changes of the registrant received by the registry shall be forwarded to the CAR [~~Central Adoption Registry~~].

(b) Registrant information obtained by a registry on or after June 1, 1999, shall be forwarded to the CAR [~~Central Adoption Registry~~] by the 15th day of the following month after the registration application becomes active.

(c) If a match is identified by the CAR between two applicants, and one of the applicants is registered only with an affiliated registry and not the CAR, the CAR shall notify that agency's registry and confirm the biological relationship. The CAR shall then notify the applicant who is registered with the CAR that a match has been made and allow the applicant to either decide to register with the other matching registry or to request matching procedures with only the CAR. If the latter is chosen, the CAR shall provide to the agency's registry copies of all documentation used during and up to the release of identifying information. If the applicant who is registered only with the CAR requests matching procedures with the agency's registry, then the CAR shall release any documentation necessary for the agency's registry to coordinate the release of identifying information. The registry shall provide to the CAR copies of all documentation used during and up to the release of identifying information.

[~~(c) To ensure that the Central Adoption Registry is able to catalog or list all registrants, agency registries shall forward a copy of all registration applications received any time prior to June 1, 1999, including proof of age and identity of each registrant, and the names, dates of birth, and places of birth of each person for whom the registrant is searching to the Central Adoption Registry by January 1, 2000. Registries may forward the applications earlier if they wish to do so.~~]

[~~(d) The Central Adoption Registry shall take the lead in completing a match and releasing identifying information between two biological relatives if it is the only registry involved. If a birth parent, sibling, or adoptee who was placed for adoption by a child-placing agency that operates an authorized registry registers with both registries, the two registries shall coordinate the responsibilities for completing the match, releasing identifying information, and informing the secondary registry when identifying information is released.~~]

§181.44. Inquiry through the Central Index.

(a) The bureau [~~Texas Department of Health-Bureau of Vital Statistics~~] charges a fee of $5.00 to [~~adoptees, birth parents or biological siblings who inquire with the central index to~~] determine if a child-placing agency that operates its own registry was involved in a specified adoption. The person may send the inquiry, along with the appropriate fee and proof of age and identity to the [~~Texas Department of Health - Bureau of Vital Statistics,~~] Central Adoption Registry (CAR) [~~(ZZ055),~~] P.O. Box 140123, Austin, Texas 78714-0123 or may inquire in person at the Bureau of Vital Statistics, 1100 West 49th Street, Austin, Texas.

(b) (No change.)

(c) The department shall provide the child-placing agency's name, address, telephone number, and E-mail address, if appropriate, if that agency operates its own registry to which a person may apply. If the CAR [~~Central Adoption Registry~~] finds inconclusive information to determine which agency handled the adoption, the person is entitled to apply only to the CAR [~~Central Adoption Registry~~].

§181.45. Registration in the Voluntary Adoption Registry System.

(a) To register with the [~~Texas Department of Health - Bureau of Vital Statistics'~~] Central Adoption Registry (CAR) or any other authorized registry as defined in Texas Family Code, §162.403(b), a person must comply with the following requirements:

(1) complete registration form (BVS - 2271) and any other information the authorized registry deems necessary to identify the person(s) the applicant is searching for. Form BVS - 2271 shall provide a space to include the registry's mailing address if different than the CAR; and

(2) provide proof of identity, such as a copy of his or her driver's license or other photo identification and, if the requestor's name has changed due to marriage, a copy of his or her birth certificate or marriage certificate. If his or her name has been legally changed, a certified copy of the court order shall accompany the registration form; and

(3) (No change.)

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

§181.46. Notification of a Match and Requirements for Release of Information by Participating Voluntary Adoption Registries.

(a) If the administrator of any authorized voluntary adoption registry matches a registrant with another registrant, each registrant shall be notified by certified mail, return receipt requested and delivery restricted to addressee only, that a match has been made. The notice shall state which birth relative is being matched.

(b) (No change.)

§181.47. Confidentiality and Release of Information by all Voluntary Adoption Registries.

(a) Each authorized adoption registry shall ensure that the confidentiality of the records in the registry shall be maintained and may not be disclosed except in the manner authorized by the Texas Family Code, Chapter 162, Subchapter E.

(b) [~~(a)~~] The administrator of any authorized adoption registry releases identifying information to registrants, who have not withdrawn their registrations and who have consented in writing to disclosure. Disclosure may include the registrant's information.

(c) [~~(b)~~] If the registrant is a birth parent, is deceased at the time the match has been made, and consented to the postdeath disclosure of [~~his or her~~] identity, [~~at the time of registration or during anytime the registration was valid, identifying~~] information may be released provided that [~~only if~~]:

(1) each child of the deceased birth parent is an adult; or

(2) the surviving parent, guardian, managing conservator or legal custodian of each child has consented in writing to the release of information.

(d) [~~(c)~~] If a match cannot be made because of the death of an adoptee, a birth parent or biological sibling who has not registered or who registered and did not agree to the postdeath disclosure, the Central Adoption Registry shall notify the affected registrant. If appropriate, the registry may disclose nonidentifying information concerning

the circumstances of the person's death and the nature of the death, including whether it was genetically related.

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 April 9, 2001.

TRD-200102027
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 458-7236

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25 TAC §181.48, §181.49

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

The repeals are proposed under authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, department and the Commissioner of Health.

The proposed sections affect Health and Safety Code, §191.003.

§181.48. Confidentiality of Records Maintained by Each Registry.

§181.49. Fee Requirements for the Central Adoption Registry.

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 April 9, 2001.

TRD-200102028
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 458-7236

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 15. FLEET VEHICLE MANAGEMENT

30 TAC §15.1

The Texas Natural Resource Conservation Commission (commission) proposes new Chapter 15, Fleet Vehicle Management, §15.1, Fleet Vehicle Management.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of the proposed rule is to implement the requirements of House Bill (HB) 3125, signed into law during the 76th Legislature, 1999. The bill amended Texas Government Code, Title 10, Chapter 2171, by adding §2171.1045, Restrictions on Assignment of Vehicles. This section requires state agencies to adopt rules consistent with the fleet management plan developed by the State Council on Competitive Government. The rule has been drafted to be consistent with the intent and language of the bill.

The rule describes under what circumstances a commission vehicle may be assigned to an individual. If the exceptions outlined in the rule are not met, then the rule stipulates that each vehicle the commission owns must be assigned to the commission motor pool.

SECTION BY SECTION DISCUSSION

Chapter 15, Fleet Vehicle Management, is added to 30 TAC.

New proposed §15.1(a) establishes that each vehicle will be assigned to the commission's motor pool and will be available to be checked out.

New proposed §15.1(b) establishes the exceptions to §15.1(a). Specifically, a vehicle may be assigned to a field employee or the executive director (ED) may assign a vehicle to an employee on a regular basis only if the ED finds and documents in writing that the regular assignment is critical to the needs and mission of the commission.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed rule.

The proposed rule is intended to implement certain provisions of HB 3125, 76th Legislature, 1999, which require state agencies to adopt rules consistent with the fleet management plan adopted by the Office of Vehicle Fleet Management.

The proposal would require all commission vehicles, except for those assigned to field personnel, to be assigned to the commission's motor pool and be available for use. Commission divisions and offices could request to have vehicles assigned to individuals on a regular or everyday basis only if a written request is submitted and approved by the ED. This proposal is procedural in nature, and the commission anticipates no significant fiscal implications to the commission as a result of implementing the proposed rule.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rule will be potentially more efficient utilization and management of commission vehicles.

The proposal would require all commission vehicles, except for those assigned to field personnel, to be assigned to the commission's motor pool and be available for use. Commission divisions and offices could request to have vehicles assigned to individuals on a regular or everyday basis only if a written request is submitted and approved by the ED. The proposed rule only affects

state agencies; therefore, the commission anticipates no fiscal implications for individuals and businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of implementing the proposed rule. The proposal would require all commission vehicles, except for those assigned to field personnel, to be assigned to the commission's motor pool and be available for use. Commission divisions and offices could request to have vehicles assigned to individuals on a regular or everyday basis only if a written request is submitted and approved by the ED. The proposed rule only affects state agencies; therefore, the commission anticipates no fiscal implications for small or micro-businesses.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposal does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking proposes to adopt state statutory requirements relating to vehicle fleet management as required by Texas Government Code, §2171.1045. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Nevertheless, the commission further evaluated the proposed rule and performed a preliminary assessment of whether the proposed rule constitutes a takings under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and preliminary assessment. The specific purpose of the proposed rule is to create new Chapter 15, Fleet Vehicle Management, to comply with state statutory requirements relating to vehicle fleet management as required by Texas Government Code, §2171.1045. The proposed rule would substantially advance this stated purpose by requiring commission vehicles, except for vehicles assigned to field employees, to be assigned to the commission motor pool. The proposed rule would also require that prior to assigning a vehicle to an individual administrative or executive employee on a regular basis, the ED shall make a written documented finding that such assignment is critical to the needs and mission of the commission. Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, no private property will be affected in any way by this rule. The rule will place restrictions only on the assignment of state property, specifically state vehicles. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-004-015-AD. Comments must be submitted by 5:00 pm on May 21, 2001. For further information, please contact Kathy Ramirez, Office of Environmental Policy, Analysis, and Assessment, (512) 239-6757.

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under this code and other laws of this state. The proposed new section is also authorized by Texas Government Code, §2171.1045, which requires a state agency to adopt the vehicle fleet management rules.

The proposed new section implements TWC, §5.103, relating to Rules. The proposed new section also implements Texas Government Code, §2171.1045, relating to Restrictions on Assignment of Vehicles.

§15.1. Fleet Vehicle Management.

(a) Requirements--each commission vehicle shall be assigned to the commission motor pool and shall be available for checkout, except as provided in subsection (b) of this section.

(b) Exceptions--vehicles that meet the criteria in paragraphs (1) and (2) of this subsection are excepted from subsection (a) of this section:

(1) a vehicle assigned to a field employee; or

(2) a vehicle assigned to an individual administrative or executive employee on a regular or everyday basis if the executive director makes a written documented finding that the assignment is critical to the needs and mission of the commission.

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

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

TRD-200102007

Margaret Hoffman
Director Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 21, 2001
For further information, please call: (512) 239-4712

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CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Chapter 334, Subchapter C, Technical Standards, §334.54, Temporary Removal From Service; Subchapter J, Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects, §334.460, Renewal of Certificate of Registration for Corrective Action Project Manager; and Subchapter K, Storage, Treatment, and Reuse Procedures For Petroleum- Substance Contaminated Soil, §334.503, Reuse of Petroleum-Substance Waste.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules would correct errors that were made in the major Chapter 334 rulemaking as published in the June 2, 2000 issue of the *Texas Register* (25 TexReg 5152), which culminated in a rule package that went into effect November 23, 2000. The corrections remove internal inconsistencies from each rule section at issue so that they will function as intended and remove confusion concerning the proper requirements under the rules.

SECTION BY SECTION DISCUSSION

Subchapter C. Technical Standards.

Section 334.54, Temporary Removal from Service, is proposed to be amended. At the proposal stage of the recent major Chapter 334 rulemaking, §334.54(d) and (e) was published correctly in the June 2, 2000 issue of the *Texas Register* (25 TexReg 5152). At the adoption stage, no public comment was received on this language and the commission intent was to adopt these rule subsections with the same language as at the proposal stage. While the fact that the language was not meant to change from proposal was reflected in the text of the adoption as published in the November 17, 2000 issue of the *Texas Register* (25 TexReg 11442), the actual rule text adopted at the commission's November 1, 2000 agenda was incorrect due to an administrative error. Language in §334.54(d)(1) - (3) that was to be deleted was instead maintained, and the proposed language for that same subsection was deleted. The proposed amendment would correct this error, so §334.54(d)(1) would read "All regulated substances have been removed as completely as possible by the use of commonly-employed and accepted industry procedures." Section 334.54(d)(2) would read "Any residue from stored regulated substances which remains in the system (after the completion of the substance removal procedures under paragraph (1) of this subsection) shall not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity." Section 334.54(d)(3) would read "The volume or concentration of regulated substances remaining in the system would not pose an unreasonable risk to human health and safety or to the environment if a release occurs during the period when the system is temporarily out of service."

Correcting the errors in §334.54 would restore the provisions which define the term "empty system" as it applies to temporarily out-of-service tanks. This should in turn reduce the likelihood of contamination because, without those provisions, excessive amounts of regulated substances or residues could leak into the environment after being left for extended periods in an unmonitored out-of-service tank. This contamination can have adverse effects on human health and safety through its entrance into public water supplies, private water wells, utility spaces, etc. Making the rule clear and enforceable concerning the term "empty system" should increase the compliance rate with the rule.

Subchapter J. Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects.

Section 334.460, Renewal of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager, is proposed to be amended. Among the amendments made to this rule section during the recent Chapter 334 rulemaking were changes concerning a transition from a one-year to a two-year certificate renewal schedule. Section 334.460(a) contained language intended to explain how the transition period would work. Due to ambiguous sentence construction, there has been confusion concerning the last sentence in this subsection. Section 334.460(a) is proposed to be amended so that, in the last sentence, the word "issued" will be changed to "renewed"; the word "subchapter" would be changed to "section"; and the phrase "original date of issuance or two years from the" would be deleted, such that the final sentence would read "Following this designated period, each certificate of registration renewed under this section shall expire two years from the last date of expiration." This change would greatly clarify the intent of the rule. Section 334.460(f)(2) is proposed to be amended to correct a typographical error in the second sentence in this subparagraph, the number of days has been amended to read "30" rather than "60." This correction would make the paragraph consistent with the remainder of the rule section and thus clarify the section as a whole. Since the certificate is required by law for certain corrective action activities to be performed, it is vital to these contractors that there be a clear procedure for the timelines associated with license renewal. Correcting the errors will remove the internal inconsistency from the rule and thus ensure a predictable timeline. This also reduces the chances that a member of the public would hire such a contractor, only to find that his certificate was not in effect for part of the corrective action project (which could have implications for monetary reimbursements from the Petroleum Storage Tank Reimbursement Fund for the party hiring the contractor).

Subchapter K, Storage, Treatment, and Reuse Procedures For Petroleum-Substance Contaminated Soil.

Section 334.503, Reuse of Petroleum-Substance Waste, is proposed to be amended. Section 334.503(c)(3)(E) concerns when it is appropriate for petroleum substance-waste to be used as fill and gives procedures for how this is determined. The current language could be read to give the mistaken impression that the subparagraph is speaking to a status of the waste called "clean" as something separate and apart from the appropriate use of the waste as fill. Consequently, to clarify this rule consistent with its intent, the phrase in the first sentence which reads "will be considered clean, and" is proposed to be deleted. Correcting the error in this rule section should increase the compliance rate with the rule. Exposure to this waste may have adverse impacts

on human health and safety, so it is vital that the proper procedures are followed for determining how this waste may be used.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no fiscal impacts to units of state or local government as a result of implementation of the proposed rules.

This rulemaking is intended to clarify petroleum storage tank (PST) program rules adopted by the commission in November 2000 by correcting several errors that create internal inconsistencies in the rule sections at issue. This proposal is administrative in nature and correcting these errors does not introduce any additional regulatory requirements; therefore, the commission anticipates no fiscal implications for units of state or local government that own or operate tanks regulated in the PST program.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules would be increased compliance with commission regulations and protection of the environment and human health due to clarification of adopted PST program rules.

This rulemaking is intended to clarify PST program rules adopted by the commission in November 2000 by correcting several errors that create internal inconsistencies in the rule sections at issue. This proposal is administrative in nature and correcting these errors does not introduce any additional regulatory requirements; therefore, the commission anticipates no fiscal implications for individuals and businesses that own or operate tanks regulated in the PST program.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed rules, which are intended to clarify PST program rules adopted by the commission in November 2000 by correcting several errors that create internal inconsistencies in the rule sections at issue. Correcting these errors does not introduce any additional requirements from the rules adopted in November 2000.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of the state or a sector of the state. The proposed rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of the state or a sector of the state because the proposed rules are intended to simply correct errors from the recently completed Chapter 334 rulemaking. Correction of these errors would remove internal inconsistencies from these rule sections and thus make them easier to read and understand.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is simply to correct errors from the recently completed Chapter 334 rulemaking (which became effective November 23, 2000). Correction of these errors would remove internal inconsistencies from these rule sections and thus make them easier to read and understand. This action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property. The corrections in this rulemaking also will not be the cause of a reduction in market value of private real property, and will not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 21, 2001, and should reference Rule Log Number 2001-010-334-WS. For further information, please contact Michael Bame at (512) 239-5658.

SUBCHAPTER C. TECHNICAL STANDARDS

30 TAC §334.54

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amendment is also proposed under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an UST or aboveground storage tank; and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

The proposed amendment implements TWC, Chapter 26, Subchapter I, Underground Storage Tanks.

§334.54. Temporary Removal from Service.

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

(d) Empty system. For the purposes of this section only, and specifically for the purpose of exempting certain UST systems (when temporarily out of service) from the release detection requirements of this chapter, an UST system shall be considered empty when the following provisions have been met:

(1) All regulated substances have been removed as completely as possible by the use of commonly-employed and accepted industry procedures.

[(1) Time limitation. If due to the phase-in of upgrades and improvements as allowed under §334.47 of this title (relating to Technical Standards for Existing Underground Storage Tank Systems), any existing UST system is not yet adequately protected from corrosion (as provided under subsection (c)(1) of this section) and any existing nonempty UST system is not yet adequately monitored for releases (as provided under subsection (c)(2) of this section), such UST systems cannot remain out of service indefinitely and must meet the following requirements.]

[(A) The UST system shall be operated and maintained in accordance with the provisions of subsection (b) of this section during the time the system is temporarily out of service, which shall not exceed 12 months.]

[(B) Beginning no later than the date on which the UST system has been out of service for a continuous period of 10 months, regardless of whether or not regulated substances remain in the system, the owner or operator shall initiate appropriate activities or procedures to assure that no later than the date on which the system has been out of service for a continuous period of 12 months, the UST system is either:]

[(i) permanently removed from service (by disposal in-place or removal from the ground), in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal from Service);]

[(ii) brought back into service in conformance with the requirements in paragraph (3) of this subsection; or]

[(iii) appropriately upgraded such that the UST system is adequately protected from corrosion and adequately monitored for releases of regulated substances in a manner that will allow the system to remain temporarily out of service under the provisions of subsection (c) of this section.]

(2) Any residue from stored regulated substances which remains in the system (after the completion of the substance removal procedures under paragraph (1) of this subsection) shall not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity.

[(2) Extension of time. For UST systems which are temporarily out of service, and for which the owner or operator determines that conformance with the schedule under paragraph (1)(B) of this subsection would be impractical or unreasonable, the owner or operator must secure prior approval from the executive director for an extension of time subject to the following conditions.]

[(A) Any request for extension of time shall be in conformance with §334.43 of this title (relating to Variances and Alternative Procedures).]

[(B) Any request for extension of time shall be accompanied by written documentation adequate to justify the requested extension and the results of a site assessment conducted in accordance with of §334.55(e) of this title (relating to Permanent Removal from Service).]

(3) The volume or concentration of regulated substances remaining in the system would not pose an unreasonable risk to human health and safety or to the environment if a release occurs during the period when the system is temporarily out of service.

[(3) Returning UST system to service. When an unprotected and unmonitored UST system that has been temporarily out of service for longer than six months is placed back into service, the owner or operator shall:]

[(A) ensure the integrity of the system by the performance of a tank tightness test and piping tightness test that meet the requirements of §334.50(d)(1)(A) and (b)(2)(A)(ii)(I), respectively, of this title (relating to Release Detection) prior to bringing the system back into operation; and]

[(B) ensure that the UST system is brought into compliance with all applicable corrosion protection, release detection, and spill and overfill prevention requirements of §334.49 of this title (relating to Corrosion Protection), §334.50 of this title (relating to Release Detection), and §334.51 of this title (relating to Spill and Overfill Prevention and Control) in accordance with the applicable schedules in §334.44 of this title (relating to Implementation Schedules).]

(e) (No change.)

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

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

TRD-200102004
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 21, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER J. REGISTRATION OF CORRECTIVE ACTION SPECIALISTS AND PROJECT MANAGERS FOR PRODUCT STORAGE TANK REMEDIATION PROJECTS

30 TAC §334.460

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amendment is also proposed under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an UST or aboveground

storage tank; and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

The proposed amendment implements TWC, Chapter 26, Subchapter I, Underground Storage Tanks.

§334.460. Renewal of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager.

(a) As of the effective date of this rule, the agency will transition to renewal of certificates of registration on a two-year basis. For one year after the effective date of this subsection, existing certificates with even registration numbers will be renewed for one year and certificates with odd registration numbers will be renewed for two years. Following this designated period, each certificate of registration renewed [~~issued~~] under this section [~~subchapter~~] shall expire two years from the [~~original date of issuance or two years from the~~] last date of expiration.

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

(f) A properly completed application for renewal (including but not limited to proper payment of renewal fees, certification of adequate financial requirements as prescribed in §334.456(D)(2)(i) of this title, and documentation of completion of required continuing education) shall be submitted to the executive director at least 30 days prior to the expiration date of the certification of registration.

(1) (No change.)

(2) If a complete application for renewal is not filed at least 30 days prior to the expiration date of the current registration and the executive director has not processed the renewal application, the current registration shall expire and will not be considered provisionally renewed. The registration may be renewed within 30 [~~60~~] days of the expiration date. Corrective action services performed after expiration, but before renewal, shall be considered to have been performed without a proper registration under this subchapter.

(g) - (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.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: May 21, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER K. STORAGE, TREATMENT, AND REUSE PROCEDURES FOR PETROLEUM-SUBSTANCE CONTAMINATED SOIL

30 TAC §334.503

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amendment is also proposed under TWC, §26.345, which provides the commission authority to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which provides the commission authority to adopt rules establishing the requirements for taking corrective action in response to a release from an UST or aboveground storage tank; and §26.454, which provides the commission authority to adopt rules for the licensing of installers and on-site supervisors, and continuing education requirements for installers and on-site supervisors.

The proposed amendment implements TWC, Chapter 26, Subchapter I, Underground Storage Tanks and Subchapter K, Underground Storage Tank Installers.

§334.503. Reuse of Petroleum-Substance Waste.

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

(c) Reuse requirements are as follows.

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

(3) Petroleum-substance wastes may be reused under the following conditions.

(A) - (D) (No change.)

(E) For releases reported to the agency on or before August 31, 2003, petroleum-substance wastes [~~will be considered clean, and~~] may, if appropriate, be used as fill. To determine if the soil to be reused is appropriate for the application, analysis for contamination must be conducted as specified by this agency. The agency will give written approval for the particular reuse after ensuring that the implementation will, in the opinion of agency staff, adequately protect human health, safety, and the environment. The landowner at the receiving site (if different from the original owner of the petroleum substance contaminated soil) must give written consent for this activity. Fill for tank hold bedding and backfill for tank systems must meet the requirements of §334.46(a)(5) of this title (relating to Installation Standards for New Underground Storage Tank Systems).

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.85, §91.91

The Texas Youth Commission (TYC) proposes an amendment to §91.85, concerning Medical Care and §91.91, concerning Psychopharmacotherapy. The amendment to §91.85 incorporates the mid level practitioner as an individual who is a physician's assistant or an advanced practice nurse that is certified as such by the respective state board. The mid level practitioner is now included as a professional authorized to deliver specific medical intervention. Other changes include minor grammar changes, incorporating the abbreviation HCP for health care professionals, and clarifying that discharge summaries will be developed when a youth transitions to parole or is discharged from the facility. The amendment to §91.91 clarifies that the use of standing orders for psychotropic drugs must comply with state regulations. The other change allows for an exception that standing orders not be utilized unless the mid-level practitioners are used to provide services under a supervising psychiatrist.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section allowing for alternate certified medical staff to provide medical care in a more cost and time efficient manner. Also appropriate psychiatric intervention will be used in the administering of psychotropic medications. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to provide any medical of psychiatric treatment that is necessary.

The proposed rules affect the Human Resource Code, §61.034.

§91.85. Medical Care.

(a) Purpose. The purpose of this rule is to establish basic standards and policies for delivery of health care services to Texas Youth Commission (TYC) youth.

(b) Explanation of Terms Used.

(1) Health Care Professional[~~Professionals~~] (HCP) --any person who has completed a course of study in a field of health including RN's, physicians, [~~and~~] dentists, and mid level practitioners. The person is usually licensed by a government agency or certified by a professional organization.

(2) Mid Level Practitioner --Physician's Assistant or Advanced Practice Nurse that is certified as such by the respective state board.

(c) Services.

(1) TYC shall provide for professional medical and dental services for its youth in residential care. These services may be provided through contractual arrangements with providers of health care.

(2) Access to a licensed HCP [~~health care professionals~~] is available 24 hours a day.

(3) Medical/dental services will be delivered by a licensed HCP [~~the facility physician, dentist, psychiatrist, and nurses,~~] directly or indirectly through a contract with a health care provider. The facility physician will act as the local health authority.

(4) All youth in residential care will receive a physical and dental screening and examination upon admission to TYC and annually thereafter.

(5) Youth are provided medical examination and treatment following an injury, following contamination from use of a chemical agent, and following the use of force if indicated.

(6) In facilities housing females, obstetrical, gynecological, family planning, and health education services will be available on site or by referral.

(7) Routine medical complaints:

(A) in institutions, nursing staff respond at the scheduled sick call to be held at least once a day, five days per week. A physician or mid level practitioner and dentist will provide services at least weekly. The psychiatrist or mid level practitioner will provide services on campus as agreed in his/her contract; and

(B) in halfway houses and contract facilities, nursing consultation will be available on a daily basis. The physician and dentist will be available to provide medical services as needed. A psychiatrist or mid level practitioner will be available to provide mental health services as needed and as agreed in a contract.

(d) General Procedural Requirements.

(1) Facility nurses will, for each TYC youth, develop an individual medical plan which documents current health status and availability of medical insurance.

(2) Youth, who by history or examination, have a chronic or debilitating condition may be placed on medical alert by the responsible physician.

(3) Pharmaceutical procedures will comply with federal and state laws and accepted industry practices pertaining to the acquisition, storage, administration, and documentation of prescription drugs.

(4) The responsible physician or psychiatrist may authorize medical and pharmacological intervention when required in a life threatening situation consistent with criteria in (GAP) §91.81 of this title (relating to Medical Consent). When this intervention requires the use of psychotropic medication, the authorization must be consistent with criteria in (GAP) §91.92 of this title (relating to Psychotropic Medication-Related Emergencies).

(5) Youth may file grievances related to health care services through the youth complaint procedure.

(6) All efforts are made by TYC and contracted healthcare providers to utilize third party reimbursement if available.

(7) Facilities housing more than 25 youth must have a central medical room with medical examination facilities.

(e) Limitation of Services.

(1) TYC is not responsible for medical costs incurred by youth:

(A) on furlough or parole status when they are placed in the home of a parent, relative or guardian;

(B) on escape status;

(C) for injuries/illnesses sustained while on escape/absconsence status; or

(D) in detention centers or county facilities.

(2) Pharmaceutical, cosmetic, and medical experiments are prohibited. This policy does not preclude individual treatment of a youth based on his/her[~~his or her~~] need for a specific medical procedure, which is not generally available.

(f) Medical Discharge.

(1) In the event a youth suffers an injury or medical illness that[~~which~~] requires extended specialized care or which prevents a youth's return to active program participation, the case is reviewed for possible early discharge and referral for outside medical care.

(2) Youth who have a serious medical need and have been determined to be at low risk based on the nature and length of offense history, may be considered for discharge provided there is a successful referral to an appropriate outside treatment resource.

(3) Facility nurses will, for each TYC youth, develop an individual discharge summary, upon transition to parole or discharge[~~at release or discharge~~], that provides recommendations for follow-up care when a youth is released or discharged.

§91.91. Psychopharmacotherapy.

(a) Purpose. The purpose of this policy is to provide for the use of psychopharmacotherapy as an established method of treatment of emotionally disturbed adolescents for the clinical relief of symptoms distressing to the youth or interfering with normal functioning.

(b) Medical or pharmaceutical experimentation or research using TYC youth is strictly prohibited.

(c) Psychotropic drugs shall not be administered for purposes of punishment or for program management or control. Psychotropic medication may only be prescribed for youth who have had a physical examination by a physician.

(d) Psychotropic medication shall be given only to a youth who has a diagnosed psychiatric disorder. A diagnostic assessment shall be performed by the prescribing physician prior to initiating a psychotropic drug order. Indication for the drug therapy must be documented. Every effort will be made to ensure that prescribing is a collaborative effort between the youth and the clinician, necessitating, whenever reasonable or possible, the sharing of information such as treatment objectives, disadvantages, available alternatives, and side effects.

(e) The lowest dosage that will maintain the desired therapeutic effect shall be considered the proper dosage.

(f) The oral route will be the preferred method of administration in the absence of specific contraindications.

(g) Standing orders will not be utilized for psychotropic drugs, except where psychiatric mid-level practitioners are used to provide services under a supervising psychiatrist. The use of standing orders must comply with applicable state regulations.

(h) Psychotropic medication may not be administered against the will of a youth except in a medication related emergency as specified in (GAP) §91.92 of this title (relating to Psychotropic Medication-Related Emergencies).

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 April 4, 2001.

TRD-200101976
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 424-6301

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CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.53

The Texas Youth Commission (TYC) proposes an amendment to the §93.53, concerning Appeal to Executive Director. The amendment to the section makes minor sentence structure changes as well as adds a decision from a Title IV-E hearing as being eligible for a direct appeal to the executive director. An automatic appeal for youth being detained in a location other than a TYC operated institution. A youth in a TYC institution will have an automatic appeal to the executive director after a third and subsequent level IV hearing.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced due process for youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs that take into consideration the welfare, and rehabilitation of the youth under its care.

The proposed rule affects the Human Resource Code, §61.034.

§93.53. Appeal to Executive Director.

(a) Purpose. The purpose of this rule is to permit Texas Youth Commission (TYC) youth, their parents or guardians, and TYC or contract program employees to appeal decisions made by TYC or contract program employees to the TYC executive director[~~Executive Director~~].

(b) An appeal to the executive director may be filed, after all preliminary levels of appeal have been exhausted, concerning any TYC or contract program employee decision regarding a complaint[~~filed through the TYC complaint resolution system, after all preliminary levels of appeal have been exhausted~~].

(c) A direct appeal to the executive director may be filed in matters limited to:

(1) parole revocation;

(2) reclassification;

(3) classification;

(4) a disciplinary transfer or assigned disciplinary length of stay under (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequence);

(5) behavior management program length of stay and extension under (GAP) §95.17 of this title (relating to Behavior Management Program);

(6) aggression management program length of stay under (GAP) §95.21 of this title (relating to Aggression Management Program);

(7) a disapproved home evaluation;

(8) the results of an alleged mistreatment investigation under (GAP).§93.33 of this title (relating to Alleged Mistreatment);

(9) an appeal of a level IV hearing when a youth is being detained in a location other than a TYC operated institution;

(10) [~~(9)~~] a result of[~~decision from~~]the third and subsequent[~~a~~] level IV hearing pursuant to (GAP) §95.59 of this title (relating to Level IV Hearing Procedure)when a youth is in an institution detention program;[~~or~~]

(11) [~~(10)~~] a decision from a mental health status review hearing pursuant to (GAP) §95.71 of this title (relating to Mental Health Status Review Hearing Procedure);or

(12) a decision from a Title IV-E hearing.

(d) All appeals to the executive director must be filed within six months of the decision being appealed. Appeals filed after that time may be considered, at the discretion of the executive director.

(e) The executive director shall respond to each appeal, in writing, within 30 working days after receipt of the appeal. When the response cannot be completed within 30 working days, a delay letter explaining that the decision is delayed but will be forthcoming is sent to the complainant. Failure to respond to an appeal within this time period will constitute an exhaustion of administrative remedy for purposes of appeal to the courts, but will not be construed as acceptance or rejection of any contention made in the appeal.

(f) Opinions are distributed to the youth, the youth's attorney or representative, if any and certain TYC staff.

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 April 4, 2001.

TRD-200101975
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 424-6301

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CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

37 TAC §§95.51, 95.55, 95.57, 95.59

The Texas Youth Commission (TYC) proposes an amendment to §95.51, concerning Level I Hearing Procedure;§95.55, concerning Level II Hearing Procedure; §95.57, concerning Level III Hearing Procedure; §95.59, concerning Level IV Hearing Procedure. The amendment to §95.51 simplifies the manner in which the primary service worker requests a hearing from the legal services department and minor grammar changes. The amendment to §95.55 includes only minor grammatical changes, and clarifies when a level II hearing must be scheduled when a youth is admitted to the institution detention program. The amendment to §95.57 will clarify when the rule is applicable to determine minor disciplinary consequences for youth on parole. The amendment to §95.59 adds that a youth pending charges or pending a trial is eligible for a level IV hearing. The amendment also clarifies that numbers of days are considered working days as well as defines that a hearing must be held in a community detention facility unless it is properly waived, further detention is necessary, and the level I or II hearing cannot be held within ten days. A change was made to state that the decision-maker in a hearing must not be the person who requested the youth's detention in an institution detention program or in a community detention program. Clarifications were made stating the youth's release must occur if the hearing is not timely held or properly waived. Other changes involve a youth's right to appeal. The youth will be notified in writing of the right to appeal. For youth in institution detention, the first and second level IV hearing appeals will be to the superintendent. An automatic appeal to the executive director will occur on the third and subsequent appeals even if the youth waives the hearing. For youth being detained elsewhere, appeals of a level IV hearing will be to the executive director. Other changes to the rule were minor grammatical changes.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased accountability placed on TYC youth as well as increased due process for youth to ensure their rights are protected. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine treatment and liberty under supervision when behavior is conducive.

The proposed rules affect the Human Resource Code, §61.034.

§95.51. Level I Hearing Procedure.

(a) Purpose. The purpose of this rule is to establish a[~~the rules and~~] procedure to be followed when the highest level of due process is afforded a youth. The level I hearing procedure is appropriate due process in the following instances.

(1) parole revocation

(2) reclassification

(3) extension of time to treat a psychiatric disorder in connection with a Corsicana Stabilization Unit placement at the Corsicana Residential Treatment Center (as appropriate).

(b) Applicability.

(1) See (GAP) §95.53 of this title (relating to Level I Hearing by Telephone) for circumstances in which the hearing may be conducted by telephone.

(2) See (GAP) §95.9 of this title (relating to Parole Revocation Consequence).

(3) See (GAP) §95.7 of this title (relating to Reclassification Consequence).

(4) See (GAP) §87.67 of this title (relating to Corsicana Stabilization Unit).

(c) Explanation of Terms Used. Preponderance of the evidence - a standard of proof meaning the greater weight and degree of credible evidence admitted at the hearing, e.g., whether the credible evidence makes it more likely than not that a particular proposition is true.

(d) Procedure.

(1) The hearing shall be conducted by a hearings examiner appointed by the Texas Youth Commission (TYC) hearings section chief. The hearings examiner shall be impartial.

(2) The hearing shall be conducted in two parts: fact-finding and disposition.

(A) The purpose of the fact-finding shall be to establish whether the youth's behavior and/or circumstances require that action be taken.

(B) The purpose of the disposition shall be to determine whether the action proposed by TYC staff is appropriate under TYC policy.

(3) The person requesting a hearing shall appoint a staff representative to appear at the hearing and present the reasons for the proposed action. The staff representative shall also be responsible for making relevant information available to all parties to the hearing.

(4) The youth shall be assisted by legal counsel at the hearing. The agency will arrange counsel for indigent youth.

(5) The primary service worker (PSW) requests [~~shall request~~] a hearing by completing the Level I Hearing Request E-form and transmitting it to the legal services department as soon as practical but no later than seven days, excluding weekends and holidays, after the alleged violation. A delay of more than seven days in scheduling the hearing must be justified by documentation of circumstances, which made it impossible, impractical, or inappropriate to schedule the hearing earlier.

(6) The date and time for the hearing shall be determined by the hearings examiner.

(7) The hearing shall be held in the community where the alleged rule violation occurred unless, for good cause, the hearings examiner directs that it be held in another locale.

(8) All necessary parties shall be present at the hearing site unless it is conducted pursuant to (GAP) §95.53 of this title (relating to Level I Hearing by Telephone).

(9) The staff representative shall provide the youth with written notice of the date and time of the hearing not less than three working days before the scheduled date. This notice shall include:

(A) the reason(s) for the hearing;

(B) the proposed action to be taken; and

(C) the youth's rights in connection with the hearing.

(10) The staff representative shall make reasonable efforts to inform the youth's parent(s) of the date, time and place of the hearing not less than three working days prior to the scheduled hearing date.

(11) The staff representative shall provide counsel for the youth with written notice of the date, time, and place of the hearing not less than three working days prior to the scheduled hearing date. The notice to counsel shall also include:

(A) the name, address, and telephone number of the staff representative and the hearings examiner;

(B) a list of all witnesses the staff representative intends to call;

(C) an indication of the expected testimony of each witness;

(D) copies of any statements made by the youth;

(E) copies of any statements, affidavits, reports, or other documentation relied upon as grounds for the proposed action; and

(F) copies of any reports or summaries which will be relied upon at disposition.

(12) Requests for continuance or postponement shall be directed to the hearings examiner.

(13) If requested by counsel, the hearings examiner shall postpone the hearing [~~for not more than 10 days following the date upon which counsel received notice of the hearing~~]. The hearings examiner may grant a postponement for good cause at the request of any party.

(14) As soon as possible following receipt of the notice of hearing, and no later than the commencement of the hearing, counsel shall inform the staff representative of any witnesses he wishes to call on behalf of the youth. The staff representative will, if necessary, assist counsel in contacting those witnesses and securing their attendance at the hearing.

(15) The staff representative shall provide counsel for the youth with reasonable access to all information concerning the youth, which is held by TYC. Counsel for the youth will respect the confidential nature of such information and will comply with reasonable requests to withhold sensitive information from the youth or his family.

(16) Prior to the hearing, the hearings examiner may review copies of any documentation previously provided to counsel except for those documents which relate solely to dispositional criteria. Such information shall be made available to the hearings examiner only if the hearing proceeds to disposition.

(17) If necessary, the hearings examiner may direct that a subpoena be issued to compel the attendance of a witness at the hearing or the production of books, records, papers, or other objects.

(A) Motions for subpoenas shall be addressed to the hearings examiner and shall state the name and address of the witness or specify the books, records, papers, or other objects desired and the material and relevant facts to be proved by them. If the matter of testimony sought is relevant, material, and necessary and will not result in harassment or undue inconvenience or expense, the hearing examiner shall direct the issuance of a subpoena.

(B) Subpoenas shall be issued only after a showing of good cause and deposit of sums sufficient to insure payment of expenses incident to the subpoenas. Payment of witness fees shall be in the manner prescribed in the Administrative Procedure and Texas Register Act (Texas Civil Statutes Article 6252-13a, §14).

(18) A victim who appears as a witness should be provided a waiting area which eliminates or minimizes contact between the victim and the youth, the youth's family, or witnesses on behalf of the youth.

(19) To protect the confidential nature of the hearing, persons other than the youth, counsel for the youth, the staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearings examiner, however:

(A) observers may be permitted with the consent of the youth;

(B) any person except the youth's counsel may be excluded from the hearing room if their presence causes undue disruption or delay of the hearing. The reason(s) for the youth's exclusion are stated on the record.

(20) The hearing shall be tape recorded and the hearings examiner shall retain copies of all documents admitted into evidence. Physical evidence may be retained at the discretion of the hearings examiner; if not retained, an adequate description of the item(s) shall be entered in the record by oral stipulation.

(21) Factual issues not in dispute may be stipulated to by the staff representative and counsel for the youth. Such stipulations shall be made on the record of the hearing.

(22) A youth accused of misconduct shall be given the opportunity to respond "true" or "not true" to each allegation of such conduct prior to any evidence being heard on such allegations.

(A) The youth shall have a right to respond "not true" to any such allegation and require that proof of the allegation be presented at the hearing.

(B) A response of "true" to any such allegation shall be sufficient to establish each and every element necessary to proof of that allegation without the presentation of any other evidence.

(23) All witnesses shall take an oath to testify truthfully.

(24) With the exception of the youth, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing their testimony with anyone until all the witnesses have been dismissed.

(25) The hearings examiner may question each witness at his discretion. Counsel for the youth and the staff representative shall be given an opportunity to question each witness.

(26) The hearings examiner may permit a witness to testify outside the presence of the youth if such appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, counsel for the youth shall be present during the testimony and shall have the opportunity to review the testimony with the youth before questioning the witness.

(27) The youth shall not be called as a witness unless, after consulting with counsel, he or she waives his right to remain silent on the record.

(A) The youth's failure to testify shall not create a presumption against him.

(B) A youth who waives his right to remain silent may only be questioned concerning those issues addressed by his testimony.

(28) All factual issues shall be determined by a preponderance of the evidence.

(29) The hearings examiner shall determine the admissibility of evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(30) The rules of evidence will generally be applicable,[.] unless[~~Unless~~] specifically precluded by statute, evidence not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonably prudent persons[~~men~~] in the conduct of their affairs.

(31) Copies of due process hearing documents need not be certified if such document(s) are part of the youth's record(s).

(32) Accomplice testimony is sufficient to prove an allegation if it is corroborated by other evidence tending to connect the youth with the alleged violation. The corroboration is not sufficient if it merely shows the commission of the violation alleged. If two accomplices testify, the testimony of each can serve to corroborate the other.

(33) Legally recognized privileges of relationships will be given effect.

(34) Evidence otherwise admissible may be received in written form if so doing will expedite the hearing and will not significantly prejudice the rights or interests of the youth.

(35) A youth's written statement concerning his possible involvement in illegal activities is admissible if it is signed by the youth and accompanied by evidence indicating that the youth made the statement voluntarily after being advised of:

(A) his right to remain silent;

(B) the possible consequences of giving the statement;

(C) his right to consult with an attorney prior to giving the statement; and

(D) his right to have an attorney provided for him if he is indigent.

(36) A youth's oral statement is admissible only if it relates facts which would not have otherwise been discovered, are found to be true and which tend to establish the youth's involvement in illegal activities.

(37) The hearings examiner shall rule immediately on any motions or objections made in the course of the hearing. All such motions, objections, and rulings shall be included in the hearings examiner's written report.

(38) The hearings examiner may, for good cause, recess or continue the hearing for such period(s) of time as may be necessary to insure an informed and accurate fact-finding.

(39) Following the presentation of all evidence pertaining to the factual issues raised at the hearing, the hearings examiner shall announce his findings as to those issues.

(A) When the fact-finding concerns an allegation of criminal conduct, the hearings examiner may find that the evidence suffices to prove an offense other than that originally alleged and enter the appropriate allegation in the record if the original allegation gave sufficient notice of the offense proved.

(B) Irrespective of the evidence, the hearings examiner may not find a criminal offense more serious than that originally alleged unless the original allegation has been amended on the record and after notice to counsel for the youth.

(C) If the hearings examiner's findings require that disposition be made, the hearing shall proceed to disposition; if not, the hearing shall be adjourned with no change in the youth's status.

(40) The hearings examiner may receive additional evidence for purposes of disposition. The evidence received at disposition may be in the form of testimony from witnesses submitted during fact finding or at disposition, as well as written reports offered by youth, staff, professionals, counselors or consultants. Relevant documents contained in the youth's record may be admitted and considered. All written documents offered shall be provided to the parties three (3) days prior to the hearing unless otherwise waived.

(41) Following announcement of the decision as to disposition, the hearings examiner shall inform the youth of his right to appeal any or all findings and decision made at the hearing.

(42) Immediately following the close of the hearing, the hearings examiner shall give youth a copy of the Hearing Examiner's Report of a Level I Hearing, CCF-160.

(43) A notice of appeal or request for a rehearing shall not suspend implementation of the hearings examiner's decision(s), which shall be effective when announced at the hearing.

(44) As soon as possible following the conclusion of the hearing, the hearings examiner shall prepare a written report which shall include:

(A) a summary of the evidence presented;

(B) findings of fact, including the reliability of the evidence and the credibility of the witnesses, and the reasons for those findings;

(C) conclusions of law;

(D) an explanation of the dispositional decision; and

(E) rulings made on motions and objections and the reasons therefor.

(45) Copies of the hearings examiner's report shall be provided to counsel for the youth and the staff representative.

(46) An edited copy of the hearings examiner's report is given to the youth.

§95.55. Level II Hearing Procedure.

(a) Purpose. The purpose of this rule is to establish a[~~the rules and~~] procedure to be followed when the second highest level of due process is afforded a youth. The level II hearing procedure is appropriate due process in the following instances:

(1) disciplinary transfer;

(2) disciplinary extension in length of stay;

(3) admission to a behavior management program (BMP);

(4) admission to the aggression management program (AMP);

(5) with a few exceptions in procedure:

(A) admission to the Corsicana Stabilization Unit, Corsicana Residential Treatment Center; and

(B) extension of time to treat a psychiatric disorder in connection with a Corsicana Stabilization Unit placement at the Corsicana Residential Treatment Center (as appropriate).

(b) Applicability.

(1) For the highest level of due process, see (GAP) §95.51 of this title (relating to Level I Hearing Procedure).

(2) See (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequence).

(3) See (GAP) § 95.17 of this title (relating to Behavior Management Program).

(4) See (GAP) §95.21 of this title (relating to Aggression Management Program).

(5) See (GAP) §87.67 of this title (relating to Corsicana Stabilization Unit).

(6) For exceptions in procedures used for admission to Corsicana Stabilization Unit, Corsicana Residential Treatment Center, and extension of time to treat the psychiatric disorder, see (GAP) §95.71 of this title (relating to Mental Health Status Review Hearing Procedure).

(c) Explanation of Terms Used. Preponderance of the evidence - a standard of proof meaning the greater weight and degree of credible evidence admitted at the hearing, e.g., whether the credible evidence makes it more likely than not that a particular proposition is true.

(d) Procedure.

(1) The designated primary service worker (PSW) or the administrative duty officer (ADO), shall request permission to schedule a hearing from the appropriate supervisor, institutional superintendent, halfway house superintendent, parole supervisor, or quality assurance administrator. The hearing must be scheduled as soon as practical but not later than seven days, excluding weekends and holidays, after the alleged violation. A delay of more than seven days in scheduling the hearing must be justified by documentation of circumstances, which made it impossible, impractical, or inappropriate to schedule the hearing. Failure to document circumstances making it impossible, impractical, or inappropriate to schedule the hearing may result in a dismissal or reversal of the decision of the hearing manager.

(2) Failure to document circumstances making it impossible, impractical, or inappropriate to conduct the hearing may result in a dismissal or reversal of the decision of the hearing manager.

(3) [~~(2)~~] If the youth is admitted to Institution Detention Program (IDP) pending a level II hearing, the[~~A~~] hearing shall be conducted within ten days from date of admission to detention. A delay of more than ten days in conducting the hearing must be justified by documentation of circumstances, which made it impossible, impractical, or inappropriate to conduct the hearing earlier. [~~Failure to document circumstances making it impossible impractical or inappropriate to conduct the hearing may result in a dismissal or reversal of the decision of the hearing manager.~~]

(4) [~~(3)~~] The appropriate supervisor, institutional superintendent, halfway house superintendent, parole supervisor, or quality assurance administrator will appoint an impartial staff member to act as hearing manager.

(5) [~~(4)~~] The hearing manager shall be a Texas Youth Commission (TYC) staff member who is trained to function as a hearing manager.

(A) If the youth is currently assigned to an institution, the hearing manager shall be someone not directly responsible for supervising the youth.

(B) If the youth is currently assigned to a halfway house, the hearing manager shall not be a member of the halfway house staff.

(C) If the youth is currently assigned to a contract program, the hearing manager shall not be the TYC quality assurance specialist assigned to that youth.

(D) If the youth is currently assigned to his or her home, the hearing manager shall not be the parole officer assigned to the youth's case.

(6) [~~(5)~~] The youth's PSW shall be responsible for assembling all evidence and giving all notices required for the hearing.

(7) [~~(6)~~] The youth shall be given written notice of his rights not less than 24 hours prior to the hearing. The youth's rights are:

(A) the right to remain silent;

(B) the right to be assisted by an advocate at the hearing;

(C) the right to confront and cross-examine adverse witnesses who testify at the hearing;

(D) the right to contest adverse evidence admitted at the hearing;

(E) the right to call readily available witnesses and present readily available evidence on his own behalf at the hearing; and

(F) the right to appeal [~~from~~] the results of the hearing. The youth's right to appeal cannot be waived.

(8) [~~(7)~~] The youth and the youth's advocate shall be given written notice of the reasons for calling the hearing, the proposed action to be taken, and the evidence to be relied upon not less than 24 hours prior to the hearing. After receipt of the written notice and consultation with the advocate, the youth may waive the 24-hour notice period by agreeing, in writing, to an earlier hearing time.

(9) [~~(8)~~] Reasonable efforts shall be made to inform the youth's parent(s) of the time and place of the hearing not less than 24 hours prior to the hearing.

(10) [~~(9)~~] The hearing shall consist of two parts: fact-finding and disposition, and shall be held where the youth resides unless the hearing manager determines that some other site is more appropriate. During the fact-finding portion of the hearing, only evidence concerning the alleged misconduct may be considered; the youth's prior behavior shall not be considered unless disposition is reached.

(11) [~~(10)~~] The youth shall be assisted by an informed and responsible advocate appointed by the hearing manager. In cases where the youth is not proficient in the English language, the appointed advocate shall be proficient in English as well as the primary language of the youth or an interpreter shall be used.

(12) [~~(11)~~] The hearing shall be tape recorded and the recording shall be the official record of the hearing. The tape [~~Tape~~] recording and the hearing packet shall be preserved for six months following the hearing.

(13) [~~(12)~~] The youth shall be present during the hearing unless he waives his presence or his behavior prevents the hearing from proceeding in an orderly and expeditious fashion.

(A) A waiver of the youth's presence shall be in writing and signed by the youth and his advocate. If the youth does not sign the waiver for any reason, his presence is not waived.

(B) If the youth waives his presence, the hearing may be conducted by teleconference.

(C) If a youth is excluded for behavioral reasons, those reasons shall be documented in the hearing record.

(D) A true plea cannot be entered on behalf of a youth who has waived his presence at the hearing.

(14) [~~(13)~~] A victim who appears as a witness should be provided a waiting area where he is not likely to come in contact with the youth except during the hearing.

(15) [~~(14)~~] Witnesses shall take an oath prior to testifying.

(16) [~~(15)~~] The hearing manager, PSW , and advocate may question each witness in turn. The primary service worker and advocate may offer summation statements.

(17) [~~(16)~~] To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearings manager, however any person except the youth's advocate may be excluded from the hearing room if their presence causes undue disruption or delay of the hearing. The reason(s) for the exclusions are stated on the record.

(18) [~~(17)~~] With the exception of the youth, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing their testimony with anyone until all the witnesses have been dismissed.

(19) [~~(18)~~] The hearings manager may permit a witness to testify outside the presence of the youth if such appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the advocate for the youth shall be present during the testimony and shall have the opportunity to review the testimony with the youth before questioning the witness.

(20) [~~(19)~~] The youth shall not be called as a witness unless, after consulting with the advocate, he or she waives his right to remain silent on the record. Neither the hearing manager or the PSW may question the youth unless he/she waives the right to remain silent.

(A) The youth's failure to testify shall not create a presumption against him.

(B) A youth who waives his right to remain silent may only be questioned concerning those issues addressed by his testimony.

(21) [~~(20)~~] All credible evidence may be considered, irrespective of its form.

(22) [~~(21)~~] The standard of proof for all disputed issues is a preponderance of the evidence.

(23) [~~(22)~~] The hearings manager may, for good cause, recess or continue the hearing for such period(s) of time as may be necessary to insure an informed and accurate fact-finding.

(24) [~~(23)~~] The hearing manager will announce his findings of fact.

(25) [~~(24)~~] If there is finding of true, the hearing manager shall proceed to disposition and order the disposition recommended by the staff representative unless the hearing manager finds extenuating circumstances.

(A) A hearing manager's decision that a youth be transferred is final.

(B) A hearing manager's decision to assign a disciplinary minimum length of stay (with or without a transfer) is final subject to approval by the appropriate director of juvenile corrections or designee. If, subsequent to the assignment of a disciplinary minimum length of stay, the appropriate director of juvenile corrections disapproves the assignment, neither the assignment nor a transfer may then occur.

(C) A hearing manager's decision that a youth will be transferred and/or an assigned a length of stay in a disciplinary segregation program is final subject to an appeal by the youth.

(26) [~~(25)~~] The hearing manager shall prepare the Hearing Manager's Report of a Level II Hearing form, CCF-170, of his findings which includes grounds for the hearing and evidence relied upon and the decision.

(27) [~~(26)~~] The youth is informed of his/her right to appeal to the executive director at the close of the hearing. The pendency of an appeal shall not preclude implementation of the hearing manager's dispositional decision.

(28) [~~(27)~~] A copy of the report (CCF-170) is given to the youth immediately following the close of the hearing.

§95.57. Level III Hearing Procedure.

(a) Purpose. The purpose of this rule is to establish a hearing procedure as the appropriate informal due process for immediately imposing disciplinary consequences [~~at the site of the youth's program~~].

(b) Applicability.

(1) See (GAP) §95.13 of this title (relating to On-Site Disciplinary Consequences); and

(2) when a level III hearing is conducted to determine admission or extension to the security program, also see the requirements of (GAP) §97.40 of this title (relating to Security Program).

(3) when a level III hearing is conducted to determine minor disciplinary consequences for youth on parole according to (GAP)§95.15 of this title (relating to Parole Minor Disciplinary Consequences).

(c) Prior to assigning an on-site consequence, staff shall follow basic minimum due process procedure to ensure that the youth is aware of the alleged misconduct and the consequence, and is given opportunity to speak on his or her behalf.

(d) To initiate the level III hearing, the youth will be notified orally of the time and date of the hearing, the rule violation(s) and the recommended consequences to be imposed prior to implementing any action.

(e) The youth has the right and will be given the opportunity to speak on his or her behalf regarding alleged misconduct or the appropriateness of the disciplinary measure.

(f) If the level III hearing involves a decision for admission or an extension to the security program the youth will be appointed an advocate.

(g) The administrator may consider any reasonably reliable information in reaching a decision regarding the truth of the youth's alleged misconduct and the appropriateness of the disciplinary consequences.

(h) If the hearing administrator has reasonable grounds to believe the violation occurred, the appropriate disciplinary consequence may be imposed, unless there is a finding of extenuating circumstances to the commission of the violation.

(i) The youth may appeal the disciplinary decision to the appropriate staff or team on grounds that:

(1) he did not commit the violation as alleged; or

(2) the disciplinary measure imposed was inappropriate; or

(3) there were extenuating circumstances to the commission of the violation.

(j) If the disciplinary decision is determined to be inappropriate it will be removed from the youth's behavioral record, and staff or team may determine some form of equitable relief for a youth who has already completed a disciplinary measure and/or has been adversely affected.

§95.59. Level IV Hearing Procedure.

(a) Purpose. The purpose of this rule is to establish a procedure to determine whether justification exists to warrant holding a youth in detention pending charges or a hearing or trial [~~when the hearing or a trial cannot be held within ten days of the detention~~].

(b) Applicability.

(1) The level I due process procedures referred to herein are found in (GAP) §95.51 of this title (relating to Level I Hearing Procedure).

(2) The level II due process procedures referred to herein are found in (GAP) §95.55 of this title (relating to Level II Hearing Procedure).

(c) A detention review hearing procedure (level IV hearing) shall be held to determine whether justification exists to warrant holding a youth in detention pending a hearing or trial when a level I or II hearing or a trial is not held and continued detention is necessary and appropriate based stated criteria in (GAP) §97.41 of this title (relating to Community Detention) or (GAP) §97.43 of this title (relating to Institution Detention Program). The timing of the required due process level IV hearing is related to the facility in which the youth is detained. A detention review hearing will be conducted by Texas Youth Commission (TYC) [~~TYC~~] staff:

(1) for youth [~~assigned to a TYC institution~~] held in the [~~TYC~~] institution detention program:

(A) on or before 72 hours from admission to the institution detention program, or the next working day; and

(B) within ten working days of the previous detention review hearing.

(2) for a youth held in a community detention facility the detention hearing will be held on or before the tenth working day of detention if; [~~when the level I or II hearing cannot be held within ten days if the community detention staff does not hold a detention hearing. The hearing will be conducted ten working days from initial detention.~~]

(A) a detention hearing is not waived or conducted by the community for a TYC youth;

(B) the level I or II hearing or trial cannot be held within ten working days; and

(C) further detention is necessary and appropriate.

(d) Procedure.

(1) Decision Maker.

(A) A parole supervisor, quality assurance administrator, halfway house superintendent, or an institution superintendent shall appoint a decision-maker, who will schedule the hearing.

(B) The decision-maker shall be impartial and shall not have been the person who requested or admitted the youth to the security intake , or the institution detention program, or community detention.

(2) Detention Review Hearings.

(A) The youth has a right and shall be informed of his/her right to be represented:

(i) in a level I hearing, a youth shall be represented by counsel. Counsel is:

(I) an attorney obtained by the youth; or

(II) the attorney appointed to represent the youth.

(ii) in a level II hearing or pending a trial, a youth shall be represented by a youth advocate. If the trial attorney chooses to be the youth's advocate in a level IV hearing, the attorney [~~he~~] may represent the youth but is not required to do so.

(B) The youth may waive the level IV hearing after being advised by an attorney (for a level I hearing) or an advocate (for a level II hearing or trial).

(C) The hearing shall be tape-recorded and the recording shall be the official record of the hearing. Tape recordings shall be preserved for six months following the hearing.

(D) When a detention review is necessary due to the adjournment of a level I telephone hearing under (GAP) §95.53 of this title (relating to Level I Hearing by Telephone), the hearings examiner may conduct a level IV hearing following adjournment of the telephone hearing.

(E) The staff responsible for calling for the level I or II hearing, or the Primary Service Worker (PSW) of the youth being held for trial must show cause to detain the youth pending the hearing or trial. The attorney or advocate may present evidence as to why the youth should not be detained.

(3) The Decision.

(A) The decision-maker shall base his/her [~~his or her~~] decision on criteria for detention. See criteria in (GAP) §97.41 of this (relating to Community Detention) and (GAP) §97.43 of this title (relating to Institution Detention Program).

(B) If criteria are not met, the youth must be released to his/her assigned location.

(C) If a level IV hearing is not timely held or is not properly waived, the youth shall be released to his/her assigned location.

(4) Appeal.

(A) The youth is notified in writing [~~informed~~] of his/her right to appeal [~~to the executive director pursuant to (GAP) §93.53 of this title (relating to Appeal to Executive Director)~~].

(i) For youth held in an institution detention program, an automatic appeal to the executive director will be filed on the third and subsequent level IV hearing to determine if the institution detention criteria have been proven, even if the youth waives the level IV hearing. The PSW will initiate the automatic appeal.

(ii) For all other youth in alternative detention facilities level IV hearing appeals will be to the executive director to (GAP) §93.53 of this title (relating to Appeal to Executive Director).

(B) The pendency of an appeal shall not preclude implementation of the decision-maker's dispositional decision.[~~;~~] The PSW shall expedite the appeal by immediately faxing the record and evidence to the complaint coordinator in the office of general counsel to review the appeal. [~~however this appeal shall be expedited by the PSW by notifying the complaint coordinator in the office of general counsel of the appeal and forwarding the record and evidence by fax for consideration immediately from notice of appeal.~~]

[~~(C) For youth assigned to a TYC institution, who are held in an institution detention program, an automatic appeal to the executive director will be filed on the third and subsequent level IV hearing to determine if the institution detention criteria have been proven. The PSW will initiate the automatic appeal.~~]

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 April 4, 2001.

TRD-200101974
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 424-6301

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.37, §97.40

The Texas Youth Commission (TYC) proposes an amendment to §97.37, concerning Security Intake and §97.40, concerning Security Program. The amendment to §97.37 specifies that if admission criteria are met, the designated staff may admit youth to the security intake for up to 24 hours. If the criteria are not met or the policy and procedures are not followed, the youth must be released from the security unit. The amendment also allows a youth to appeal his/her admission through the youth complaint system. All specific operation procedures were removed from the rule section and placed in the management requirements. Other minor grammatical changes were also made to the rule. The amendment to §97.40 clarifies the time frame for which admission decisions must be reviewed. Included throughout the rule is the provision for a youth to be returned to general population if the criteria are not met and policy and procedures are not followed. Other changes include that the admission criteria must be found true with no extenuating circumstances in order for a youth to be admitted into the security program. All youth will be notified in writing the outcome of an appeal. All program requirements were removed from the rule and were placed in the management section of the policy, as they are internal operating procedures for the unit. Other grammatical changes were made to make language consistent throughout the rule.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clearer definition of the intent of the rule as well as establish guidelines for putting the rule into effect and clarifying expectations of operating the security program and added provisions of due process for youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs and facilities.

The proposed rules affect the Human Resource Code, §61.034.

§§97.37. Security Intake [~~Unit~~].

(a) Purpose. The purpose of this rule is to establish criteria and procedure for segregating youth from the general population under certain circumstances. Each Texas Youth Commission (TYC) operated high restriction facility or secure contract program provides for segregation programs. Placement in a segregation program may be imposed only in specific situations for specified periods of time. Youth who may be eligible for a placement in a segregation program may be initially referred to the security intake. Such youth are placed into a secure setting that is controlled exclusively by staff.

(b) Applicability. This rule does not apply to:

(1) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(2) the use of the same or adjacent space when used specifically as detention in lieu-of-county detention or specifically as institution detention. See (GAP) §97.43 of this title (relating to Institution Detention Program);

(3) the use of the same or adjacent space when used specifically as a disciplinary segregation program. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(4) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(5) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(c) Referral and Admission Criteria. A youth may be admitted to security intake if there is reason to believe, based on overt acts by the youth, and/or under the following circumstances:

(1) the youth is a serious and continuing escape risk; or

(2) the youth is a serious and immediate physical danger to himself/herself [~~himself or herself~~] or others and staff cannot protect the youth or others except by referring the youth to security intake; or

(3) confinement is necessary to prevent imminent and substantial destruction of property; or

(4) confinement is necessary to control behavior that creates disruption of the youth's current program; or

(5) the youth requests confinement, unless campus-wide self referrals have been disallowed by the superintendent or designee; or

(6) staff requests detention for a youth.

(d) Referral and Admission Process.

(1) A youth may be referred to the security intake by staff or at the youth's own request.

(2) A youth may be held in security intake on referral for up to one hour.

(3) The superintendent or designee may extend the one-hour time limit up to one additional hour if requested and necessary in order to make a proper decision.

(4) Within one hour (or two hours if an extension has been granted) of the youth's arrival at security intake, the designated staff shall determine whether criteria for admission have been met. If admission criteria are met, designated staff may admit youth to the security intake for up to 24 hours.

(5) Designated staff include the superintendent, assistant superintendent, administrative duty officer (ADO), program administrator (PA), institution placement coordinator (IPC), principal, psychologist, [~~a~~] caseworker, or [~~a~~] designated juvenile correctional officer (JCO) V trained in the security intake policy and procedure to admit youth to the security intake program. On the late night shift, a JCO IV trained in the security intake admission policy and procedure may admit a youth to security intake. The director of security may not admit a youth to security intake.

(6) The director of security or designee will review all admission decisions within one working day to determine if admission criteria have been met. If the criteria are not met or policy and procedures are not followed, the youth will be released from the security unit. The director of security or designee shall not have been involved in the admission decision.

(7) A youth may appeal the admission decision to the security intake through the youth complaint system as defined in (GAP) §93.31 of this title (relating to Complaint Resolution System).

[~~(7) As a result of the review, staff may release youth to general population or admit the youth to the security intake unit for up to 24 hours.~~]

[~~(8) The appeal of an admission to security intake will be to the superintendent, assistant superintendent or the administrative duty officer (ADO) as long as they were not the admitting staff.~~]

(e) Security Intake Termination/Other Segregation Programs.

(1) Within 24 hours of admission to security intake, a youth shall be:

(A) released to the general population; or

(B) admitted to one of the following programs:

(i) security program - if it is determined that there are reasonable grounds to believe one or more of the security program admission criteria is occurring. See (GAP) §97.40 of this title (relating to Security Program);

(ii) institution detention program - if it is determined that there are reasonable grounds to believe one or more of the institution detention admission criteria is occurring. See (GAP) §97.43 of this title (relating to Institution Detention Program).

(2) Youth may be released by the director of security or any designated staff authorized to admit youth in this policy.

(f) Restrictions.

(1) Segregation shall not be used for retribution at any time.

(2) No minimum length of time in security intake shall be imposed.

(3) The superintendent or designee may disallow the self-referrals campus-wide at his/her[~~his or her~~] discretion.

[~~(g) Program Requirements.~~]

[(1) Doors of individual security intake rooms may be locked during the process of referral to security intake, and will be locked following admission.]

[(2) All segregation programs will ensure at a minimum the following:]

[(A) appropriate psychological and medical services;]

[(B) the same food, including snacks prepared in the same manner as for other youth except for special diets that are prescribed on an individual basis by a physician, dentist or psychiatrist or approved by a chaplain;]

[(C) one hour of large muscle exercise daily; and]

[(D) appropriate educational services.]

[(3) The assistant deputy executive director of juvenile corrections will approve a standardized program and rules for the security unit.]

[(4) The director of security will post the program schedule and rules of the security unit and ensure the rules are reviewed with and signed by the youth.]

[(5) Youth will engage in the standardized program and comply with the rules of the security unit, but if programming is not provided, youth may remain on their mattresses during that time.]

§§97.40. Security Program.

(a) Purpose. The purpose of this rule is to provide for a security program in Texas Youth Commission (TYC) institutions and secure contract programs for the placement of out of control youth when specific criteria are met and to establish program operation requirements. Assurance that youth is sufficiently in control to be returned to general population is affirmed by compliance with the standardized program or rules of the security program which are supplied to the youth upon admission to security intake.

(b) Applicability.

(1) This rule does not apply to:

(A) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(B) the use of the same or adjacent space when used specifically as detention in a TYC institution. See (GAP) §97.43 of this title (relating to Institution Detention Program);

(C) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(D) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation);

(E) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(2) When a level III hearing is conducted to determine admission or an extension to the security program, this policy needs to be read in conjunction with (GAP) §95.57 of this title (relating to Level III Hearing Procedure).

(c) Admission Criteria. A youth may be admitted to the security program if there is reason to believe, based on overt acts by the youth, and/or under the following circumstances:

(1) the youth is a serious and continuing escape risk; or

(2) the youth is a serious and immediate physical danger to himself/herself [himself or herself] or others and staff cannot protect the youth or others except by admitting the youth to security program; or

(3) the confinement is necessary to prevent imminent and substantial destruction of property; or

(4) the confinement is necessary to control behavior that creates disruption of the youth's current program; or

(5) the youth is not complying with the standardized program or rules of the security unit while in security intake or in the security program; or

(6) upon the youth's own request, unless campus-wide self referral has been disallowed by the superintendent or designee.

(d) Admission Process.

(1) A decision-maker is appointed by the superintendent to conduct a level III hearing to determine whether admission criteria have been met. As a result of the hearing, the youth shall be either:

(A) released to the general population; or

(B) admitted to the security program for up to 24 hours.

(2) The following staff may be appointed to be the decision-maker: superintendent, assistant superintendent, administrative duty officer (ADO), program administrator (PA), institution placement coordinator (IPC), principal, psychologist, [a] caseworker, or [a] designated juvenile correctional officer (JCO) V trained in the security policy and procedure to admit youth to the program. The director of security may not admit a youth to security.

(3) Based upon a finding of true to the admission criteria, and no extenuating circumstances, the youth will be admitted into the security program.

(4) [(3)] The director of security or designee will review all admission decisions within one working day to determine if admission criteria have been met. If criteria have not been met or policy and procedures not followed, the youth will be returned to the general population. The director of security or designee shall not have been involved in the level III hearing.

[(4) Based upon a finding of true to the admission criteria, and no extenuating circumstances, the youth will be admitted into the security program.]

(5) The youth will be notified in writing of his/her [his or her] right to appeal [in writing]. The appeal of an admission to the security program will be to the superintendent, assistant superintendent or the ADO as long as they were not the decision-maker for admission. The youth is notified in writing of the outcome of the appeal.

(6) The youth's advocate will be assigned by the decision-maker for the level III due process hearing. Whenever practical, the advocate may be a person chosen by the youth.

(7) The youth may be released from the security program by the director of security or designated staff authorized to admit youth in this policy.

(e) Restrictions.

(1) A youth shall not remain in the security program more than 24 hours from admission to the program solely on the basis of the behavior for which he was admitted to security intake or security program.

(2) A youth shall not remain in the security program more than 24 hours from admission without the required extended stay due process hearing protections.

(f) Extended Stay Requirements.

(1) A youth's stay in the security program may be extended beyond the 24 hours from admission to the program if there are reasonable grounds to believe that one of the admission criteria to the security program is continuing.

(2) Extended confinement due process protections will be provided to determine whether reasonable grounds exist for the youth to remain in the security program longer than 24 hours.

(A) A level III hearing is afforded the youth before security program confinement is extended past 24 hours.

(B) A decision-maker is appointed by the superintendent to determine the reasons for the extended confinement and make a decision on the facts presented.

(C) The following staff may be appointed to be the decision-maker: superintendent, assistant superintendent, ADO[~~administrative duty officer (ADO)~~], PA [~~program administrator (PA)~~], IPC [~~institution placement coordinator (IPC)~~], principal, psychologist, [~~a~~] caseworker, or [~~a~~] designated JCO V [~~juvenile correctional officer (JCO) V~~] trained in the security policy and procedure to extend youth in the program. The director of security may not be the decision-maker.

(D) Based upon a finding of true to the admission criteria, and no extenuating circumstances, the youth's stay in the security program may be extended up to an additional 24 hours.

(E) [~~(D)~~] The director of security or designee will review [~~approve~~] the 24-hour extension decision within one working day to determine if admission criteria continue to exist based on current behavior. If criteria have not been met or policy and procedures have not been followed, the youth will be returned to the general population. The director of security or designee shall not have been involved in the level III hearing.

[~~(E) Based upon a finding of true to the admission criteria, and no extenuating circumstances, the youth's stay in the security program may be extended up to an additional 24 hours.~~]

(F) The youth will be notified in writing of his/her [~~his or her~~] right to appeal. The appeal of an extension to the security program will be to the superintendent, assistant superintendent or the ADO as long as they were not the decision-maker for admission or extension. The youth is notified in writing of the outcome of the appeal.

(3) After the initial level III due process extension hearing, up to five subsequent level III hearings may be conducted as set forth in paragraph (2) of this subsection, every 24 hours thereafter for additional extensions of up to 24 hours for up to 168 hours from admission into the security program.

(4) After 168 hours, a due process extension level III hearing will be conducted as set forth in paragraph (2) of this subsection for an additional extension of up to 72 hours for up to 240 hours from admission into the security program.

(A) The appropriate director of juvenile corrections will review[~~approve~~] the 72-hour extension decision within one working day to determine if admission criteria continue to exist based on current behavior. If the criteria have not been met or policy and procedures have not been followed, the youth will be returned to the general population.

(B) The youth will be notified in writing of his/her right to appeal. The extension decision [~~approved by the director of juvenile corrections~~] may be appealed to the assistant deputy executive director for juvenile corrections and the youth is notified in writing of the outcome of the appeal.

(5) After 240 hours, a due process extension level III hearing will be conducted as set forth in paragraph (2) of this subsection every 72 hours thereafter for only two additional extensions of up to 72 hours each.

(A) The assistant deputy executive director for juvenile corrections will review [~~approve~~] the 72-hour extension decision within one working dayif admission criteria continue to exist based on current behavior. If the criteria have not been met or policy and procedures not followed, the youth will be returned to the general population.

(B) The youth will be notified in writing of his/her right to appeal. The extension[~~Extension~~] decisions [~~approved by the assistant deputy executive director for juvenile corrections~~] may be appealed to the deputy executive director[~~,~~] and the youth is notified in writing of the outcome of the appeal.

(6) After 384 hours (16 days), the youth shall be either released back to the general population or the assistant deputy executive director for juvenile corrections must recommend other alternatives [~~other alternatives must be recommended by the assistant deputy executive director for juvenile corrections~~].

(7) If [~~admission decision or~~] due process extension hearings are not timely held [~~or approved~~] the youth shall be released from the security program.

[~~(g) Program Requirements.~~]

[~~(1) Individual doors are locked.~~]

[~~(2) All segregation programs will ensure at a minimum the following:~~]

[~~(A) appropriate psychological and medical services;~~]

[~~(B) the same food, including snacks prepared in the same manner as for other youth except for special diets that are prescribed on an individual basis by a physician, dentist or psychiatrist or approved by a chaplain;~~]

[~~(C) one hour of large muscle exercise daily; and~~]

[~~(D) appropriate educational services.~~]

[~~(3) The assistant deputy executive director for juvenile corrections will approve a standardized program and rules for the security unit.~~]

[~~(4) The director of security will post the program schedule and rules of the security unit and ensure the rules are reviewed with and signed by the youth.~~]

[~~(5) Youth will engage in the standardized program and comply with the rules of the security unit, but if programming is not provided, youth may remain on their mattresses during that time.~~]

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 April 4, 2001.

TRD-200101977

Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 424-6301

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37 TAC §97.41

The Texas Youth Commission (TYC) proposes an amendment to §97.41, concerning Community Detention. The amendment to the section specifies that a hearing is to be scheduled as soon as practical but no later than seven days from the date of the alleged violation. When a due process hearing date and time has been set, the hearing is considered scheduled. Additional clarification was made to the rule concerning detention hearings. TYC staff in the community must conduct a detention hearing, if a level I or II hearing cannot be held within ten working days and the county detention staff has not held a hearing. Other changes include minor grammatical changes to maintain language consistency and clarify expectations of the rule.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will provide a greater accountability for staff to ensure due process is followed for youth being detained. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.091, which provides the Texas Youth Commission with the authority to cooperate with other agencies consistent with their proper function.

The proposed rule affects the Human Resource Code, §61.034.

§97.41. Community Detention.

(a) Purpose. The purpose of this rule is to establish:

(1) criteria for detaining youth in detention facilities in the community (juvenile or adult); and

(2) expectations for interaction between Texas Youth Commission (TYC)[~~TYC~~] staff and community detention staff when youth in TYC custody are detained in community detention facilities.

(b) Applicability.

(1) This rule applies to TYC youth admitted to community detention facilities.

(2) This rule does not apply to TYC youth admitted to a TYC institution detention program. See (GAP) §97.43 of this title (relating to Institution Detention Program).

(c) Explanation of Terms Used.

(1) Detention Hearing - the court hearing required and described in the Texas Family Code to determine whether conditions exist to justify a detention order.

(2) Detention Review Hearing - the TYC hearing required by this policy, held in lieu of a detention hearing for the same purpose, also referred to as the level IV hearing.

(3) Community Detention Facilities - refers to the local detention facilities designed for either juveniles or for adults including jail. References to community staff mean staff who work at community detention facilities.

(d) Youth in TYC custody, who are age 17 and younger, may be referred to juvenile community detention facilities with the consent of local authorities. Youth in TYC custody who have escaped/absconded from a TYC placement or violated a condition of parole who are age 17 and older may be referred to detention in an adult jail facility.

(e) TYC will utilize community detention facilities in a manner consistent with local policies. If community detention is not available, a TYC youth may be detained in a TYC institution detention program of a TYC training school in lieu of community detention in accordance with (GAP) §97.43 of this title (relating to Institution Detention Program). Detention admission in a training school may be sought only if a local community detention facility is not available.

(f) Criteria for Detention.

(1) A youth may be detained when there are reasonable grounds to believe the youth engaged in criminal behavior delinquent conduct, a major rule violation, or conduct indicating a need for supervision and one of the following criteria is met:

(A) the youth is likely to abscond and not appear at a disciplinary hearing;

(B) suitable supervision, care, or protection for the youth is not being provided by the parent or guardian to ensure protection of the public safety or prevention of youth self-injury and a less restrictive temporary shelter is not available or is inappropriate; or

(C) the youth is accused of committing a felony offense and may be dangerous to himself/herself or others if released.

(2) Youth shall not be placed in detention for the purpose of punishment.

(3) A hearing will be scheduled as soon as practical but no later than seven days, excluding weekends and holidays, from the date of the alleged violation. A due process hearing or trial is considered to be scheduled if a due process hearing date and time has been set or trial is pending.

(g) Detention Hearing.

(1) If a detentionhearing[~~hearings~~] is [~~are~~] conducted or waived pursuant to the Family Code by the community for TYC youth that is held in a community detention facility, TYC staff will participate as requested by the community and no other action [~~hearing~~] is necessary.

(2) If a detention hearing is not conducted by the community for a TYC youth that is held in a community detention facility and a level I or II hearing cannot be held within ten working days and further detention is necessary and appropriate, a TYC staff shall hold a detention review hearing (level IV hearing) on or before the tenth working day of detention. See (GAP) §95.59 of this title (relating to Level IV Hearing Procedure).

[(2) If detention hearings are not conducted by the community for a TYC youth that is held in a community detention facility, TYC staff shall hold a detention review hearing (level IV hearing) on or before the tenth day of detention when a level I or II hearing cannot be held within ten days and further detention is necessary and appropriate. See (GAP) §95.59 of this title (relating to Level IV Hearing Procedure).]

(h) Disposition.

(1) If the parole officer or other referring [local TYC] staff responsible for the youth determines the youth has not committed any offense or is detained in [from] a local detention facility and local authorities have not ordered the youth's detention, arrangements are made for immediate return to the TYC facility or other appropriate placement.

(2) Even if TYC staff receives information that additional criminal or delinquent proceedings against the youth are planned, pending, or anticipated by local authorities, TYC may continue to hold the youth in detention and may schedule and hold an administrative due process hearing.

(i) Procedure.

(1) Upon notification by detention staff, the [a] referring [TYC] staff will confirm whether the youth is under TYC authority, obtain details of the allegations regarding behavior and notify the appropriate facility or person responsible for the youth[assigned placement facility of the detention, if appropriate, and the parole supervisor of the allegations regarding behavior].

(2) If the parole officer or other staff determines that there is probable cause to believe that offenses have been committed and that detention is warranted, he/she[he or she] will hold a detention review conference with the parole supervisor or other TYC program administrator to justify and obtain approval for having the youth held in detention. The conference must be held no later than the second working day after the youth is detained unless the youth is detained on a Friday or Saturday, then on the first working day after the youth is detained.

(3) The referring[TYC] staff will visit detained youth daily when [where] possible. No more than three days may pass without a contact by the staff responsible for the youth.

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 April 4, 2001.

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Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 424-6301

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37 TAC §97.43

The Texas Youth Commission (TYC) proposes an amendment to §97.43, concerning Institution Detention Program. The amendment to the section includes several minor grammatical changes and changes to phrases that are used throughout other rules to ensure consistency in language. Changes also included a provision for a youth to appeal admission into the institution detention program. Sentence structure was also changed to clarify criteria for admission and reduce repetitiveness. Amending the section also included incorporating when a hearing must be scheduled and the timelines for scheduling. A change was also made to designate which staff person was responsible for holding a detention hearing. A section was added to clarify criteria for release from the institution detention program. All program requirements were deleted from the rule and placed in the management section as these are operational guidelines and procedures for implementation.

Don McCullough, Acting Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section increased accountability for staff and youth to adhere to program guidelines and better definition of the specific programs developed to help discipline negative behavior. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Sherma Cragg, Chief of Policy and Manuals, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs in facilities that are charged with custody and rehabilitation of youth.

The proposed rule affects the Human Resource Code, §61.034.

§97.43. Institution Detention Program.

(a) Purpose. The purpose of this rule is to establish criteria and procedures for detaining appropriate Texas Youth Commission (TYC) youth in an Institution Detention Program (IDP) operated within each TYC institution or secure contract program, who have charges against them pending or filed, or are awaiting a due process hearing or trial, or [are] awaiting transportation subsequent to a due process hearing or trial.

(b) Applicability.

(1) This rule applies to TYC youth detained in TYC operated institutions or secure contract programs for pre-hearing or post-hearing pending transportation.

(2) This rule does not apply to:

(A) TYC youth detained in community detention facilities. See (GAP) §97.41 of this title (relating to Community Detention);

(B) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(C) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(D) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(E) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(F) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(c) Explanation of Terms Used. Detention Review Hearing - the TYC level IV hearing required by this policy.

(d) Criteria for Placement in an Institution Detention Program.

(1) Designated staff will conduct a review to determine whether admission criteria have been met.

(2) Admission Criteria for Detention Up To 72 Hours.

(A) A youth assigned to a [~~an~~] TYC operated institution may be admitted to the IDP program (for up to 72 hours):

(i) if the youth is awaiting transportation subsequent to a due process hearing or trial; or

(ii) if a due process hearing or trial has been requested in writing or charges are pending or have been filed; and

(iii) there are reasonable grounds to believe the youth has committed a violation; and

(iv) one of the following applies:

(I) suitable alternative placement within the facility is unavailable due to on-going behavior of the youth that creates disruption of the routine of the youth's current program; or

(II) the youth is likely to interfere with the hearing or trial process; or

(III) the youth represents a danger to himself/herself or others; or

(IV) the youth has escaped or attempted escape as defined in (GAP) §97.29 of this title (relating to Escape/Abscondence and Apprehension).

(B) A youth who is assigned to a placement other than a TYC operated institution or secure contract program may be detained in a TYC operated IDP (up to [~~beyond~~] 72 hours):

(i) if a due process [~~level~~]hearing or trial has been requested in writing; and

(ii) based on current behavior or circumstances, and all detention criteria must have been met as defined in (GAP) §97.41 of this title (relating to Community Detention)[~~have been met~~].

(C) A youth may appeal the admission decision to the IDP through the youth complaint system as defined in (GAP) §93.31 of this title (relating to Complaint Resolution System).

(3) Admission Criteria for Detention Beyond 72 Hours.

(A) A youth who is assigned to a TYC operated institution may be detained in the IDP beyond 72 hours[~~:~~] based on current behavior or circumstances, and all other criteria in paragraph (2) of this subsection have been met.

~~*f(i)* if a due process hearing or trial has been scheduled or charges are pending or have been filed; and]~~

~~*f(ii)* based on current behavior or circumstances, all other criteria in paragraph (2) of this subsection have been met.]~~

(B) A youth who is assigned to a placement other than a TYC operated institution may be detained in a TYC operated IDP beyond 72 hours [~~(beyond 72 hours)~~] based on current behavior or circumstances and all detention criteria in (GAP) §97.41 of this title (relating to Community Detention) have been met:

~~*f(i)* if a due process hearing or trial has been scheduled or charges are pending or have been filed; and]~~

~~*f(ii)* based on current behavior or circumstances, all detention criteria in (GAP) §97.41 of this title (relating to Community Detention) have been met.]~~

(4) A hearing will be scheduled as soon as practical but no later than seven days, excluding weekends and holidays, from the date of the alleged violation.

(A) [~~(C)~~] A due process hearing or trial is considered to be scheduled if a due process hearing date and time has been set or trial is pending.

(B) [~~(D)~~] A youth whose due process hearing or trial has been held may be detained without a level IV hearing when the youth is waiting for transportation:

(i) to TDCJ, ID following a transfer hearing; or

(ii) to a different placement following a level I or II hearing.

(C) Transportation should be arranged immediately to take place within 72 hours and anything past that must have superintendent's approval.

(e) Detention Hearings Required for Any Youth Held in an Institution Detention Program.

(1) A youth, who meets admission criteria, may be detained in an IDP for up to 72 hours.

(2) For extensions beyond 72 hours an initial detention review hearing (level IV hearing) must be held on or before 72 hours from admission to the IDP, or the next working day.

(3) Subsequent detention review hearings must be held within ten working days from the previous detention review hearing when a due process [~~level~~] hearing or trial is not held and continued detention is necessary and appropriate based upon current behavior or circumstances that meet criteria unless youth is under indictment pending trial. See (GAP) §95.59 of this title (relating to Level IV Hearing Procedure).

(4) A detention review hearing is not required for youth detained pending transportation pursuant to subsection (d)(3)(D) of this section.

(5) Institution or a designated community staff will hold the required level IV detention review hearings. The primary service worker (PSW) for youth not assigned to an institution, will coordinate with institution staff to ensure that hearings are timely held or waived properly.

(6) [~~(5)~~] If a level IV hearing is not timely held or is not properly waived, the youth shall be released from the IDP.

~~[(6) Institution or a designated community staff will hold the required level IV detention review hearings. The primary service worker (PSW) for youth not assigned to an institution, will coordinate with institution staff to ensure that hearings are held timely or waived properly.]~~

(7) The youth is notify in writing [~~informed~~] of his/her right to appeal the level IV hearing [~~to the executive director pursuant to (GAP) 93.53 of this title (relating to Appeal to Executive Director)~~].

~~[(f) Program Requirements.]~~

~~[(1) Individual doors are locked.]~~

[(2) All segregation programs will ensure at a minimum the following:]

[(A) appropriate psychological and medical services;]

[(B) the same food, including snacks prepared in the same manner as for other youth except for special diets that are prescribed on an individual basis by a physician, dentist or psychiatrist or approved by a chaplain;]

[(C) one hour of large muscle exercise daily; and]

[(D) appropriate educational services.]

[(3) The assistant deputy executive director for juvenile corrections will approve a standardized program and rules for the security unit.]

[(4) The director of security will post the program schedule and rules of the security unit and ensure the rules are reviewed with and signed by the youth.]

[(5) Youth will engage in the standardized program and comply with the rules of the security unit, but if programming is not provided, youth may remain on their mattresses during that time.]

(f) [(g)] Release from institution detention is determined by the outcome of a hearing or trial or upon the decision not to hold a hearing. If the youth is pending transportation, the youth is released from detention upon transport.

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 April 4, 2001.

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.73

The Texas Department of Criminal Justice proposes new §151.73 concerning Texas Board of Criminal Justice vehicle assignments. The purpose of this new section is for all Agency vehicles to be assigned to the motor pool and be available for check out.

David P. McNutt, Deputy Director for Administrative Services of the Department of Criminal Justice, has determined that for each year of the first five-year period the new section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section as proposed.

Mr. McNutt also has determined that for each year of the first five year period the new section is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be the availability of all Agency vehicles to administrative or executive employees on a regular basis in order to carry out the needs and mission of the Agency. There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons required to comply with the new section as proposed.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, carl.reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new section is proposed under Texas Government Code, §492.013, which grants general rulemaking authority to the Board and §2171.1045, which specifically authorizes this section.

Cross Reference to Statute: Texas Government Code, §2171.1045.

§151.73. Texas Board of Criminal Justice Vehicle Assignments.

(a) It is the policy of the Texas Board of Criminal Justice that each agency vehicle, with the exception of a vehicle assigned to a field employee, be assigned to the Agency motor pool and be available for check out.

(b) The Agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis, only if the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency, such as vehicles used for law enforcement purposes and vehicles assigned to positions which are required to respond to emergency situations.

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 April 9, 2001.

TRD-200102013
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 463-9693

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CHAPTER 152. INSTITUTIONAL DIVISION
SUBCHAPTER B. MAXIMUM SYSTEM CAPACITY OF THE INSTITUTIONAL DIVISION

37 TAC §152.12

The Texas Department of Criminal Justice proposes an amendment to §152.12 concerning the unit inmate capacity of TDCJ Institutional Division facilities, consistent with state law governing appreciable increases or reductions in such capacity. The amendment concerns reductions in capacity in Institutional Division facilities that can be effected indefinitely by the Executive Director, for the purpose of deactivating housing areas in the event of excess capacity.

David P. McNutt, Director for Financial Services of the Department of Criminal Justice, has determined that for each year of the first five year period the amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment as proposed.

Mr. McNutt also has determined that for each year of the first five year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to increase the potential for unit safety and public safety by decreasing the number of inmates required to be housed in units that may lack sufficient staff to be fully operational. There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons required to comply with the amendment as proposed.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, or carl.reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal. In accordance with Texas Government Code §499.103, notice to inmates in the affected facilities will also occur.

The amendment is proposed under Texas Government Code, §492.013, which grants general rulemaking authority to the Board; and Government Code Chapter 499, Subchapter E, Unit and System Capacity.

Cross Reference to Statute: §499.107(b) and (c).

§152.12. Methodology for Changing [~~the~~] Maximum Unit and System Population.

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

(d) The maximum population of any existing institutional division facility or of any institutional division facility added to capacity hereafter may be reduced by the executive director of the Texas Department of Criminal Justice (executive director) for the limited purpose of allowing single-cell flexibility or to make renovations and repairs, for a period up to 60 days, as permitted by the Texas Government Code, §499.107(c). The maximum capacity of institutional division units may be indefinitely reduced by the executive director, for the purpose of deactivating housing areas and increasing the sufficiency of staff in the remaining areas of the unit, in the event of excess capacity.

(e) - (j) (No change.)

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

Filed with the Office of the Secretary of State, on April 9, 2001.

TRD-200102014
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 463-9693

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 50. §1915(C) CONSOLIDATED WAIVER PROGRAM

40 TAC §§50.1, 50.2, 50.4, 50.6, 50.8, 50.10, 50.12, 50.14, 50.16, 50.18, 50.20, 50.22, 50.24, 50.26, 50.28, 50.30, 50.32, 50.34, 50.36, 50.38, 50.40, 50.42, 50.44, 50.46, 50.48

The Texas Department of Human Services (DHS) proposes new §§50.1, 50.2, 50.4, 50.6, 50.8, 50.10, 50.12, 50.14, 50.16, 50.18, 50.20, 50.22, 50.24, 50.26, 50.28, 50.30, 50.32, 50.34, 50.36, 50.38, 50.40, 50.42, 50.44, 50.46, and 50.48, concerning the §1915(c) Consolidated Waiver Program, in its new Chapter 50. Section 1915(c) is a part of the Social Security Act.

The purpose of the new sections is to establish the rule base for the Consolidated Waiver Program (CWP), a §1915(c) waiver pilot program that will provide home and community-based services to individuals who meet the criteria for institutional care. The pilot was authorized by Texas Government Code, §531.0219, for the purpose of testing the feasibility of combining five of the state's §1915(c) Medicaid waiver programs, including Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Deaf Blind Multiple Disabilities (DBMD), Medically Dependent Children Program (MDCP), and Home and Community Based Services (HCS). The pilot will be located in Bexar County, an area where CBA, CLASS, DBMD, HCS, and MDCP are currently operating. These rules will not repeal or replace any existing §1915(c) waiver rules statewide or in the pilot area for individuals not participating in the pilot.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $687,984 in fiscal year (FY) 2001; $2,136,921 in FY 2002; $2,243,766 in FY 2003; $2,243,766 in FY 2004; and $2,243,766 in FY 2005. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of adoption of the proposed rules is the opportunity to test the feasibility of consolidating and streamlining five §1915(c) waivers, usually administered by three state agencies, each serving different populations, with different rates and separate providers. Participants will be selected from interest lists from existing waivers in the pilot area, with priority given to children in nursing facilities. The CWP will serve a diverse population in one waiver with one set of rates, one set of providers, and a broad array of services. It will allow waiver participants a single point of entry to the Medicaid waivers, with one administrative agency and lower administrative costs. It will incorporate permanency planning for children and aging in place for adults to delay or prevent institutionalization. The pilot will operate for three years, reporting results of the pilot to the legislature after two years of operation. There could be a minimal economic effect on large, small, or microbusinesses as the result of enforcing or administering the sections, as there may be some cost to providers who choose to enroll in the Consolidated Waiver Program associated with training staff to serve a broader population than that which they normally serve. Providers may also have costs associated with the provision of services they do not normally provide. However, the impact should not be significant because this is a pilot serving only 200 individuals in a single county, and these are administrative costs that are considered

in setting reimbursement rates for the program. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Cindy Eilertson at (512) 438-3443 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-070, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorize the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§50.1. Introduction.

The §1915(c) Consolidated Waiver Program is a pilot program authorized by Texas Government Code §531.0219 for the purpose of testing the feasibility of combining five of the state's §1915(c) Medicaid waiver programs, including Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Medically Dependent Children Program (MDCP), Home and Community Based Services (HCS), and Deaf Blind Multiple Disabilities (DBMD). Section 1915(c) Medicaid waiver programs, including the Consolidated Waiver Program, provide home and community-based services to individuals who meet the criteria for institutional care. The pilot program is limited to serving 200 individuals in Bexar County or other areas as designated by the Texas Board of Human Services. Results of this pilot will be reported to the Texas Legislature in January 2004. These rules are not intended to repeal or replace any existing §1915(c) waiver rules statewide or in the pilot area for individuals not participating in the pilot.

§50.2. Definitions.

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

(1) Adult--For the purposes of this waiver, an individual, applicant, or participant who is 21 years of age and older unless indicated otherwise.

(2) Advance notice--A statement of the adverse action the state intends to take, provided in writing to the individual or the individual's authorized representative advising them of the right to a hearing, the method by which a hearing may be obtained, and that the individual may represent himself or use legal counsel, a relative, a friend, or other spokesperson. A participant is entitled to be notified 10 days before any reduction or termination of his services and to have the notification mailed 12 days before the date of reduction or termination.

(3) Applicant--An individual whose eligibility for waiver services in the Consolidated Waiver Program (CWP) is in the process of being determined. An individual becomes an applicant when he is next in line to fill a slot in the waiver program, a slot exists, DHS has approved the filling of the slot, DHS has notified the individual, and the individual has submitted the required application materials to DHS within a specified time frame.

(4) Case Management--Administrative case management provided by DHS as a function of the human services specialist, also referred to as case manager, to CWP participants.

(5) Child--For the purposes of this waiver, an individual, applicant, or participant who is under the age of 21, unless indicated otherwise.

(6) Individual Service Plan (ISP)--Plan of care agreed to by the Interdisciplinary Team (IDT) as being necessary to prevent institutionalization.

(7) Interdisciplinary Team (IDT)--At minimum, a group consisting of the participant (applicant) and his parent or guardian, if appropriate; DHS case manager; and home and community support services agency (HCSSA) representative. Other professionals may be included as appropriate, as well as anyone the participant or applicant chooses to invite to participate.

(8) Legal confinement--The result of an individual having been remanded by a judge to a particular setting other than their normal living arrangement for a specified period of time or to achieve a desired outcome. Some examples of settings for legal confinement include, but are not limited to, jails, prisons, hospitals, or institutions for mental disease, or rehabilitation facilities.

(9) Participant--An individual who has been determined eligible to receive waiver services, has enrolled in the Consolidated Waiver Program, and receives waiver services according to an ISP.

(10) Respite--A service that provides temporary relief from caregiving to the primary caregiver of a waiver participant during times when the participant's primary caregiver would normally provide uncompensated care.

(11) Suspension of services--A temporary cessation of certain specified waiver services without loss of program or Medicaid eligibility.

(12) Waiver program--A Medicaid program that provides home and community-based services as an alternative to institutional care in accordance with waiver provisions of the Social Security Act, §1915(c) (42 United States Code §1396n).

§50.4. Participant Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for Consolidated Waiver Program (CWP) services, an applicant or participant must:

(1) live in the pilot area;

(2) meet the financial eligibility criteria as defined in §50.6 of this title (relating to Financial Eligibility Criteria);

(3) not participate in other §1915(c) Medicaid waiver programs;

(4) have an individual service plan for home and community-based services developed by the interdisciplinary team (IDT). The individual service plan (ISP) for home and community-based services must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration as defined in §50.16 of this title (relating to Individual Service Plan);

(5) have an ISP for home and community-based services with an estimated annual cost that does not exceed:

(A) 125% of the average aggregate cost of intermediate care facilities for individuals with mental retardation (ICF-MR) Level

I and VIII for individuals who meet the ICF-MR level of care in accordance with §50.8(a)(2) of this title (relating to Individual Level-of-Care Criteria); or

(B) 150% of the individual's actual Texas Index for Level of Effort (TILE) payment rate for individuals with a nursing facility level-of- care in accordance with §50.8(a)(1) of this title (relating to Individual Level-of-Care Criteria);

(6) meet the level-of-care criteria as described in §50.8 of this title (relating to Individual Level-of-Care Criteria);

(7) have ongoing needs for waiver services whose projected costs, as indicated on the ISP, do not exceed the maximum service ceilings that follow:

(A) adaptive aids and medical supplies service category cannot exceed $10,000 per ISP plan year with DHS maintaining the right to exception;

(B) minor home modifications service category cannot exceed $7500 per individual per 7 years until age 21; then the minor home modifications service category cannot exceed $7500 (lifetime maximum) with a maximum of $300 for repairs per ISP year thereafter;

(C) respite care cannot exceed 45 days per individual per ISP year with DHS maintaining the right to exception; and

(D) dental care cannot exceed $1000 per ISP year;

(8) receive waiver services within 30 days after waiver eligibility is determined;

(9) meet the re-evaluation of institutional level-of-care criteria as performed annually by DHS using the same criteria as used initially;

(10) reside in his own home, in a licensed assisted living facility, in an adult foster care home, 24-hour residential habilitation or family surrogate services setting contracted with DHS to provide CWP services, or in a foster home that meets the requirements for foster homes in accordance with 40 TAC §700.1501 (concerning Foster and Adoptive Home Development). CWP services will not be delivered to residents of hospitals, nursing facilities, ICF-MR facilities, or unlicensed assisted living facilities unless the facility is exempt in accordance with §50.30 of this title (relating to 24-Hour Residential Habilitation) as pertains to provider requirements for 24- hour residential habilitation; and

(11) choose waiver services as an alternative to institutional care.

(b) A preadmission level of care assessment by DHS expires 120 calendar days from its issuance. For participants who are enrolled in the waiver program within 30 calendar days of discharge from an institution, the current level-of-care assessment may be used for enrollment and is valid until the expiration date on the approved ISP;

(c) Enrollment into this waiver program is limited to the number of participants approved by the Health Care Financing Administration (HCFA) and funded by the State of Texas.

(d) Enrollment in the pilot is restricted to 200 participants with the following slot allocation:

(1) 50 slots for adults who meet the requirements for nursing facility care from the Community Based Alternatives (CBA) interest list;

(2) 50 slots for children who meet the requirements for nursing facility care from the Medically Dependent Children Program (MDCP) interest list;

(3) 25 slots for adults with mental retardation who meet the requirements for ICF-MR care level I from the Home and Community Based Services (HCS) interest list;

(4) 25 slots for children with mental retardation who meet the requirements for ICF-MR care level I from the HCS interest list;

(5) 25 slots for adults with related conditions or developmental disabilities who meet the requirements for ICF-MR care level VIII from the CLASS interest list, with one of these slots specifically targeted to an individual who is deaf-blind with multiple disabilities from the Deaf Blind Multiple Disabilities (DBMD) interest list; and

(6) 25 slots for children with related conditions or developmental disabilities who meet the requirements for ICF-MR care level VIII from the CLASS interest list, with one of these slots specifically targeted to an individual who is deaf-blind with multiple disabilities from the DBMD interest list.

§50.6. Financial Eligibility Criteria.

An applicant or participant is financially eligible for the Consolidated Waiver Program (CWP) if he:

(1) is eligible for supplemental security income (SSI) benefits; or

(2) has been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law; or

(3) is under age 18 and resides with their parent, spouse, foster family, or other relative, and:

(A) is eligible for Medicaid benefits only if institutionalized;

(B) meets the SSI criteria for disability, as documented on the appropriate Texas Department of Human Services (DHS) forms;

(C) meets the SSI criteria for institutional deeming; and

(D) has income and resources that meet the requirements of the SSI Program; or

(4) is financially eligible for SSI benefits in the community except for income and meets the special institutional income limit for Medicaid benefits in Texas without regard to spousal income; or

(5) is under age 19 and financially the responsibility of the Texas Department of Protective and Regulatory Services (TDPRS), in whole or in part (not to exceed Level II foster care payment), and is being cared for in a family foster home licensed or certified and supervised by:

(A) TDPRS; or

(B) a licensed public or private nonprofit child-placing agency; or

(6) is a member of a family who receives full Medicaid benefits as a result of qualifying for Temporary Aid to Needy Families (TANF).

§50.8. Individual Level of Care Criteria.

(a) An applicant or participant must meet one of the following level- of-care (LOC) requirements for the Consolidated Waiver Program (CWP):

(1) the level-of-care criteria for medical necessity for nursing facility care in accordance with §19.2409 of this title (relating to

General Qualifications for At-Risk Assessments and Medical Necessity Determinations) and §19.2410 of this title (relating to Criteria Specific to a Medical Necessity Determination); or

(2) the level-of-care criteria for an intermediate care facility for the mentally retarded (ICF-MR) as determined by the Texas Department of Human Services (DHS) indicating that an individual has had a determination of mental retardation performed in accordance with Texas Health and Safety Code, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A; or has been diagnosed by a licensed physician as having a related condition as defined in 25 TAC §406.202 (concerning Definitions) as the rule was effective June 1, 2001, and as verified by a current level-of-care assessment that indicates one of the following is required:

(A) intermediate care facility for the mentally retarded with related conditions (ICF-MR/RC level VIII); or

(B) intermediate care facility for the mentally retarded (ICF-MR level I).

(b) Additional criteria related to level-of-care must be met as outlined in §50.10 of this title (relating to Additional Eligibility Criteria Related to Level of Care).

§50.10. Additional Eligibility Criteria Related to Level of Care.

(a) Individuals who meet the level-of-care criteria for medical necessity for nursing facility care in accordance with §50.8(a)(1) of this title (relating to Individual Level of Care Criteria) must also meet the following requirements:

(1) meet two or more of the criteria for nursing home risk, as specified in the Resident Assessment Instrument Home Care Assessment for Nursing Home Risk as revised in April 1996 in accordance with §48.6003(10)(A-G) of this title (relating to Client Eligibility Criteria Nursing Home Risk), except for the following individuals who are exempt from meeting the nursing home risk criteria if:

(A) transferring to the Consolidated Waiver Program (CWP) from a nursing facility or

(B) applying for or receiving §1915(c) waiver services before their 21st birthday; and

(2) if under 21 years of age:

(A) the participant must access services through the Comprehensive Care Program; and

(B) yearly Consolidated Waiver Program services are limited to 50% of the cost ceiling in §50.4(a)(5)(B) of this title (relating to Participant Eligibility Criteria).

(b) Individuals who meet the level-of-care criteria for an intermediate care facility for the mentally retarded with related conditions (ICF-MR/RC Level VIII) in accordance with §50.8(a)(2)(A) of this title (relating to Individual Level of Care Criteria) and who wish to fill slots in the program designated for people who are deaf- blind with multiple disabilities must provide medical documentation that verifies the existence of deaf blindness with multiple disabilities.

§50.12. Spousal Impoverishment Provisions.

(a) For waiver participants with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in the Social Security Act, §1924, and as specified in the Medicaid state plan and in §50.6 of this title (relating to Financial Eligibility Criteria).

(b) After the participant is determined to be eligible for Medicaid, a determination is made by the Texas Department of Human Services (DHS) regarding the amount of the recipient's income applicable to payment.

§50.14. Calculation of Participant Copayment.

(a) Participants who are determined to be financially eligible based on the special institutional income limit are required to share in the cost of waiver services. The method for determining the participant's copayment is described in subsection (b) of this section and documented on the Texas Department of Human Services (DHS) copayment worksheet for §1915(c) waiver programs. When calculating the copayment amount for participants with incomes that exceed the supplemental security income (SSI) federal benefit rate (FBR), DHS staff deduct the following:

(1) the cost of the participant's maintenance needs that must be equivalent to:

(A) the special institutional income limit for waiver recipients residing in their own homes; or

(B) the SSI FBR per month for individuals residing in foster homes, assisted living facilities, 24-hour residential habilitation, or family surrogate services settings;

(2) the special couple institutional income limit for waiver recipients for couples residing in adult foster care, assisted living facility, 24-hour residential habilitation, or family surrogate services settings that is equivalent to the FBR for an individual living in other community living arrangements for each member of the couple;

(3) the cost of the maintenance needs of the participant's spouse. This amount is equivalent to the amount of the SSI FBR, less the spouse's own income;

(4) the cost of the maintenance needs of the client's dependent children. This amount is equivalent to the Temporary Assistance to Needy Families (TANF) basic monthly grant for children or a spouse with children, using the recognizable needs amounts in the TANF budgetary allowances chart; and

(5) the costs incurred for medical or remedial care that are necessary but are not subject to payment by Medicare, Medicaid, or any other third party. These include the cost of health insurance premiums, deductibles, and coinsurance.

(b) The copayment amount is the participant's remaining income after all allowable expenses have been deducted. The copayment amount is applied only to the cost of home and community-based services that are funded through this waiver program and specified on the participant's individual service plan. The copayment must not exceed the cost of services actually delivered.

(c) Participants must pay the cost-sharing amount directly to the providers contracted to deliver authorized waiver services.

§50.16. Individual Service Plan (ISP).

(a) Waiver participants must have an individual service plan (ISP) for waiver services developed by the interdisciplinary team (IDT) as described in the waiver request.

(b) The IDT members must sign and date the ISP prior to implementation of the plan. The IDT members must certify in writing that the waiver services are necessary as an alternative to institutionalization and appropriate to meet the needs of the individual in the community.

(c) The Texas Department of Human Services (DHS) must approve and the IDT must update the ISP at least annually.

§50.18. Right to Appeal.

(a) Any applicant or participant who is denied waiver program services is entitled to a fair hearing conducted by the Texas Department of Human Services (DHS), according to the Health and Human Service Commission's Uniform Fair Hearing Rules in Title I, Chapter 357 of this code.

(b) A participant whose waiver services are reduced or denied must be given advance notice as defined in §50.2 of this title (relating to Definitions) and is entitled to a fair hearing as indicated in subsection (a) of this section.

§50.20. Provider Claims Payment.

(a) The agency providing Consolidated Waiver Program (CWP) services is reimbursed based on a fee-for-service reimbursement methodology. Units of service that have been provided must be documented and must be authorized on and delivered according to the individual service plan.

(b) Room and board are not included in the reimbursement rate to providers except in the case of respite care services. Respite care services must not exceed 45 calendar days per year per client.

(c) The agency providing CWP services is not entitled to payment if the Texas Department of Human Services (DHS) has not authorized client enrollment.

§50.22. Service Array for Home and Community Support Services Providers.

Home and community support services agencies (HCSSAs) must provide the following array of home and community support services in accordance with the individual service plan (ISP) through their own employees, subcontractors, or personal service agreements with qualified individuals:

(1) personal assistance services;

(2) in-home respite care;

(3) habilitation;

(4) adaptive aids;

(5) medical supplies;

(6) minor home modifications;

(7) transportation;

(8) nursing;

(9) physical therapy;

(10) occupational therapy;

(11) speech and language pathology;

(12) psychological services;

(13) social work;

(14) audiology services;

(15) behavioral communication services;

(16) orientation and mobility specialist services;

(17) dietary services;

(18) dental services;

(19) child support services;

(20) intervenor services; and

(21) 24-hour residential habilitation. Additional requirements for 24- hour residential habilitation providers are listed in §50.30 of this title (relating to 24-Hour Residential Habilitation).

§50.24. General Contracting.

(a) Home and community support services agencies (HCSSAs). To be qualified as a HCSSA provider to deliver Consolidated Waiver Program (CWP) services under contract with the Texas Department of Human Services (DHS), a HCSSA must:

(1) have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered;

(2) deliver CWP services through the licensed home health category of HCSSA licensure;

(3) have the county in the DHS contract for CWP services included in the identified service area on file at DHS with the licensed home health category of licensure;

(4) be authorized by the secretary of state to do business in the State of Texas, if an out-of-state corporation; and

(5) meet all requirements outlined in §48.6028 of this title (relating to Provisional Contracts - Home and Community Support Service Agencies). The reference to Community Based Alternatives (CBA) contract in §48.6028(k)(2) and (3) means Consolidated Waiver Program (CWP) contract for home and community support service agency providers that are contracted to deliver CWP services.

(b) Emergency Response Services (ERS). To contract with DHS to provide ERS under the CWP, a legal entity must:

(1) have a 24-hour, seven-day-a-week emergency response monitoring capability;

(2) be a public agency or a private not-for-profit or for-profit corporation that is either chartered with or authorized by the secretary of state to transact business within the State of Texas;

(3) be licensed by the Texas Commission on Private Security, unless exempt from its regulation. The provider agency must send a copy of its license and a copy of the annual renewal of its license to DHS; and

(4) have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered.

(c) Adult Foster Care (AFC). To contract with DHS to provide AFC services under the CWP, the provider must:

(1) be enrolled by DHS as a CWP adult foster care provider;

(2) be serving four or fewer participants;

(3) if serving four participants, be licensed by DHS as a Type C Assisted Living Facility as defined in §92.4(3) of this title (relating to Types of Assisted Living Facilities) of the DHS Licensing Standards for Assisted Living Facilities;

(4) agree to comply with all Adult Foster Care standards found in the Community Based Alternatives (CBA) Provider Manual, Section 4200, Adult Foster Care; and

(5) have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered.

(d) Assisted Living/Residential Care (AL/RC). To contract with DHS to provide assisted living/residential care services under the CWP, the facility must be licensed as an assisted living facility by DHS, type "A" or "B" as defined in Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities); and have a

separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered.

(e) Home-delivered Meals (HDM). To contract with DHS to provide home delivered meals under the CWP, the provider must:

(1) meet state, local health, and DHS requirements in the handling, transporting, serving and delivery of these meals;

(2) ensure that menus for standard diets are developed using Dietary Guidelines for Americans and are reviewed and approved by a registered dietitian;

(3) ensure that menus for therapeutic and modified diets are written by and prepared under the supervision of a registered dietitian;

(4) ensure that established procedures are in place to assure that each participant who requires a therapeutic and modified meal receives only the meal ordered for that individual; and

(5) have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered.

(f) Out-of-home respite. To contract with DHS to provide out-of-home respite services under the CWP, providers must have a separate contract with DHS to provide CWP services in the designated service area in which services are to be delivered and be one of the following:

(1) a licensed Intermediate Care Facility for Individuals with Mental Retardation (ICF-MR);

(2) a licensed hospital;

(3) a licensed nursing facility;

(4) one of the American Camping Association's accredited camps;

(5) a child care center that meets state requirements for respite;

(6) an assisted living facility in accordance with §50.24(d) of this title (relating to General Contracting); or

(7) an adult foster care facility meeting the requirements in §50.24(c) of this title (relating to General Contracting).

(g) Family surrogate services. To contract with DHS to provide family surrogate services (available only to CWP participants younger than 18 years of age), providers must meet all the requirements of the Texas Department of Protective and Regulatory Services (TDPRS) minimum standards for Independent Foster Family Homes pursuant to 40 TAC §720.231-720.248 (concerning Standards for Foster Family Homes). Additional provider requirements are outlined in §50.26 of this title (relating to Care Options in Family Surrogate Services).

(h) Independent advocacy. To contract with DHS to provide Independent Advocacy services, the provider:

(1) must be 21 years of age or older;

(2) must be chosen and recommended for contract enrollment by the participant;

(3) must be capable of performing advocacy functions as described in the waiver service description, which are specific to the participant's needs;

(4) cannot be providing any other CWP services to the participant; and

(5) cannot be the participant's parent, spouse, or first-degree relative.

(i) In addition to the requirements in subsections (a)-(h) of this section, all providers contracted to deliver CWP services must adhere to the rules found in Chapter 49 of this title (relating to Contracting for Community Care Services).

§50.26. Care Options in Family Surrogate Services.

(a) In addition to the requirements outlined in §50.24 of this title (relating to General Contracting), Family Surrogate Services providers must provide services:

(1) to no more than three children receiving similar services in the same residence at any one time;

(2) in a home in which the Family Surrogate Services provider has legal responsibility for the residence;

(3) in a home that is a typical residence within the community; and

(4) in a residence, neighborhood and community that meets the needs and choices of each individual and provides an environment that assures the health, safety, comfort and welfare of the individual.

(b) For any child who is a Consolidated Waiver Program (CWP) participant and is placed in a Family Surrogate Services setting, the Family Surrogate Services provider, along with the Interdisciplinary Team (IDT):

(1) justifies the reasons for serving a minor individual outside the natural or adoptive family home;

(2) makes every possible effort to return a minor individual being served outside his or her natural or adoptive family home to his or her family home as soon as possible; and

(3) documents permanency planning and appropriate habilitation goals in the Individual Service Plan (ISP);

(c) The Family Surrogate Services provider must provide care to the CWP participant as appropriate and authorized on the ISP, including:

(1) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(2) assistance with meal planning and preparation;

(3) securing and providing transportation;

(4) assistance with housekeeping;

(5) assistance with ambulation and mobility;

(6) reinforcement of counseling and therapy activities;

(7) assistance with medications and the performance of tasks delegated by a registered nurse;

(8) supervision of individuals' safety and security;

(9) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(10) habilitation, exclusive of day habilitation.

(d) The Family Surrogate Services provider:

(1) allows the individual's family members and friends access to the individual without arbitrary restrictions unless exceptional conditions are justified by the individual's IDT, documented in the ISP, and approved by the DHS human services specialist;

(2) ensures that a school-age individual receives educational services in a six-hour-per-day program five days a week provided by the local school district and that no individual receives educational services at a state school/state center educational setting, unless contraindications are documented with justification by the IDT;

(3) ensures that a pre-school-age individual receives an early childhood education with appropriate activities and services, including but not limited to small group and individual play with peers without disabilities, unless contraindications are documented with justification by the IDT; and

(4) provides individuals with age-appropriate activities that enhance self-esteem and maximize functional level.

§50.28. Housing Options in Assisted Living/Residential Care Services.

(a) An assisted living apartment setting is an apartment for single occupancy that is a private space with individual living and sleeping areas, a kitchen, bathroom, and adequate storage space. It must meet the following requirements:

(1) the apartment must have a minimum of 220 square feet, not including the bathroom;

(2) the kitchen must be equipped with a sink, refrigerator, a cooking appliance that can be removed or disconnected, adequate space for food preparation, and storage space for utensils and supplies. A cooking appliance may be a stove, microwave, or built-in surface unit;

(3) the bathroom must be a separate room in the individual's living area with a toilet, sink, and an accessible bath; and

(4) the bedroom must be single occupancy except when double occupancy is requested by the participant.

(b) A residential care apartment must be a double occupancy apartment with a connected bedroom, kitchen, and bathroom area that meets the following requirements:

(1) the apartment must provide a minimum of 350 square feet of space per participant. Indoor common areas used by waiver participants may be included in computing the minimum square footage. The portion of the common area allocated must not exceed usable square footage divided by the maximum number of individuals who have access to the common areas; and

(2) the kitchen must be equipped with a sink, refrigerator, a cooking appliance that can be removed or disconnected, adequate space for food preparation, and storage space for utensils and supplies. A cooking appliance may be a stove, microwave, or built-in surface unit.

(c) The assisted living/residential care apartment may be an efficiency or one- or two-bedroom apartment, and each apartment must have a private bath and cooking facilities.

(d) A residential care non-apartment setting is a licensed assisted living facility that has living units that do not meet either the definition of an assisted living apartment or a residential care apartment. Living units may be double occupancy. The facility must:

(1) be freestanding; and

(2) be licensed for 16 or fewer beds.

§50.30. 24-Hour Residential Habilitation.

To contract with the Texas Department of Human Services (DHS) to provide 24-hour residential habilitation (available only to Consolidated Waiver Program (CWP) participants 18 years of age and older), providers must:

(1) be licensed Home and Community Support Services Agencies (HCSSA) in accordance with Chapter 97 of this title (relating to Home and Community Support Services Agencies);

(2) have a contract with DHS to provide CWP services as a HCSSA, as specified in §50.24 of this title (relating to General Contracting).

(3) serve no more than four individuals receiving similar services at one location; and

(4) either:

(A) be licensed type "A" or "B" assisted living facilities; or

(B) meet current state assisted living licensure exemptions for this type of facility as outlined in Health and Safety Code, §247.004(4). This exemption requires the Texas Department of Mental Health and Mental Retardation (TDMHMR) to monitor these providers. TDMHMR will only monitor them if the provider is certified as a Home Community- Based Services (HCS) provider in good standing with TDMHMR and there is at least one person receiving HCS at the specific location. In order to meet this exemption, the provider must:

(i) have a contract with TDMHMR to provide HCS services; and

(ii) be in good standing with TDMHMR; and

(iii) have at least one person receiving HCS services on the premises.

§50.32. Maintenance of Interest Lists.

(a) The Consolidated Waiver Program (CWP) staff maintain a list of individuals, identified from existing §1915(c) waiver interest lists, who have expressed an interest in receiving §1915(c) waiver services. The list can be accessed by Texas Department of Human Services (DHS) staff and is organized by age, institutional base, and Mental Retardation/Developmental Disability status in order to fulfill the slot allocation as outlined in §50.4(d) of this title (relating to Participant Eligibility Criteria).

(b) The CWP staff assign an applicant's placement on the interest list chronologically by date of request for waiver services.

(c) The CWP staff remove an individual's name from the interest list only if it is documented that:

(1) a written request has been received from the individual or their representative to remove the individual's name from the interest list;

(2) the individual is deceased;

(3) the individual moved out of the designated pilot service area;

(4) the Texas Department of Human Services (DHS) has denied the applicant enrollment and the applicant or their representative has had an opportunity to exercise the applicant's right to appeal the decision according to §50.18 of this title (relating to Right to Appeal);

(5) the individual or the individual's representative has not responded to the CWP's notification of a program vacancy within 30 calendar days of the date of the CWP's written notification;

(6) the individual is receiving §1915(c) waiver services;

(7) the individual or the individual's representative chooses participation in another §1915(c) Medicaid waiver program instead of

the CWP when offered this choice in accordance with §50.4(a) of this title (relating to Participant Eligibility Criteria);

(8) the individual or the individual's representative refuses CWP services; or

(9) the applicant is certified as eligible for CWP services.

§50.34. Calculation of Room and Board Amounts.

(a) The Consolidated Waiver Program (CWP) does not reimburse providers for room and board, as indicated in §50.20 of this title (relating to Provider Claims Payment). Participants who receive CWP services other than respite in a residential setting of adult foster care, assisted living/residential care, 24-hour residential habilitation, or family surrogate services setting are required to pay their own room and board directly to the provider.

(b) To determine the room and board amounts for participants residing in adult foster care, 24-hour residential habilitation, family surrogate services, or assisted living facilities, Texas Department of Human Services (DHS) staff apply the following post-eligibility calculations:

(1) for individuals, the room and board amount is the supplemental security income (SSI) federal benefit rate (FBR) minus the personal needs allowance;

(2) for SSI couples, the room and board amount is the SSI FBR minus the personal needs allowance for an individual multiplied by 2; or

(3) for couples with incomes that exceed the SSI FBR for couples, the room and board amount is the couple's monthly income minus the personal needs allowance for an individual multiplied by 2. This amount cannot exceed double the room and board amount for an individual.

§50.36. Circumstances Requiring Denial of Services with Advance Notice.

(a) Advance notice is a statement of the action the state intends to take provided in writing to the individual or the individual's authorized representative. Advance notice advises them of the right to a hearing, the method by which a hearing may be obtained, and that the individual may represent himself, or use legal counsel, a relative, a friend, or other spokesperson. The Texas Department of Human Services (DHS) must mail a notice to the participant at least 12 days before the day of action.

(b) The Consolidated Waiver Program (CWP) provider agency must provide written documentation to the DHS case manager within two DHS workdays of the occurrence to support a recommendation for denial of CWP services, if one or more of the circumstances occurs:

(1) the participant leaves the pilot area for more than 90 days. DHS retains the authority to extend this time in extraordinary circumstances;

(2) the participant has been legally confined or has resided in an institutional setting for longer than 120 days. An institution includes legal confinement, an acute-care hospital, a state hospital, a rehabilitation hospital, a state school, a nursing home, or an intermediate-care facility for persons with mental retardation/related conditions (ICF-MR/RC). DHS will retain authority to extend this time in extraordinary circumstances;

(3) the participant is not financially eligible for Medicaid benefits;

(4) the participant does not meet the individual level-of-care criteria as set out in §50.8 of this title (relating to Individual Level-of-Care Criteria);

(5) the estimated cost of the CWP services necessary to adequately meet the needs of the participant exceeds the CWP cost ceiling;

(6) Home and community support services agencies (HCSSA) providers have refused to serve the participant on the basis of a reasonable expectation that the participant's medical and nursing needs cannot be met adequately in the participant's residence;

(7) the participant or someone in the participant's home refuses to comply with mandatory program requirements, including the determination of eligibility and/or the monitoring of service delivery;

(8) the participant fails to pay his room and board expenses or copayment in the adult foster care, assisted living/residential care, 24-hour residential habilitation, or family surrogate services setting;

(9) the participant fails to pay his qualified income trust copayment;

(10) the situation, participant, or someone in the participant's home is hazardous to the health and safety of the service provider, but there is no immediate threat to the health or safety of the provider; or

(11) the participant or someone in the participant's home openly uses illegal drugs or has illegal drugs readily available within sight of the service provider.

(c) The supporting documentation must include a description of the interventions that have occurred before the decision to recommend the denial of services. The documentation must justify the reasons for denial and describe the strategies, outcomes, and negotiations with the participant in accordance with the program policies outlined in CWP policy letters or the CWP provider manual.

(d) If the DHS case manager determines the documentation supports initiation of denial, the case manager provides written notification of denial to the participant and CWP provider agency within two DHS workdays of receipt of the provider's written recommendation for denial. The written notification must specify the reason for denial, along with the regulatory reference, the effective date of denial, and provide written notice of the right to appeal.

(e) If the participant appeals the notification of denial within 10 days of receiving written notification, the CWP provider agency continues CWP services until notification of the decision by the DHS hearing officer. The CWP provider agency must not reduce waiver services until the outcome of the appeal is known.

§50.38. Circumstances Requiring Denial of Services and Medicaid Eligibility Without Advance Notice.

(a) The Texas Department of Human Services (DHS) case manager is required to deny Consolidated Waiver Program (CWP) services without advance notice as defined in §50.2 of this title (relating to Definitions) and §50.18 of this title (relating to Right to Appeal), if one or more of the following occurs:

(1) the operating agency or its designee has factual information confirming the death of the participant;

(2) the operating agency or its designee receives a clearly written statement signed by the participant that:

(A) he no longer wishes services; or

(B) gives information that requires termination or reduction in services and indicates that he understands that this must be the result of supplying that information;

(3) the participant's whereabouts are unknown and the post office returns agency or designee mail directed to him or her indicating no forwarding address;

(4) the operating agency or its designee establishes the fact that the participant has been accepted for Medicaid services by another state; or

(5) a change in the level of medical care is prescribed by the participant's physician that indicates that due to the individual's change in condition, the participant is no longer appropriate for waiver services.

(b) The CWP provider agency must verbally notify the DHS case manager by the next DHS workday of the reason for denial and provide written documentation on the case information form within two DHS workdays of the verbal notification.

§50.40. Circumstances That May Result in Denial of Services and Require Advance Notice.

(a) If one or both circumstances specified in paragraphs (1)-(2) of this subsection occur, the Texas Department of Human Services (DHS) case manager may deny Consolidated Waiver Program (CWP) services. The CWP provider agency must provide written documentation to DHS to support the reason for the denial of services:

(1) The participant or someone in the participant's home has a substantial and demonstrated pattern of verbal abuse and harassment of service providers, not related to the participant's disability, that results in an inability to provide services to the participant;

(2) The participant or someone in the participant's home has a substantial and demonstrated pattern of discrimination against the service providers on the basis of race, color, national origin, age, sex, or disability that has not improved with appropriate intervention and that results in an inability to provide services to the participant.

(b) The case manager must mail advance written notification of denial of services to the participant with written notice of the right to appeal at least 12 days before the effective date of the denial. The notification must specify the reason for denial, along with the regulatory reference, and the effective date of denial.

(c) If the participant appeals the denial of services within 10 days of written notification, the CWP provider agency must continue CWP services until notification of the decision by the DHS hearing officer. The CWP provider agency must not reduce or suspend services until the outcome of the appeal is known.

§50.42. Crisis Intervention Requiring Immediate Suspension or Reduction of Services without Advance Notice.

(a) If the participant or someone in the participant's place of residence exhibits reckless behavior that may result in imminent danger to the health and safety of service providers, the Texas Department of Human Services (DHS) case manager and Consolidated Waiver Program (CWP) provider agency are required to make an immediate referral for appropriate crisis intervention services to the Texas Department of Protective and Regulatory Services (TDPRS) and/or the police and suspend CWP services. Suspension of services is defined in §50.2 of this title (relating to CWP Definitions).

(b) The DHS case manager must immediately provide written notice of temporary suspension to the participant and the right of appeal to a fair hearing must be explained to the participant. The written notification must specify the reason for denial or suspension, along with the regulatory reference, the effective date, and the right of appeal.

(c) The CWP provider agency must verbally inform the DHS case manager by the following DHS workday of the reason for the immediate suspension and provide written notification to DHS within two DHS workdays of verbal notification.

(d) The DHS case manager must make a face-to-face visit to initiate efforts to resolve the situation. If the temporary suspension of services constitutes a threat to the health and safety of the participant, community alternatives or placement in an institutional setting must be offered and facilitated by the case manager.

(e) With prior authorization by DHS, the CWP provider agency may continue providing services to assist in the resolution of the crisis. This service will be reimbursed as an administrative expense.

(f) If the crisis is not satisfactorily resolved, the DHS case manager provides notification of denial of services and offers the right of appeal. Services do not continue during the appeal process.

§50.44. Immediate Suspension Due to Temporary Institutional Stay.

(a) If the participant becomes legally confined or is admitted to an institution, the Consolidated Waiver Program (CWP) provider agency is required to immediately suspend CWP services. An institution includes an acute-care hospital, state hospital, rehabilitation hospital, state school, nursing home, or intermediate-care facility.

(b) The CWP provider agency must verbally notify the Texas Department of Human Services (DHS) case manager by the next DHS workday of the reason for suspension and provide written documentation on the case information form within two DHS workdays of the verbal notification.

§50.46. Sanctions.

(a) The Texas Department of Human Services (DHS) may sanction, up to and including contract termination, a Consolidated Waiver Program (CWP) provider agency that:

(1) has discontinued services to a participant for a reason other than what is allowed in §50.42 of this title (relating to Crisis Intervention Requiring Immediate Suspension or Reduction of Services without Advance Notice) and §50.44 of this title (relating to Immediate Suspension Due to Temporary Institutional Stay);

(2) uses the information cited in §50.42 to this title (relating to Crisis Intervention Requiring Immediate Suspension or Reduction of Services without Advance Notice) to discontinue services to a participant when the provider agency knew or should have known that the cited information did not apply to the participant; or

(3) is a Home and Community-based Services (HCS) provider who is being monitored by the Texas Department of Mental Health and Mental Retardation (TDMHMR) as indicated in §50.30 of this title (relating to 24-Hour Residential Habilitation) when DHS receives a recommendation from TDMHMR that the provider should be sanctioned or is being sanctioned by TDMHMR.

(b) Additional reasons for the CWP provider agency sanctions are located in §49.19 of this title (relating to Contracting for Community Care Services).

§50.48. Utilization Review.

(a) The Texas Department of Human Services (DHS) will review a proposed Individual Service Plan (ISP) and supporting documentation specified in §50.16 of this title (relating to Individual Service Plan for Waiver Services) upon receipt of a proposed ISP having a cost that exceeds 100% of:

(1) the Nursing Facility Texas Index for Level of Effort for individuals who meet the level-of-care criteria for medical necessity for

nursing facility care in accordance with §50.8(a)(1) of this title (relating to Individual Level of Care Criteria); or

(2) the estimated annualized average per capita cost for Intermediate Care Facility for Individuals with Mental Retardation (ICF/MR) services for individuals who meet the level-of-care criteria for an ICF/MR in accordance with §50.8(a)(2) of this title (relating to Individual Level of Care Criteria).

(b) DHS will review the proposed ISP to determine if the type and amount of CWP program services specified in the ISP are appropriate and supported by documentation specified in §50.16 of this title (relating to Individual Service Plan). After reviewing the proposed ISP and supporting documentation, DHS may request additional documentation. DHS will review any additional documentation submitted in accordance with its request. DHS may modify an ISP based on its review and approve the proposed ISP or send written notification that the proposed ISP has been approved with modifications.

(c) Subsections (a)-(b) of this section do not apply to ISPs that are being denied due to exceeding the cost ceiling as defined in §50.4(a)(5)(A)-(B) of this title (relating to Participant Eligibility Criteria).

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 April 9, 2001.

TRD-200102016
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 438-3108

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PART 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

CHAPTER 141. GENERAL PROVISIONS

40 TAC §§141.61, 141.62, 141.71

The Texas Commission on Alcohol and Drug Abuse proposes to adopt new §§141.61, 141.62 and 141.71 of Chapter 141, General Provisions.

The new sections contain information regarding the procurement of goods and services, procurement protest and eligibility requirements and employee obligations for training and education. Additionally, new §141.61 and §141.62 are proposed to comply with Texas Administrative Code, Title 1, Part 15, Chapter 391.

Jay Kimbrough, Executive Director, 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 the proposed sections.

Mr. Kimbrough has also determined that for each year of the first five years the new sections are in effect the anticipated public benefit will be streamlined purchasing processes under the authority delegated to the Health and Human Services Commission. There will be no effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Rules Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days after the date the proposal is published in the *Texas Register*

The new sections are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

The code affected by the proposed new sections is the Texas Health and Safety Code, Chapter 461.

§141.61. Procurement.

(a) The commission shall procure all goods and services in compliance with Texas Administrative Code, Title 1, Part 15, Chapter 391.

(1) Procurements will be classified as either formal or informal, based on the estimated dollar value of the transaction. Dollar thresholds will be established in commission policies and procedures, and the methodology will be reviewed annually.

(2) The commission may use a waiver process as defined in Texas Administrative Code, Title 1, Part 15, Chapter 391 for procurements below $100,000. The waiver process will be used because of the uniqueness of circumstances related to that procurement action. All waivers will be approved by the Executive Director.

(3) Procurement of prevention, intervention, treatment and related support services shall be conducted as described in Chapter 143 of this title (relating to Funding).

(b) The commission adopts by reference rules relating to Historically Underutilized Businesses published by the General Services Commission in the Texas Administrative Code, Title 1, Part 5, Chapter 3, Subchapter B.

(c) Procurement personnel, vendors, contractors, and suppliers will adhere to standards of conduct established in commission policies and procedures. These standards shall be at least as restrictive as standards of conduct for state officers and employees under applicable state and federal law.

§141.62. Procurement Protests.

(a) An applicant may request an informal review of a tentative purchase award if:

(1) the applicant was not selected in a competitive procurement;

(2) the procurement was a sole source or emergency procurement; or

(3) the procurement was made under an Executive Director waiver.

(b) The protest must be limited to issues relating to the applicant's qualifications, the suitability of the goods or services offered by the applicant, or alleged irregularities in the procurement process.

(c) A procurement review request must be submitted in writing and received by the commission no later than 30 calendar days after the date of the award, except for protests alleging irregularities involving

standards of conduct on the part of commission employees or selected vendors, which must be received by the commission no later than 90 calendar days after the date of the award.

(d) The protest process shall be carried out in accordance with commission policies and procedures, which include documentation standards.

(e) A procurement protest shall not be conducted as a contested case under the Administrative Procedure Act, Chapter 2001, Government Code.

(f) The commission shall not award a contract for a protested procurement until the commission has provided the protesting applicant with a written response. The commission may waive this requirement for exigent circumstances or when an award required by state or federal law must be completed by a particular date.

§141.71. Training and Education.

Commission policy establishes eligibility requirements and employee obligations for training and education supported by the agency.

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 April 4, 2001.

TRD-200101971
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: May 20, 2001
For further information, please call: (512) 349-6607

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists has withdrawn from consideration the proposed amendment to §463.11 which appeared in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12310).

Filed with the Office of the Secretary of State on April 5, 2001.

TRD-200101987
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 5, 2001
For further information, please call: (512) 305-7700

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER C. EASEMENT REQUESTS AND UNAUTHORIZED EASEMENT ACTIVITY

31 TAC §51.92

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repealed section, submitted by the Texas Parks and Wildlife Department has been automatically withdrawn. The section as proposed appeared in the October 6, 2000 issue of the *Texas Register* (25 TexReg 10120).

Filed with the Office of the Secretary of State on April 9, 2001.

TRD-200102022

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 604. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

40 TAC §604.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the State Pension Review Board has been automatically withdrawn. The new section as proposed appeared in the October 6, 2000 issue of the *Texas Register* (25 TexReg 10125).

Filed with the Office of the Secretary of State on April 9, 2001.

TRD-200102023

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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 22. EXAMINING BOARDS

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 adopts an amendment to §461.15, concerning Compliance with Act, Rules, Board Directives and Orders, without changes to the proposed text as published in the March 2, 2001, issue of the *Texas Register* (26 TexReg 1823).

The amendment is being adopted in order to make the rules agree with the Act and a recent attorney general opinion JC-321 regarding exempt facilities.

The adopted rule will make the rules easier for the general public and licensees to follow and understand.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 April 5, 2001.

TRD-200101980
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 25, 2001
Proposal publication date: March 2, 2001
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS

22 TAC §463.30

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.30, concerning Time Period for Appealing a Decision, without changes to the proposed text as published in the March 2, 2001, issue of the *Texas Register* (26 *TexReg* 1823).

The repeal is being adopted in order to agree with the proposed revisions to §470.8, concerning Informal Disposition of Complaints and Applications Disputes.

The repeal of this section will make the rules easier for licensees and the general public to follow and understand.

No comments were received regarding the adoption of the repeal.

This repeal is adopted 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.

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 April 5, 2001.

TRD-200101979
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 25, 2001
Proposal publication date: March 2, 2001
For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 38. CHRONICALLY ILL AND DISABLED CHILDREN'S SERVICES PROGRAM

25 TAC §§38.1 - 38.18

The Texas Department of Health (department) adopts the repeal of §§38.1 - 38.18 and new §§38.1 - 38.15 concerning the Children with Special Health Care Needs (CSHCN) Services Program. Sections 38.2 - 38.4, 38.6, 38.7, 38.10, and 38.12 - 38.14

are adopted with changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10632). The repeals and new §§38.1, 38.5, 38.8, 38.9, 38.11, and 38.15 are adopted without change, and therefore will not be republished.

The new rules cover purpose and common name; definitions; eligibility for client services; covered services; rights and responsibilities of parents/foster parents/guardian/managing conservator or the adult client; providers; ambulatory surgical care facilities; inpatient rehabilitation centers; cleft/craniofacial center teams; payment of services; contracts, written agreements, and donations; denial/modification/suspension/termination of eligibility and/or services; right of appeal; development and improvement of standards and services; and the Children with Special Health Care Needs (CSHCN) Advisory Committee.

The repeal of §§38.1-38.18 allows for the adoption of the new sections in *Texas Register* format. The new §§38.1-38.15 update and revise the CSHCN program to bring the program into compliance with state law; to improve program services for clients, families, providers, and contractors; to make the program administratively more efficient and effective; and to allow the program better to complement other programs serving children with special health care needs, including the Texas Medical Assistance (Medicaid) Program and the Children's Health Insurance Program (CHIP). Senate Bill 374, 76th Legislature, 1999, amended the Health and Safety Code, Chapter 35, requiring changes to the CSHCN program. The new sections implement Senate Bill 374.

Changes made to the proposed text result from comments received during the comment period. The details of the changes are described in the summary of comments that follow. Other minor changes were made due to staff comments to clarify the intent and improve the accuracy of the sections.

Comment: Concerning the chapter as a whole, several comments recommended that the financial eligibility criteria for the CSHCN program should be the same as those for the CHIP program. CSHCN who are eligible for CHIP also should be eligible for CSHCN program benefits not included in the CHIP benefit plan, and applicants to both programs should not be required to complete two similar, but separate application forms to document financial criteria.

Response: The department agrees that the CSHCN financial eligibility criteria and application forms for the CSHCN program should be as compatible as possible with those for the CHIP program. The CSHCN program and CHIP already set family income eligibility at 200% of the federal poverty level, employ comparable financial criteria, and serve similar client populations. Streamlining the CSHCN application process will improve delivery of program service to families.

The department amended the description of financial criteria in §38.3(2) as follows: "Financial criteria are determined annually and are based upon the same determinations of income, family size, and disregards as the CHIP. The CHIP net income is the family's gross income minus disregards. For applicants who are not eligible for CHIP, premiums paid for health insurance may be included as an additional disregard. All families must verify their income and disregards." The department has deleted proposed §38.3(2)(A) and §38.3(2)(B) and re-designated the remaining subparagraphs.

The department amended §38.3(7)(B) to require documentation for "income disregards" in the application process and added "criteria for" to clarify §38.3(8).

Comment: Concerning the chapter as a whole, one comment stated that if the CSHCN program initiates a denial, suspension, or termination of eligibility or a request for covered services, including family supports, inclusion of information by the program concerning the right to appeal and the time limits for the appeal along with notice of the program's adverse action is critical.

Response: The program agrees. Sections 38.3(6)(C), 38.4(b)(5)(B)(viii), and 38.13(b)(1) address these requirements. No changes were made as a result of this comment.

Comment: Concerning the chapter as a whole, several comments stated that home health agencies are now called "certified home and community support services" agencies.

Response: The department agrees and has amended §§38.4(b)(3)(Q), concerning program rehabilitation services; 38.6(c)(19), concerning providers; and 38.10(3)(K), concerning payment of services accordingly.

Comment: Concerning the chapter as a whole, one comment recommended that any limitations on eligibility or covered services based on budgetary limitations by type of service, by age, and/or by client's medical status be defined in rule and approved by the Board of Health.

Response: The department agrees that specific criteria for making budgetary limitations should be carefully defined at the time that such limitations are necessary. However, adoption of such criteria by rule could restrict significantly the program's flexibility and its ability to implement a timely response to changing needs. No changes were made as a result of this comment.

Comment: Concerning the chapter as a whole, one comment recommended that eligible clients should be moved from the waiting list to begin receiving program services solely on a first come, first served, basis without regard to the urgency or severity of the client's needs or condition.

Response: The department disagrees. During development of the rule, many stakeholders expressed concern that if the waiting list is administered according to a strict first-come, first-served policy, critically ill children might languish on the waiting list while other "less ill" children would be able to receive program benefits. Although the program must have flexibility to respond to individual crisis situations, the first-come, first-served principle is a primary consideration. No changes were made as a result of this comment.

Comment: Concerning the chapter as a whole, one comment stated that CSHCN clients who meet the Texas Department of Mental Health and Mental Retardation (TDMHMR) priority population program definition and are referred to TDMHMR for services through community mental health centers may find that the services are not available. The comment stated that CSHCN clients should not be denied services under those circumstances because the CSHCN program is the payer of last resort.

Response: Section 38.4(e)(3), concerning services authorization, and §38.6(a)(4), concerning general requirements for provider participation both state that the CSHCN program is the payer of last resort, when payment from another source, "is available to the client." If services from TDMHMR were available, CSHCN program rules would require that the client use the TDMHMR benefit first. However, if payment or services

were not available from TDMHMR, the rule would not require a CSHCN program denial. No changes were made as a result of this comment.

Comment: Concerning the chapter as a whole, one comment stated that pilot projects and wellness centers that use the "parents as case managers" model should always receive preferential consideration for funding.

Response: The department disagrees. Although the "parents as case managers" model should, in most instances, receive additional consideration for funding, the decision to award funding to pilot projects and/or wellness centers should be based upon a variety of qualifying considerations, depending upon identified needs. No changes were made as a result of this comment.

Comment: Concerning the chapter as a whole, one comment recommended adding rule language to specify funding categories and stating that CSHCN program resources and funding are for CSHCN and not for general public essential public health services.

Response: The department appreciates the intent of the comment, but disagrees that additional rule language is needed. As the United States Health and Human Services Title V designee, the CSHCN program must address health concerns for children with special health care needs globally, whether they are program eligible or not. Although the CSHCN program does not fund essential public health services for the general public, some public health services are available for CSHCN eligible clients in the context of comprehensive care. The program must retain flexibility to adjust its funding categories to meet the needs of CSHCN, and a specific funding formula required by rule might prove to be too rigid or detrimental to the program's goals and objectives. No changes were made as a result of this comment.

Comment: Concerning §38.2(6)(E)(iii), one comment recommended defining "bona fide resident" as "an adult residing in Texas, including an adult whose legal guardian is a bona fide resident or who is his/her own guardian".

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.2(10), one comment stated that use of the word "several" in the definition of chronic developmental condition to describe the number of major activities of daily living which need assistance, was ambiguous.

Response: The department agrees. Quantification of activities of daily living needing assistance does not improve the definition, and the words "several of" have been deleted.

Comment: Concerning§38.2(10), one comment recommended adding the word "mental" to the definition of a chronic developmental condition.

Response: The department agrees, and has amended the definition accordingly.

Comment: Concerning §38.2(11), several comments recommended amending the definition of "chronic physical condition" in order to enhance its effective application in program eligibility determinations.

Response: The department agrees. As amended, a "chronic physical condition" is defined as "a disease or disabling condition of the body, of a bodily tissue or of an organ which will last or is expected to last for at least 12 months; that results, or without treatment, may result in limits to one or more major life activities; and that requires health and related services of a type or amount beyond those required by children generally. Such a condition may exist with accompanying developmental, mental, behavioral, or emotional conditions, but is not solely a delay in intellectual development or solely a mental, behavioral and/or emotional condition."

Comment: Concerning §38.2(23)(D) and §38.2(23)(E), several comments stated that the definition of "eligibility date" should be amended to enhance their accuracy, flexibility with regard to obtaining Medicaid and CHIP eligibility determinations, and consistency with program procedure.

Response: The department agrees. In §38.2(23)(D), medical bills that meet the requirements for spenddown are defined to include those having a date of service (DOS) "within 12 months from the date of receipt of the application, or a DOS within 12 months after the financial eligibility denial date." Also in §38.2(23)(D), the reference to "parents" has been changed to "applicant, parent(s)," and the word "legally" has been deleted. The resulting sentence, "Medical bills for any member of the household for which the applicant, parent(s), guardian or managing conservator of the CSHCN applicant is responsible may be included," now describes those medical bills that may be considered in qualifying for spenddown eligibility.

In §38.2(23)(E), "citizenship status" and "insurance coverage" have been added as exclusions, so that clients "who are known to be ineligible for Medicaid and/or the CHIP due to age, citizenship status or insurance coverage," are not required to obtain an eligibility determination from Medicaid and/or the CHIP. These amendments permit quicker processing of an application when the CSHCN program has documentation indicating that an application to Medicaid and/or the CHIP would be denied if submitted.

Comment: Concerning §38.2(27), several comments recommended changing the definition of "family" to make it consistent with definitions used in the CHIP, adding that consistency among program definitions facilitates determinations of financial eligibility comparable with those of the CHIP as well as the exchange of eligibility information between the CHIP and the CSHCN program.

Response: The department agrees. The amended definition of "family" is comparable to definitions in the CHIP rules, is more complete, and does not alter the original program intent for the purpose of determining financial eligibility.

Comment: Concerning §38.2(31), several comments suggested that grandparent(s) be added to the definition of "household," which is used in the determination of whose medical bills may be counted to meet spenddown eligibility. Since multi-generational families are common, a parent of a child with special health care needs also frequently may be responsible for the medical care of an elder parent. Those expenses would impact the ability of the family to care for the special needs child.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.2(33), one comment recommended changing the last sentence of the definition of "natural home" to replace the verb "utilizes" with "may utilize," and to add "as they are available" at the end of the sentence.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.2(36), one comment suggested revision of the definition of "permanency planning" to delete the sentence, "Permanency planning is based upon the philosophy that all children belong in a family and need permanent family relationships," and make it a clause at the end of the first sentence, more completely describing the goal of permanency planning.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.2(48), several comments recommended that the terms "applicant" or "client" replace "child," where appropriate.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.3(2)(C), one comment recommended amending the section to describe more accurately the process for determining which medical bills are included when applicants use spenddown to qualify for eligibility.

Response: The department agrees. Section 38.3(2)(C) as proposed has been designated §38.3(2)(A) and now refers to "family income", rather than "household income" and "application date" rather than "eligibility date". The phrase "within 12 months after the financial eligibility denial date" has been added to describe more completely the period during which medical bills may qualify to meet spenddown requirements.

Comment: Concerning §38.3(2)(D)(i), several comments stated that requiring clients for whom program expenditures are expected to exceed $2,000 per year to apply to Medicaid is impractical and causes unnecessary delay in determining CSHCN program eligibility. The comments also recommended exempting certain applicants from the requirement to obtain a Medicaid eligibility determination based on "medical condition" and "citizenship status" as well as age.

Response: The department agrees. Section 38.3(2)(D)(i) as proposed has been designated §38.3(2)(B)(i) and amended to include the phrase "medical condition or citizenship status" concerning clients who are not required to apply to Medicaid. Also, "eligibility criteria" replaces "limitations" in the same sentence, because it is a more accurate term. Since noncitizens are not eligible for Medicaid, except when treated in a medical emergency, nonemergency claims for services provided to noncitizens will never be paid by Medicaid. Therefore, requiring noncitizens to apply for Medicaid only serves to delay a decision on CSHCN program eligibility and creates a hardship both for clients and for their providers.

Comment: Concerning §38.3(2)(D)(ii), several comments recommended that noncitizens also should be exempt from similar program requirements that clients whose expenses exceed $2,000 per year apply for the Supplemental Security Income (SSI) program

Response: The department disagrees. Section 38.3(2)(D)(ii) as proposed has been redesignated as §38.3(2)(B)(ii), which authorizes but does not mandate that the CSHCN program "require a client for whom actual or projected expenditures exceed $2,000 per year to apply for the SSI program." Applying and qualifying for the SSI program is a more complex and lengthier process than applying for Medicaid, incorporating both medical and financial eligibility criteria. The section as amended allows flexibility without imposing constraints which are unreasonable or applicable to only a limited number of clients. No changes were made as a result of this comment.

Comment: Concerning §38.3(3)(B) and §38.3(3)(C) as proposed, several comments recommended revision such that new applicants to the program as well as clients renewing their eligibility be required to apply for available insurance coverage, including enrollment in CHIP, that program intent be clarified concerning extension of coverage while other applications may be pending, and also that appropriate exemptions for applicants or clients who did not qualify for other insurance or CHIP by reasons of age or citizenship status be allowed.

Response: The department agrees and has amended the section accordingly. The term "applicant/client" replaces "family" to describe persons to whom §38.3(3)(B) applies. The phrase "or eligibility renewal" has been added following "at the time of application" to describe the time at which the requirement applies. The clause "the applicant/client that is not exempt by reason of age or citizenship status" has been added to specify the circumstances under which obtaining insurance or CHIP coverage is not required. "Within 60 days of the date of the notification" replaces "prior to receiving CSHCN eligibility" to change the deadline for compliance. In addition to the amended deadline, the following sentence has also been added: "With verification of an application to an available health insurance plan, the program may extend this deadline and/or continue CSHCN program coverage, pending receipt of an insurance eligibility determination." The CSHCN program intends to provide coverage for otherwise qualified applicants/clients during a reasonable period of time during which another application is pending.

Section 38.3(3)(B) as proposed also has been amended by creation of §38.3(3)(C), including other amendments. "Families" has been deleted, "may provide" replaces "will provide", and program "benefits" replaces "assistance" to more accurately describe the program policies for assisting families in determining possible eligibility for other insurance and providing program benefits during application, enrollment, and/or limited or excluded coverage periods for other insurance. A sentence has been added to clarify that a family supports services plan for an applicant may not be implemented until the determination of program eligibility, including eligibility for an available insurance plan, is complete. Because potential availability of other insurance affects the elements of a family supports plan, such plans will be implemented only after the availability of other coverage has been determined.

Section 38.3(3)(C) as proposed has been redesignated §38.3(3)(D).

Comment: Concerning §38.3(9)(B)(v), one comment suggested incorporating "limitations or" into the phrase "the client's functional needs" among the information to be collected to facilitate contacting clients on the waiting list.

Response: The department agrees, and has amended the section accordingly.

Comment: Concerning §38.3(9)(C), one comment recommended that the criteria for sequencing clients on the waiting lists should be described more accurately.

Response: The department agrees. The amended phrases state that waiting list order is based on "the date and time the client's application is processed and determined eligible." Thus, applications processed for more than one client on the same date will be sequenced according to the time of data entry as well as the date.

Comment: Concerning §38.3(9)(D), one comment recommended that the subparagraph be amended by adding the following sentences: "Clients must maintain eligibility to remain on any waiting list. A lapse of eligibility constitutes loss of position on any waiting list." The comment added that waiting lists must include eligible clients only, and that the recommended language clarifies the consequence for a client on a waiting list of losing eligibility.

Response: The department agrees, and has amended the section accordingly.

Comment: Concerning §38.4(b)(3), one comment recommended addition of the phrase "but is not limited to", which will increase administrative flexibility and prevent the need for excess detail in the listing.

Response: The department agrees, and has amended the section accordingly.

Comment: Concerning §38.4(b)(3), several comments recommended adding a sentence to clarify that certain program services will be available only after the necessary automation procedures and systems become operational. The comments added that as the program transitions from reimbursement of services based on a select list of diagnoses to one which reimburses for a more comprehensive array of services provided to any client meeting the definition of a child with special health care needs, some of the operational details of claims payment may not be finalized at the time the rules become effective.

Response: The department agrees, and has amended the final sentence in the paragraph to address this contingency.

Comment: Concerning §38.4(b)(3), one comment recommended adding laboratory and radiology studies as rehabilitation services available for medical assessment and treatment.

Response: The department agrees, and has amended §38.4(b)(3)(A) to add "medically necessary laboratory and radiology studies," which accurately reflects a long-standing program policy. In addition, the phrase "but is not limited to" has been added to §38.4(b)(3), which lists included rehabilitation services.

Comment: Concerning §38.4(b)(3)(B), one comment stated that mental health "practitioners" should be defined as professionals who are licensed to provide the services noted.

Response: The department agrees, and has amended the section to include the phrase "professionals licensed to provide mental/behavioral health services, including psychiatrists, licensed psychologists, licensed master level social worker-advanced clinical practitioners, licensed marriage and family therapists, and licensed professional counselors" in lieu of "practitioners."

Comment: Concerning §38.4(b)(3)(B), one comment stated that pharmacological management visits with a physician for the purpose of medication monitoring should be considered the same as any physician visit and not as a behavioral health benefit.

Response: The department agrees, and has amended the section accordingly.

Comment: Concerning §38.4(b)(3)(E)(i)(II), several comments suggested that the 72-hour limitation for inpatient psychiatric care frequently is not adequate to provide assessment and crisis stabilization.

Response: The department agrees and has amended the section to allow admission to an inpatient psychiatric facility for up to five days. However, because this benefit is available only for assessment and crisis stabilization, the department has included a requirement for prior authorization.

Comment: Concerning §38.4(b)(3)(E)(i)(II), several comments stated that the requirement for a child psychiatrist to admit children under age 12 is too restrictive. Child psychiatrists may not always be available, especially in some rural areas of the state, and retaining the requirement jeopardizes access for some clients.

Response: The department agrees and has amended the section to require that services be "medically necessary and furnished by a Medicaid psychiatric hospital/facility under the direction of a psychiatrist."

Comment: Concerning §38.4(b)(3)(E)(i)(II), one comment stated that psychologists do not have admitting privileges for inpatient psychiatric care.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.4(b)(3)(E)(v), one comment stated that although many children may receive renal dialysis at a facility, others may receive the service at home, and should do so through a renal dialysis facility authorized to bill the CSHCN program for services or supplies.

Response: The department agrees and has amended the section to authorize provision of services "through" rather than only "at" renal dialysis facilities.

Comment: Concerning §38.4(b)(3)(G), one comment suggested that the scope of the medication benefit should be more specifically defined by inclusion of the phrase "outpatient medications available through pharmacy providers."

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.4(b)(3)(H), one comment suggested that the nutrition services and nutritional products benefit should be more accurately defined by excluding "hyperalimentation/total parenteral nutrition (TPN)" and adding a new subparagraph describing program benefits for TPN.

Response: The department agrees and has amended §38.4(b)(3)(H) accordingly. The department has added a new §38.4(b)(3)(I) to describe the hyperalimentation/total parenteral nutrition benefit.

Comment: Concerning §38.4(b)(3)(H)(i), one comment recommended deleting the phrase "and provided by a dietitian licensed by the State of Texas and enrolled as a CSHCN program participating provider," because such detail is better addressed in policy rather than in rule.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.4(b)(3)(H)(ii), one comment recommended clarifying the scope of the benefit by adding the limitation "covered by the CSHCN program," because the program does not cover an unlimited number or type of nutritional products.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.4(b)(3)(K), one comment stated concern that medically necessary examinations or eyewear might be needed in excess of the limits specified in the rule, which allows no flexibility as proposed.

Response: The department agrees. Section 38.4(b)(3)(K) as proposed has been redesignated §38.4(b)(3)(L), and the phrase, "but are not limited to," has been added to the introductory description to allow reasonable flexibility in authorizing benefits based upon medical necessity.

Comment: Concerning proposed §38.4(b)(3)(P), several comments stated that the description of home health nursing services should be amended to clarify the requirement for medical necessity.

Response: The department agrees. Section 38.4(b)(3)(P) as proposed has been redesignated §38.4(b)(3)(Q) and has been rephrased.

Comment: Concerning §38.4(b)(5)(A)(i), several comments stated that a client should be fully eligible for the program in order to receive family supports services.

Response: The department agrees and has amended the section to specify that a client must be "fully eligible." This change is consistent with the department's response to other comments concerning the need to consider the availability of other insurance in developing a family support services plan.

Comment: Concerning §38.4(b)(5)(D)(iii)(I), one comment recommended that respite services in segregated settings, such as respite facilities and camps, specified as an allowable family support service, should be limited to 30 days per annual plan year.

Response: The department disagrees that further limits on respite services are appropriate in rule. The department supports the view of many stakeholders that families, together with program case management staff, should be allowed to determine the most appropriate uses of the $3600 per client per year available for family support services. No changes were made as a result of this comment.

Comment: Concerning §38.4(b)(5)(E), one comment recommended specifying that "home mortgage or rent expenses, or basic home maintenance and repair" are not allowable family support services.

Response: The department agrees and has amended the section accordingly. Data obtained from a CSHCN program pilot project providing family support services indicates some families do not understand that routine housing expenses may not be paid as a program benefit.

Comment: Concerning proposed §38.4(b)(5)(E)(x), one comment stated that the section should more clearly define the items or services which are unallowable if paid for or reimbursed by other programs to avoid duplicating services or reimbursement.

Response: The department agrees. The department intends to pay for only those family support services or to supplement payment for only those medical benefit items that cannot or should not be paid by another health insurance program. Section 38.4(b)(5)(E)(x) as proposed has been redesignated §38.4(b)(5)(E)(xi). The department has added the phrase "medical benefit" to specify which items or services are included, and has replaced "support" programs with "health insurance" programs.

Comment: Concerning §38.4(b)(5)(F), one comment recommended adding flexibility by changing "include" to "may include."

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.4(b)(5)(F)(v), one comment suggested that the rule should specify the length of time a client may remain in a nursing facility or an institutional setting before CSHCN family support services will be terminated. The comment suggested a time period of "up to 120 days per year" as an example.

Response: The department disagrees because the section as proposed allows program case management staff and families to use judgment before making the termination decision. The department does not intend to continue family support services when a client resides in an institutional setting. However, the section as proposed authorizes occasional placement of a client in an institution for respite without termination of family support services. No changes were made as a result of this comment.

Comment: Concerning §38.4(b)(6)(C), one comment recommended adding "guardian, or their designee" to the identification of people for whom the program may provide meals and lodging when a child must be transported for medical care. The current language states that only "parents" may receive these services.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.4(c)(4), several comments recommended deletion of "care for newborn infants" from the list of medically necessary services which are not covered.

Response: The department agrees and has amended the section accordingly. Although routine inpatient postnatal care for healthy newborn infants is not a program benefit, care for children with special health care needs is a program benefit, even when for newborns. The effective date for eligibility may be the child's date of birth, except for premature infants, and the effective date of eligibility for infants who are born prematurely is defined elsewhere.

Comment: Concerning proposed §38.4(c)(6), several comments recommended adding the qualifying phrase, "except when medically necessary for the specific treatment of a covered condition."

Response: The department agrees and has amended the section accordingly. Since items and services to prevent pregnancy are available through other programs, routine pregnancy prevention is not a CSHCN program benefit. Conversely, the standard of care for some conditions found in children with special health care needs requires pregnancy prevention because a variety of adverse outcomes may occur with pregnancy, including endangering the mother and/or the unborn child due to toxicities or abnormalities.

Comment: Concerning §38.4(d)(2), one comment suggested that the circumstances in which the program may discontinue, limit, or restrict services or types of services available to all clients should be clarified by specifically including those occasions when funding limitations dictate the adjustment of reimbursement for selected procedures and/or providers.

Response: The department agrees and has added "reimbursement for services" to the actions the program may take to remain within available funding and to provide effective and efficient program administration. The department also has added the following sentence to clarify its intent: "Discontinuation, limitation, or

restriction may apply to selected provider types or services and not to others."

Comment: Concerning §38.6(a)(6), several comments recommended clarification of the requirement that CSHCN program providers also must be Medicaid providers. Some CSHCN providers of covered services such as funeral homes and family support respite providers are not eligible to enroll in the Medicaid program, because no comparable Medicaid benefit exists.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.6(a)(6), several comments recommended clarification concerning the circumstances under which a provider excluded by Medicaid would be excluded by the CSHCN program. Some providers may provide CSHCN program services covered by Medicaid as well as services not covered by Medicaid. Since providers may be excluded from Medicaid for many reasons, the CSHCN program also should exclude the provider for all CSHCN program services.

Response: The department agrees and has amended the section to provide that any provider excluded by Medicaid for any reason shall be excluded by the CSHCN program.

Comment: Concerning §38.6(c)(4), one comment recommended that this provider category should be described with greater specificity.

Response: The department agrees and has amended the section as follows: "mental/behavioral health professionals, including psychiatrists, licensed psychologists, licensed master level social worker-advanced clinical practitioners, licensed marriage and family therapists, and licensed professional counselors."

Comment: Concerning §38.6(c)(15) and §38.6(c)(16), one comment suggested that these provider types should be defined more accurately.

Response: The department agrees and has amended both sections accordingly.

Comment: Concerning §38.10(1), one comment recommended inclusion of a statement which more specifically describes the circumstances under which a request to waive filing deadlines could be made, because providers must understand how the program interprets "good cause" and "exceptional circumstances."

Response: The department agrees and has added the following sentences to §38.10(1): "Waivers must be requested in writing, must identify the operational problem causing the inability to file on time, must state that the problem has been or is being resolved, and must acknowledge that the waiver request is made one-time only for the identified problem. All outstanding claims related to the identified problem must be considered at one time."

Comment: Concerning §38.10(2)(A), one comment recommended amending the section to clarify that the program will accept bills upon which the insurance company takes no action within a specified time period, as well as denied claims.

Response: The department agrees and has amended the section by adding "or nonresponse" to the title.

Comment: Concerning §38.10(2)(D), one comment recommended amending the section to clarify when the program will pay the client's deductible or co-insurance.

Response: The department agrees, and has added the phrase, "total amount paid to the provider does not exceed the maximum allowed for the covered service," in lieu of "deductible and/or coinsurance does not exceed the maximum allowable CSHCN program fee schedule in use at the time of service." This language more closely parallels that used to describe "covered services" in §38.4(b)(6)(E).

Comment: Concerning §38.10(3), one comment recommended replacing the phrase "maximum fee" with "amount." "Maximum fee" has a specific connotation for the department's claims processing contractor, and the term "amount" is not only more accurate, but also allows some flexibility in references to the various fee schedules.

Response: The department agrees and has replaced "maximum fee" with "amount" in §§38.10(3)(H), 38.10(3)(I)(i), 38.10(3)(I)(iii), 38.10(3)(L)(i), and 38.10(3)(L)(ii) as proposed. The department has also replaced "maximum fee" with "amount" in §§38.10(3)(M)(ii), 38.10(3)(Q), 38.10(3)(R), 38.10(3)(S), 38.10(3)(T), 38.10(3)(U), 38.10(3)(V)(i), 38.10(3)(V)(ii), 38.10(3)(W), 38.10(3)(X), and 38.10(3)(Y) as redesignated.

Comment: Concerning §38.10(3)(H), several comments suggested changing the description of expendable medical "supplies," because both "infusion supplies" and "other expendable medical supplies" are now reimbursed the same way, and it is no longer necessary to differentiate between them.

Response: The department agrees, and has changed the subparagraph heading to "expendable medical supplies." Proposed §38.10(3)(H)(i) and §38.10(3)(H)(ii) have been consolidated as §38.10(3)(H).

Comment: Concerning §38.10(3)(M), one comment recommended deleting seating clinics as independent sources of claims reimbursable by the program because seating clinics are now considered a part of the comprehensive service provided in the context of obtaining and fitting specialty seating systems as durable medical equipment.

Response: The department agrees and has deleted proposed §38.10(3)(M) and relettered §§38.10(3)(N) through 38.10(3)(Z) as §§38.10(3)(M) through 38.10(3)(Y).

Comment: Concerning proposed §38.10(3)(O), one comment recommended replacing "child" with "client," because adult clients as well as children may be eligible for insurance premium payment assistance.

Response: The department agrees and has amended the section accordingly. Proposed §38.10(3)(O) has been relettered as §38.10(3)(N).

Comment: Concerning §38.12(a)(1), one comment stated that the section should be amended to clarify that program eligibility or benefits may be denied, modified, suspended, or terminated if the applicant/client supplies intentionally erroneous information.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.12(a)(4), one comment stated that language should be added to specify that failure to provide a receipt for family support services payments made in advance of final purchase also constitutes cause for denial/modification/suspension/termination.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §38.13, one comment recommended that providers and clients should have the same length of time

to request a fair hearing. The comment noted that providers are allowed 30 days to respond, but clients are given 20 days.

Response: The department agrees that providers and clients should have the same length of time to request a fair hearing. The department's Fair Hearing Procedures at 25 Texas Administrative Code, §§1.51-1.55 authorize both providers and clients to request a fair hearing within 20 days of receipt of the department's notice. The department has amended §38.13(a)(2) concerning appeal procedures for providers to include the same provisions as are found in §38.13(b)(2) concerning appeal procedures for clients.

Comment: Concerning §38.14(1)(D), one comment suggested that periodic client and family surveys should be required, rather than allowed.

Response: The department agrees, and has amended the section accordingly.

The comments on the proposed rules received by the department during the comment period were submitted by Advocacy, Inc. in conjunction with the Texas Council for Developmental Disabilities, by staff from the Texas Department of Mental Health and Mental Retardation, and by department staff from the Program for Amplification for Children of Texas (PACT) and the Children with Special Health Care Needs Division. The comments generally were in favor of the rules; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

The repeals are adopted under Health and Safety Code, §§35.003, 35.004, 35.005, 35.006, 35.009, and 12.001 that provide the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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 April 6, 2001.

TRD-200102012
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General Counsel
Texas Department of Health
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Proposal publication date: October 27, 2000
For further information, please call: (512) 458-7236

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CHAPTER 38. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

25 TAC §§38.1 - 38.15

The new sections are adopted under Health and Safety Code, §§35.003, 35.004, 35.005, 35.006, 35.009, and 12.001 that provide the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§38.2. Definitions.

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

(1) Act--The Children with Special Health Care Needs Services Act, Health and Safety Code, Chapter 35.

(2) Advanced practice nurse--A registered nurse approved by the Texas Board of Nurse Examiners to practice as an advanced practice nurse, including but not limited to a nurse practitioner, nurse anesthetist, or clinical nurse specialist.

(3) Advisory committee--Those persons appointed by the Texas Board of Health to serve in an advisory capacity to the Children with Special Health Care Needs (CSHCN) Program staff.

(4) Applicant--A person making application for CSHCN program services, but who has not been determined eligible.

(5) Board--The Texas Board of Health.

(6) Bona fide resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care, with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent(s), managing conservator, or guardian of the child's person is a bona fide resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a bona fide resident; or

(iii) is an adult residing in Texas, including an adult whose legal guardian is a bona fide resident or who is his/her own guardian.

(7) Case management services--Case management services include:

(A) coordinating medical services, marshaling available assistance, serving as a liaison between the child and the child's family and care givers, sources of insurance coverage, and other services needed to improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

(8) Child with special health care needs--A person who:

(A) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(B) has cystic fibrosis, regardless of the person's age; and

(C) may have a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has behavioral or emotional condition without having an accompanying physical or developmental condition.

(9) CHIP--The Children's Health Insurance Program administered by the Texas Health and Human Services Commission under Title XXI of the Social Security Act.

(10) Chronic developmental condition--A disability manifested during the developmental period for a child with special health care needs which results in impaired intellectual functioning or deficiencies in essential skills, which is expected to continue for a period longer than one year, and which causes a person to need assistance in the major activities of daily living and/or in meeting personal care needs. For the purpose of this chapter, a chronic developmental condition must include physical manifestations and may not be solely a delay in intellectual, mental, behavioral and/or emotional development.

(11) Chronic physical condition--A disease or disabling condition of the body, of a bodily tissue or of an organ which will last or is expected to last for at least 12 months; that results, or without treatment, may result in limits to one or more major life activities; and that requires health and related services of a type or amount beyond those required by children generally. Such a condition may exist with accompanying developmental, mental, behavioral, or emotional conditions, but is not solely a delay in intellectual development or solely a mental, behavioral and/or emotional condition.

(12) Claim form--The CSHCN program-approved document for submitting the unpaid claim for processing and payment.

(13) Client--A person who meets all CSHCN program eligibility requirements and is enrolled for services to be provided.

(14) Commissioner--The Commissioner of Health.

(15) Co-insurance--A cost-sharing arrangement in which a covered person pays a specified percentage of the charge for a covered service. The covered person may be responsible for payment at the time the health care service is provided.

(16) Co-pay/Co-payment--A cost-sharing arrangement in which a client pays a specified charge for a specified service. The client is usually responsible for payment at the time the health care service is provided.

(17) CSHCN program--The services program for children with special health care needs described in §38.1 of this title (relating to Purpose and Common Name).

(18) Date of service (DOS)--The date a service is provided.

(19) Deductible--A cost-sharing arrangement in which a client is responsible for paying a specific amount annually for covered services before an insurance carrier or plan begins to pay for covered services.

(20) Dentist--An individual licensed by the State Board of Dental Examiners to practice dentistry in the State of Texas.

(21) Department--The Texas Department of Health.

(22) Diagnosis and evaluation services--The process of performing specialized examinations, tests, and/or procedures to determine whether a CSHCN program applicant has a chronic physical or developmental condition as determined by a physician or dentist participating in the CSHCN program.

(23) Eligibility date--The effective date of eligibility for the CSHCN program is 15 days prior to the date of receipt of the application, except in the following circumstances.

(A) The effective date of eligibility for newborns who are not born prematurely will be the date of birth. Newborn means a child 30 days old or younger.

(B) The effective date of eligibility following traumatic injury will be the day after the acute phase of treatment ends, but no earlier than 15 days prior to the date of receipt of the application.

(C) The effective date of eligibility for an applicant that is born prematurely will be the day after the applicant has been out of the hospital for 14 consecutive days, but no earlier than 15 days prior to the date of receipt of the application.

(D) The effective date of eligibility for applicants with spenddown is the day after the earliest DOS on which the cumulative bills are sufficient to meet the spenddown amount, but no earlier than 15 days prior to the date of receipt of the application. Only medical bills having a DOS within 12 months from the date of receipt of the application, or a DOS within 12 months after the financial eligibility denial date may be included to satisfy spenddown requirements. Medical bills for any member of the household for which the applicant, parent(s), guardian or managing conservator of the CSHCN applicant is responsible may be included. Medical bills used to meet spenddown cannot be paid by the CSHCN program.

(E) Excluding applications for clients who are known to be ineligible for Medicaid and/or the CHIP due to age, citizenship status or insurance coverage, all applications must include a determination of eligibility from Medicaid and/or the CHIP. If the CSHCN application is received without a Medicaid determination, a CHIP determination, or other data/documents needed to process the application, it will be considered incomplete. The applicant will be notified that the application is incomplete and given 60 days to submit the Medicaid determination, CHIP denial or enrollment, or other missing data/documents to CSHCN. If the application is made complete within the 60-day time limit, the client's eligibility effective date will be established as 15 days prior to the date the CSHCN application was first received. If the application is made complete more than 60 days after initial receipt, the eligibility effective date will be established as 15 days prior to the date the application was made complete.

(24) Emergency--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent person with average knowledge of health and medicine could reasonably expect that the absence of immediate medical care could result in:

(A) placing the person's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(25) Emotional or behavioral condition--Behavior which varies significantly from normal, that is chronic and does not quickly disappear, and that is unacceptable because of social or cultural expectations. Emotional or behavioral responses which are so different from those of the generally accepted, age-appropriate norms of people with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress, or classroom behavior. Examples include but are not limited to the following:

(A) an inability to build or maintain satisfactory age-appropriate interpersonal relationships with peers or adults;

(B) dangerously aggressive, self-destructive, severely withdrawn, or noncommunicative behaviors;

(C) a pervasive mood of unhappiness or depression; or

(D) evidence of excessive anxiety or fears.

(26) Facility--A hospital, psychiatric hospital, rehabilitation hospital or center, ambulatory surgical center, renal dialysis center, specialty center and/or outpatient clinic.

(27) Family--For the purpose of this chapter, the family includes the following persons who live in the same residence:

(A) the applicant;

(B) those related to the applicant as a parent, step-parent or spouse who have a legal responsibility to support the applicant or guardians/managing conservators who have a duty to provide food, shelter, education, and medical care for the applicant;

(C) children of the applicant; and

(D) children of a parent, step-parent or spouse.

(28) Family support services--Disability-related support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 *et seq.*), as amended, and permanency planning, as that term is defined by Government Code, §531.151.

(29) Financial independence--A person who currently files his or her own personal U.S. income tax return and is not claimed as a dependent by any other person on his or her U.S. income tax return.

(30) Health insurance/health benefits plan--A policy or plan, either individual, group, or government-sponsored, that an individual purchases or in which an individual participates that provides benefits when medical and/or dental costs are or would be incurred. Sources of health insurance include, but are not limited to, health insurance policies, health maintenance organizations, preferred provider organizations, employee health welfare plans, union health welfare plans, medical expense reimbursement plans, the Civilian Health and Medical Program of the Uniformed Services/Veterans Administration (CHAMPUS, CHAMPVA) or their successor plans, Medicaid, the Children's Health Insurance Program (CHIP), and Medicare. Benefits may be in any form, including, but not limited to, reimbursement based upon cost, cash payment based upon a schedule, or access without charge or at minimal charge to providers of medical and/or dental care. Benefits from a municipal or county hospital, joint municipal-county hospital, county hospital authority, hospital district, county indigent health care programs, or the facilities of a medical school shall not constitute health insurance for purposes of this chapter.

(31) Household--The living unit in which the applicant resides and which also may include one or more of the following:

(A) mother;

(B) father;

(C) stepparent;

(D) spouse;

(E) foster parent(s), managing conservator, or guardian;

(F) grandparent(s);

(G) sibling(s);

(H) stepbrother(s); or

(I) stepsister(s).

(32) Medical home--A source of ongoing routine health care in the community in which providers and families work as partners to meet the needs of children and families. The medical home assists in early identification of special health care needs; provides ongoing primary care; and coordinates with a broad range of other specialty, ancillary, and related services.

(33) Natural home--The home in which the eligible person lives that is either the residence of his/her parent(s), foster parent(s) or guardian(s), or extended family member(s), or the home in the community where the person has chosen to live, alone or with other persons. A natural home may utilize natural support systems such as family, friends, co-workers, and services available to the general population as they are available.

(34) Newborn screening--The process required by law through which newborn children are screened for congenital anomalies, including but not limited to hearing impairment, congenital adrenal hyperplasia, congenital hypothyroidism, galactosemia, phenylketonuria, and hemoglobinopathies, such as sickle cell disease.

(35) Other benefit--A benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services provided under the CSHCN program including benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sections 1395 *et seq.*, 1396 *et seq.*, and 1397aa *et seq.*), as amended;

(C) the Department of Veterans Affairs;

(D) the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS);

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law or under the authority of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(36) Permanency planning--A planning process undertaken for children with chronic illness or developmental disabilities who reside in institutions or are at risk of institutional placement, with the explicit goal of securing a permanent living arrangement that enhances the child's growth and development, which is based on the philosophy that all children belong in families and need permanent family relationships. Permanency planning is directed toward securing: a consistent, nurturing environment; an enduring, positive adult relationship(s); and a specific person who will be an advocate for the child throughout the child's life. Permanency planning provides supports to enable families to nurture their children; to reunite with their children when they have been placed outside the home; and to place their children in family environments.

(37) Person--An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(38) Physician--A person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(39) Prematurity/born prematurely--A child born at less than 36 weeks gestational age and hospitalized since birth.

(40) Program--The services program for Children with Special Health Care Needs (CSHCN).

(41) Provider--A person and/or facility as defined in §38.6 of this chapter that delivers services purchased by the CSHCN program for the purpose of implementing the Act.

(42) Rehabilitation services--The process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which includes:

(A) facility care, medical and dental care, and occupational, speech, and physical therapies;

(B) the provision of braces, orthotic and prosthetic devices, durable medical equipment, and other medical supplies; and

(C) other types of care specified by the board in this chapter.

(43) Respite care--A service provided on a short-term basis for the purpose of relief to the primary care giver in providing care to individuals with disabilities. Respite services can be provided in either in-home or out-of-home settings on a planned basis or in response to a crisis in the family where a temporary care giver is needed.

(44) Routine child care--Child care for a child who needs supervision while the parent/guardian is at work, in school, or in job training.

(45) Services--The care, activities, and supplies provided under the Act, including but not limited to medical care, dental care, facility care, medications, durable medical equipment, medical supplies, occupational, physical, and speech therapies, rehabilitation, and other care specified by program rules.

(46) Social service organization--For purposes of this chapter, a for-profit or nonprofit corporation or other entity, not including individual persons, that provides funds for travel, meal, lodging, and family supports expenses in advance to enable CSHCN clients to obtain program benefits.

(47) Specialty center--A facility and staff that meets the CSHCN program minimum standards established in this chapter and are designated for CSHCN program use as part of the comprehensive services for a specific medical condition.

(48) Spenddown--Financial eligibility achieved when household income exceeds 200% of the federal poverty level, if the applicant's family can document its responsibility for household medical bills that are equal to or greater than the amount in excess of the 200% level.

(49) State--The State of Texas.

(50) Supplemental Security Income Program (SSI)--Title XVI of the Social Security Act which provides for payments to individuals (including children under age 18) who are disabled and have limited income and resources.

(51) Support--The contribution of money or services necessary for a person's maintenance, including, but not limited to, food, clothing, shelter, transportation, and health care.

(52) Treatment plan--The plan of care for the client (time and treatment specific) as certified by and implemented under the supervision of a physician or other practitioner participating in the CSHCN program.

(53) United States Public Health Service (USPHS) price--The average manufacturer price for a drug in the preceding calendar quarter under Title XIX of the Social Security Act, reduced by the rebate percentage, as authorized by the Veterans Health Care Act of 1992 (P.L. 102-585, November 4, 1992).

(54) Usual and customary--The least of the following:

(A) the customary charge, based on the provider's own historical charges;

(B) the prevailing charge, based on the customary charges of all providers in the same geographical locality with the same medical specialty; or

(C) the provider's actual charge.

§38.3. Eligibility for Client Services.

In order to be determined eligible for CSHCN program services, applicants must meet the medical, financial, and other criteria in this section.

(1) Medical criteria. A physician or dentist must certify annually that the person meets the definition of "child with special health care needs" as defined by §38.2(8) of this title (relating to Definitions). The CSHCN program must receive a medical diagnosis code from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), or its successor, on each condition for statistical and referral purposes.

(2) Financial criteria. Financial criteria are determined annually and are based upon the same determinations of income, family size, and disregards as the CHIP. The CHIP net income is the family's gross income minus disregards. For applicants who are not eligible for CHIP, premiums paid for health insurance may be included as an additional disregard. All families must verify their income and disregards.

(A) The income level for eligibility is 200% of the federal poverty level. If the family income exceeds this level, and the applicant's family can document its responsibility for household medical bills incurred within 12 months of the application date or within 12 months after the financial eligibility denial date that are equal to or greater than the amount in excess of the 200% level, the applicant may be determined financially eligible for a period of 12 months beginning on the eligibility date.

(B) Applications to Medicaid and the Supplemental Security Income (SSI) programs.

(i) If actual or projected CSHCN program expenditures for a client exceed $2,000 per year, the client whose age, medical condition, or citizenship status do not exceed Medicaid eligibility criteria shall be required to apply for Medicaid, specifically including the Medically Needy program and, if eligible, to participate in those programs in order to remain eligible for further CSHCN program benefits. Within 60 days of the date of the notification letter, the client must submit to the CSHCN program documentation of an eligibility determination from Medicaid. During this 60-day period, CSHCN program coverage will continue. If the client does not provide documentation of an eligibility determination from Medicaid within the 60-day time limit, CSHCN program coverage shall be terminated and may not be reinstated unless an eligibility determination is received. The program may grant the client a 30-day extension to obtain the determination.

(ii) The CSHCN program also may require a client for whom actual or projected expenditures exceed $2,000 per year to apply for the SSI program, and, if eligible, to participate in that program in order to remain eligible for further CSHCN program benefits. Within 60 days of the date of the notification letter, the client must submit to the CSHCN program verification of a timely and complete

application to SSI. During this 60-day period, CSHCN program coverage will continue. If the client does not provide this verification within the 60-day time limit, CSHCN program coverage may be terminated. With verification of an application to SSI, the program may continue coverage, pending receipt of an SSI eligibility determination.

(3) Health insurance.

(A) All health insurance coverage insuring the applicant and/or family must be listed on the application. If insurance coverage was effective prior to CSHCN program eligibility, such coverage must be kept in force. Noncompliance with this requirement may result in the termination of CSHCN program benefits. If insurance cannot be maintained, the applicant or parent/guardian/managing conservator must, upon request, provide to the CSHCN program proof of:

(i) cancellation from the insurer or plan sponsor;

(ii) discontinuation of the insurance plan by the insurer or plan sponsor;

(iii) exhaustion of the right to continue group insurance coverage as provided under federal and/or state law; or

(iv) financial inability to continue paying the cost of any health insurance except CHIP.

(B) If the applicant/client does not have health insurance at the time of application or eligibility renewal, but coverage may be available, including coverage under CHIP, the applicant/client that is not exempt by reason of age or citizenship status must apply for coverage and receive an eligibility determination within 60 days of the date of notification. With verification of an application to an available health insurance plan, the program may extend this deadline and/or continue CSHCN program coverage, pending receipt of an insurance eligibility determination. If the applicant/client is eligible for CHIP, the applicant/client must be enrolled in CHIP. Such insurance must be kept in force as though it were effective prior to CSHCN program eligibility.

(C) The CSHCN program will assist in determining possible eligibility for insurance and may provide CSHCN program benefits during insurance application, enrollment, and/or limited or excluded coverage periods. A family support services plan for an applicant may not be implemented until the determination of program eligibility, including eligibility for available insurance plans is complete.

(D) Before canceling, terminating, or discontinuing existing health insurance, or electing not to enroll a client in available health insurance, including canceling, terminating, discontinuing, or not enrolling in CHIP, the parent/guardian/managing conservator must notify the CSHCN program 30 days prior to cancellation, termination, discontinuance, or end of the enrollment period. When the CSHCN program provides assistance in keeping or acquiring health insurance, the parent/guardian/managing conservator must maintain or enroll in the health insurance.

(4) Age. The applicant, other than one with cystic fibrosis, must be under the age of 21.

(5) Residency. The applicant must be a bona fide resident of the State of Texas.

(6) Application.

(A) Applications are available to anyone seeking assistance from the CSHCN program. To be considered by the CSHCN program, the application must be made on forms currently in use.

(B) A person is considered to be an applicant from the time that the CSHCN program receives an application. The CSHCN program will respond in writing regarding eligibility status within 30 working days after the completed application is received. Applications will be considered:

(i) denied, if eligibility requirements are not met;

(ii) incomplete, if required information that includes a CHIP, Medicaid, or SSI determination or any other data/document needed to process the application is not provided, or if an outdated form is submitted; or

(iii) approved, if all criteria are met.

(C) The denial of any application submitted to the CSHCN program shall be in writing and shall include the reason(s) for such denial. The applicant has the right of administrative review and a fair hearing as set out in §38.13 of this title (relating to Right of Appeal).

(D) Any person has the right to reapply for CSHCN program coverage at any time or whenever the person's situation or condition changes.

(7) Verification of information.

(A) The CSHCN program shall make the final determination on a person's eligibility using the information provided with the application. The CSHCN program may request verification of any information provided by the applicant to establish eligibility.

(B) The CSHCN program shall verify selected information on the application. Documentation of date of birth, residency, income, and income disregards shall be required. The CSHCN program shall notify the applicant/family in writing when specific documentation is required. It is the applicant's/family's responsibility to provide the required information.

(C) Those clients financially eligible for CHIP, Medicaid, or other programs with similar income guidelines who also meet the age and residency requirements of the CSHCN program will be considered financially eligible. The client/family must notify the CSHCN program, if the client is no longer eligible for such programs.

(8) Determination of continuing eligibility. Medical and financial criteria for eligibility must be re-established at least annually.

(9) CSHCN program waiting lists.

(A) If budgetary limitations exist, waiting lists for access to CSHCN program services may be established. Clients shall be removed from waiting lists based on the dates in subparagraph (C) of this paragraph. However, clients may also be removed from waiting lists on the basis of urgent need or the severity of illness.

(B) In order to facilitate contacting clients on the waiting list, the CSHCN program will collect information including, but not limited to the following:

(i) the client's name, address, and telephone number;

(ii) the name, address, and telephone number of a contact person other than the client;

(iii) the date of the client's earliest application for services;

(iv) the date on which the client became eligible for services;

(v) the client's functional limitations or needs;

(vi) the range of services needed by the client; and

(vii) a date on which the client is scheduled for re-assessment.

(C) Waiting lists are maintained separately for rehabilitation services and family support services, and an eligible client may receive access to either without receiving access to both.

(i) A statewide waiting list for rehabilitation services is maintained in the CSHCN program central office, based on the date and time the client's application is processed and determined eligible for program services.

(ii) Waiting lists for family support services are maintained in each of the department's public health regions or other designated subdivisions of the state based upon:

(I) the date and time the client's application is processed and determined eligible for program services; or

(II) in the case of an eligible client, the date the client requests family support services.

(D) Waiting lists are maintained continually from one fiscal year to the next. Clients must maintain eligibility to remain on any waiting list. A lapse of eligibility constitutes loss of position on any waiting list.

(E) Clients on waiting lists also shall be referred to other possible sources of services, and shall be contacted periodically to re-confirm their need for CSHCN program services.

§38.4. Covered Services.

(a) Introduction. The CSHCN program provides no direct medical services, but reimburses for services rendered by CSHCN program participating providers and/or contractors. Clients must receive services as close to their home communities as possible unless CSHCN program contracts or policies require treatment at specific facilities or specialty centers and/or the clients' conditions require specific specialty care.

(b) Types of service.

(1) Early identification. The CSHCN program may conduct outreach activities to identify children for program enrollment, increase their access to care, and help them use services appropriately. Outreach services may include, but are not limited to:

(A) CSHCN program promotion to the general public, or targeted to potential clients and providers;

(B) development and distribution of educational materials to assist applicants and clients in the access and use of program services;

(C) development and distribution of population-based educational materials concerning children with special health care needs;

(D) integration with programs which screen for or provide treatment of newborn congenital anomalies and/or other specialty care; and

(E) links with community, regional, and/or school-based clinics to identify, assess needs, and provide appropriate resources for children with special health care needs.

(2) Diagnosis and evaluation services. May be covered for the purpose of determining whether a financially eligible child meets the CSHCN program definition of a child with special health care needs. Only CSHCN program participating providers may be reimbursed for diagnosis and evaluation services.

(3) Rehabilitation services. As defined by the Act, rehabilitation services means a process of physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury, and includes, but is not limited to: facility care, medical and dental care, and occupational, speech, and physical therapy; the provision of braces, orthotic and prosthetic devices, medications, durable medical equipment, and other medical supplies; and other types of care as specified in this chapter. To be eligible for CSHCN program reimbursement, treatment must be for a client with a chronic physical or developmental condition as specified in §38.3(1) of this title (relating to Eligibility for Client Services), and must have been prescribed by a provider in compliance with all applicable laws and regulations of the State of Texas. Services may be limited, and the availability of certain services described in the following subparagraphs is contingent upon implementation of automation procedures and systems.

(A) Medical assessment and treatment. Medical assessment and treatment services, including medically necessary laboratory and radiology studies, must be provided by physicians and other practitioners licensed by the State of Texas, enrolled as participating providers in the CSHCN program, and within the scope of their respective licenses or registrations.

(B) Outpatient mental health services. Outpatient mental health services are limited to no more than 30 encounters by all professionals licensed to provide mental/behavioral health services, including psychiatrists, psychologists, licensed master social worker-advanced clinical practitioners, licensed marriage and family therapists, and licensed professional counselors, per eligible client per calendar year. Coverage includes, but is not limited to psychological or neuropsychological testing, psychotherapy, psychoanalysis, counseling, and narcosynthesis.

(C) Preventive and therapeutic dental services (including oral/maxillofacial surgery). Preventive and therapeutic dental services must be provided by licensed dentists enrolled to participate in the CSHCN program. Coverage for therapeutic dental services, including prosthetics and oral/maxillofacial surgery, follows the Texas Medicaid program guidelines. Orthodontic care may be provided only for CSHCN eligible clients with diagnoses of cleft/craniofacial abnormalities and/or late effects of fractures of the skull and face bones.

(D) Podiatric services. Podiatric services must be provided by licensed podiatrists enrolled to participate in the CSHCN program. Coverage is limited to the medically necessary treatment of foot and ankle conditions and follows the Texas Medicaid program guidelines. Supportive devices, such as molds, inlays, shoes, or supports, must comply with coverage limitations for foot orthoses.

(E) Treatment in CSHCN program participating facilities. Non-emergency hospital care must be provided in facilities which are enrolled as CSHCN program participating providers. The length of stay is limited according to diagnosis, procedures required, and the client's condition.

(i) Inpatient hospital care and inpatient psychiatric care.

(I) Inpatient hospital care. Coverage is limited to medically necessary care and excludes the following:

(-a-) maternity care, newborn care, infertility treatment, or other reproductive services unless directly related to a covered chronic physical or developmental condition;

(-b-) personal comfort items, such as television or newspaper delivery; and

(-c-) private duty nursing/attendant care.

(II) Inpatient psychiatric care. Coverage is limited to inpatient assessment and crisis stabilization and is to be followed by referral to the Texas Department of Mental Health and Mental Retardation programs or other appropriate mental health program. Admission must be prior authorized and is limited to five days. Services include those medically necessary and furnished by a Medicaid psychiatric hospital/facility under the direction of a psychiatrist.

(ii) Inpatient rehabilitation care. Medically necessary inpatient rehabilitation care is limited to an initial admission not to exceed 30 days, based on the functional status and potential of the client as certified by a physician participating in the CSHCN program. Services beyond the initial 30 days may be approved by the CSHCN program based upon the client's medical condition, plan of treatment, and progress. Payment for inpatient rehabilitation care is limited to 90 days during a calendar year.

(iii) Ambulatory surgical care. Ambulatory surgical care is limited to the medically necessary treatment of a client and may be performed only in CSHCN program approved ambulatory surgical centers as defined in §38.7 of this title (relating to Ambulatory Surgical Care Facilities).

(iv) Emergency care. Care including, but not limited to hospital emergency departments, ancillary, and physician services, is limited to medical conditions manifested by acute symptoms of sufficient severity (including severe pain) such that a prudent person with average knowledge of health and medicine could reasonably expect that the absence of immediate medical care could result in placing the client's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. If a client is admitted to a non-participating CSHCN program hospital provider following care in that provider's emergency room, and the admitting facility declines to enroll or does not qualify as a CSHCN program provider, the client must be discharged or transferred to a participating CSHCN program provider as soon as the client's medical condition permits. All providers must enroll in order to receive reimbursement.

(v) Renal dialysis facility. Renal dialysis is limited to the treatment of acute renal disease or chronic (end stage) renal disease through a renal dialysis facility and includes, but is not limited to dialysis, laboratory services, drugs and supplies, declotting shunts, on-site physician services, and appropriate access surgery.

(F) Orthotic and prosthetic devices. Orthotic and prosthetic devices must be prescribed by a practitioner licensed to do so and supplied by an orthotist or prosthetist licensed by the State of Texas.

(G) Medications. Outpatient medications available through pharmacy providers, including over-the-counter products, must be prescribed by practitioners licensed to do so. Payment shall be made only after delivery of the medications.

(H) Nutrition services and nutritional products, excluding hyperalimentation/total parenteral nutrition (TPN).

(i) Nutrition services. Nutrition services must be prescribed by a practitioner licensed to do so .

(ii) Nutritional products. Nutritional products, including over-the-counter products, are limited to those covered by the CSHCN program and prescribed by a practitioner licensed to do so, for the treatment of an identified metabolic disorder or other medical condition and serving as a medically necessary therapeutic agent for life and health, or when part or all nutritional intake is through a tube.

(I) Hyperalimentation/Total Parenteral Nutrition (TPN). A package of medically necessary services provided on a daily basis when oral intake cannot maintain adequate nutrition. TPN services include, but are not limited to solutions and additives, supplies and equipment, customary and routine laboratory work, enteral supplies, and nursing visits. Covered services must be reasonable, medically necessary, appropriate and prescribed by a practitioner licensed to do so.

(J) Durable medical equipment. All equipment must be prescribed by a practitioner licensed to do so. Some equipment may be supplied on a contract basis, and therefore, shall be ordered from a specific supplier.

(K) Medical supplies. Supplies must be medically necessary for the treatment of an eligible client.

(L) Professional vision services. Vision services medically necessary for the treatment of a client include, but are not limited to:

(i) medically necessary eye examinations with refraction for diagnoses of refractive error, aphakia, diseases of the eye, or eye surgery;

(ii) one eye examination with refraction for the purpose of obtaining eyewear during the state fiscal year; and

(iii) one pair of non-prosthetic eye wear per year prescribed by a practitioner licensed to do so.

(M) Speech-language pathology/audiology. Speech-language pathology and audiology services medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a speech-language pathologist or audiologist licensed by the State of Texas. CSHCN program coverage of speech-language pathology and audiology services may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the client is eligible for services for which a school district is legally responsible.

(N) Audiological testing, hearing exams, and amplification devices. Services for clients under 21 years of age are coordinated through the Program for Amplification for Children of Texas (PACT). For clients 21 years of age and older and those ineligible for the PACT, covered services are the same as those available through the PACT.

(O) Occupational and physical therapy. Occupational and physical therapy medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a therapist licensed by the State of Texas. CSHCN program coverage of physical and occupational therapy may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the child is eligible for services for which a school district is legally responsible.

(P) Certified respiratory care practitioner services. Respiratory therapy medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a certified respiratory care practitioner. CSHCN program coverage of respiratory therapy may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the child is eligible for services for which a school district is legally responsible.

(Q) Home health nursing services. Home health nursing services must be medically necessary, be prescribed by a physician, and be provided only by a licensed and certified home and community support services agency participating in the CSHCN program. Home health nursing services are limited to 200 hours per client per year. Up to 200 additional hours of service per client per year may be approved with documented justification of need and cost effectiveness.

(R) Hospice care. Hospice care includes palliative care for clients with a presumed life expectancy of six months or less during the last weeks and months before death. Services apply to care for the hospice terminal diagnosis condition or illnesses. Treatment for conditions unrelated to the terminal condition or illnesses is unaffected. Hospice care must be prescribed by a practitioner licensed to do so who also is enrolled as a CSHCN provider.

(4) Care management.

(A) Medical home. Each CSHCN program client should receive care in the context of a medical home.

(i) Comprehensive coordinated health care of infants, children, and adolescents should encompass the following services:

(I) provision of preventive care, including but not limited to, immunizations; growth and development assessments; appropriate screening health care supervision; client and parental counseling about health care supervision; and client and parental counseling about health and psychological issues;

(II) assurance of ambulatory and inpatient care for acute illness, 24 hours a day, seven days a week (including after hours and weekends);

(III) provision of care over an extended period of time to enhance continuity;

(IV) identification of the need for sub-specialty consultation and referrals, provision of medical information about the client to the consultant, evaluation of the consultant's recommendations, implementation of recommendations that are indicated and appropriate, and interpretation of the consultant's recommendations for the family;

(V) interaction with school and community agencies to assure that the special health needs of the client are addressed; and

(VI) maintenance of a central record and data base containing all pertinent medical information about the client, including information about hospitalizations.

(ii) The CSHCN program may require periodic reports from the medical home.

(B) Case management. Case management services may be made available through public health regional offices or other resources to assist families in obtaining adequate and appropriate support services related to the client's medical condition, such as referral, coordination, and follow-up.

(5) Family support services. Family support services include disability-related support, resources, or other assistance and may be provided to the family of a client with special health care needs.

(A) Eligibility. A client is eligible to receive family support services if:

(i) the client is fully eligible for the CSHCN program;

(ii) there is no waiting list for family support services;

(iii) the client is not receiving services from a Medicaid home and community-based waiver program, and the requested service does not duplicate services received from other family support programs, such as the In-Home and Family Support program at the Texas Department of Human Services or the Texas Department of Mental Health and Mental Retardation; and

(iv) the client's family collaborates with the assigned case manager to identify and pursue other sources of support and to develop a family support services plan.

(B) Processing and evaluation of requests.

(i) Families indicate their need for family support services in writing at the time of their application or renewal for the CSHCN program, or at any time during their eligibility period for the CSHCN program.

(ii) In each public health region or other designated subdivision of the state, requests for family support services are processed in chronological order by the date of the request.

(iii) All requests for family support services must be approved by the CSHCN program prior to delivery.

(iv) Some services or items may require a written statement from a physician, physical therapist, occupational therapist, and/or other healthcare professional to establish the disability-related nature of the request.

(v) Some services or items may require written bids.

(vi) Persons requesting assistance are responsible for collaborating with their case managers as necessary so that an accurate determination can be made in a timely manner.

(vii) Families shall be notified in writing of the outcome of their requests.

(viii) Families have the right to appeal a decision as described in §38.13 of this title (relating to Right of Appeal).

(C) Service plan and cost allowances.

(i) After a client has been determined eligible and family support assistance becomes available, the case manager and the client/family develop a written plan.

(ii) The CSHCN program may establish annual cost allowances based upon the client's/family's level of assessed need for family support services, not to exceed:

(I) one-time assistance of up to $3,600 per eligible client for minor home remodeling; and

(II) assistance of up to $3,600 per year per eligible client to purchase other allowable services. This limit may increase to no more than $7,200 for the purchase of vehicle lifts and modifications;

(iii) Service plan cost allowances may be prorated for plans that cover less than one year.

(iv) Disbursement of assistance:

(I) may be in a lump sum or on a periodic basis;

(II) may be made to the family or to the vendor; and

(III) may be reduced by the amount of a cost-sharing requirement, if applicable.

(v) Reimbursement rates for providers are established by the client/family and the selected provider in collaboration with the case manager.

(vi) The annual service plan may be amended at any time, but will be reevaluated by the client/family and case manager at

least annually to coincide with the client's reapplication for the CSHCN program.

(D) Allowable services.

(i) Family support services for CSHCN clients and their families include those allowable services and items that:

(I) are above and beyond the scope of usual needs (i.e., basic clothing, food, shelter, medical care, and education);

(II) are necessitated by the client's medical condition or disability; and

(III) directly support the client's living in his/her natural home and participating in family life and community activities.

(ii) Family support services may not be used to supplant services available through other public or private programs, but may be used to supplement services provided by other programs.

(iii) Allowable services include:

(I) respite care;

(II) specialized child care costs for a client in excess of the prevailing rate for routine child care, including specialized training for the child care provider;

(III) counseling or training programs or services that assist the client/family, including parent or family stipends to attend education or training conferences;

(IV) minor home remodeling, limited to the purchase and installation of ramps, widening of doorways, the modification of bathroom facilities, kitchen modifications, and other modifications to increase accessibility and safety;

(V) vehicle lifts and modifications consistent with those available through the Texas Rehabilitation Commission, limited to lifts, wheelchair tie-downs, occupant restraints, accessories/modifications such as raising roofs or doors if necessary for lift installation or usage, hand controls, and repairs of covered modifications not related to inappropriate handling or misuse of equipment and not covered by other resources;

(VI) specialized equipment, including porch/stair lifts, air purification systems or air conditioners, positioning equipment, bath aids, supplies prescribed by licensed practitioners that are not covered through other systems, and other non-medical disability-related equipment that assists with family activities, promotes the client's self-reliance, or otherwise supports the family;

(VII) other disability-related services that support permanency planning, independence, and/or participation in family life and integrated/inclusive community activities.

(E) Unallowable services. Family support funds may not be used to provide those services that do not relate to the client's disability and do not directly support the client's living in his/her natural home and participating in family life and integrated/inclusive community activities. Examples of unallowable services include, but are not limited to:

(i) items for which a less expensive alternative of comparable quality is available;

(ii) purchase or lease of vehicles, or vehicle maintenance and repair;

(iii) home mortgage or rent expenses, or basic home maintenance and repair;

(iv) income taxes;

(v) medical services;

(vi) services in segregated settings other than respite facilities or camps;

(vii) insurance premiums;

(viii) death benefits, burial policies, and funeral expenses;

(ix) costs for allowable services incurred before the written service plan is approved;

(x) non-medical foods, routine shelter, routine utilities, routine home repairs, routine home appliances, routine furnishings, fences, and yard work;

(xi) medical benefit items or services paid for or reimbursed by private insurance, Medicaid, Medicare, CHIP, the CSHCN Health Benefits Plan, or other health insurance programs for which the client is eligible;

(xii) services, equipment, or supplies that have been denied by Medicaid, CHIP, or the CSHCN Health Benefits Plan because a claim was received after the filing deadline, insufficient information was submitted, or because an item was considered inappropriate or experimental;

(xiii) over-the-counter or prescription medications;

(xiv) architectural modifications to a public facility;

(xv) school tuition or fees, or equipment/items/services that should be provided through the public school system;

(xvi) items that could endanger the health and safety of the client;

(xvii) routine child care;

(xviii) computers and software, unless for use as an assistive technology device or necessary to perform a critical or essential function such as environmental control, or written or oral communication, which the client is unable to perform without the computer;

(xix) services provided by an individual under the age of 18 years or by the client's parent(s)/guardian(s) or other member of the client's household;

(xx) services exclusively to support the care of siblings or other members of the client's household, but which are not necessary to meet the medical needs of the client;

(F) Reduction/termination of services. Reasons for terminating or reducing family support services may include, but are not limited to:

(i) the client no longer meets the eligibility criteria for the CSHCN program;

(ii) services available through the program are discontinued due to budget restrictions;

(iii) the client's family indicates that the need for family support services no longer exists;

(iv) the client moves out of Texas;

(v) the client is placed in a nursing facility or other institutional setting for an indefinite period of time;

(vi) the client dies;

(vii) the client's designated case manager is unable to locate the client/family; or

(viii) the family knowingly does not comply with the written service plan, in which case the family may also be liable for restitution.

(6) Other services. The following services also are available through the CSHCN program.

(A) Ambulance services. Emergency ground, non-emergency ground and air ambulance services are covered for the medically necessary transportation of a client. Non-emergency ambulance transport is covered if the client cannot be transported by any other means without endangering the health or safety of the client, and when there is a scheduled medical appointment for medically necessary care at the nearest appropriate facility. Transportation by air ambulance is limited to instances when the client's pickup point is inaccessible by land, or when great distance interferes with immediate admission to the nearest appropriate medical treatment facility. Transports to out-of-locality providers are covered if a local facility is not adequately equipped to treat the client. Out-of-locality refers to one-way transfers 50 miles or more from point of pickup to point of destination.

(B) Transportation. The CSHCN program may provide transportation for a client and, if needed, a responsible adult, to the nearest medically appropriate facility. The lowest-cost appropriate conveyance should be used. The CSHCN program shall not assist if transportation is the responsibility of the client's school district or can be obtained through Medicaid.

(C) Meals and lodging. The CSHCN program may provide meals and lodging to enable a parent, guardian, or their designee to obtain inpatient or outpatient care for a client at a facility located away from their home. The reason for the inpatient or outpatient visit must be directly related to medically necessary treatment for the client.

(D) Transportation of deceased. The CSHCN program may provide the following services:

(i) transportation cost for the remains of a client who expires in a CSHCN participating facility while receiving CSHCN program services, if the client was not in the family's city of residence in Texas, and the transportation cost of a parent or other person accompanying the remains;

(ii) embalming of the deceased, if required by law for transportation;

(iii) a coffin meeting minimum requirements, if required by law for transportation; and

(iv) any other necessary expenses directly related to the care and return of the client's remains.

(E) Payment of insurance premiums, coinsurance, co-payments, and/or deductibles. The CSHCN program may pay public or private health insurance premiums to maintain or acquire a health benefit plan or other third party coverage for the client, if the parent/foster parent/guardian/managing conservator is financially unable to do so, and if paying for such health insurance can reasonably be expected to be cost effective for the CSHCN program. The CSHCN program may pay for coinsurance and deductible amounts when the total amount paid to the provider does not exceed the maximum allowed for the covered service. The CSHCN program may reimburse clients for co-payments paid for covered services. The CSHCN program may not pay premiums, deductibles, coinsurance or co-payments for clients enrolled in CHIP.

(F) Social Security Income (SSI) purchase-of-service. The CSHCN program may administer a purchase-of-service program for individuals who are determined to be SSI recipients.

(c) Services not covered. Services which are not covered by the CSHCN program even though they may be medically necessary for and provided to a client include, but are not limited to:

(1) treatments which are considered experimental or investigational;

(2) chiropractic services;

(3) care for premature infants;

(4) care for alcohol or substance abuse;

(5) pregnancy prevention, except when medically necessary for the specific treatment of a covered condition;

(6) maternity care; and

(7) infertility treatment or other reproductive services, unless directly related to a covered chronic physical or developmental condition.

(d) Limitations.

(1) If budgetary limitations exist, the CSHCN program may adopt a system to prioritize access to services based upon urgent need or severity of illness, which may require placing a client then receiving services on a waiting list. At the next annual eligibility determination, a client currently receiving services will be given a minimum of 30 days notice of the CSHCN program's intent to place the client on a waiting list.

(2) With board approval, the CSHCN program may discontinue, limit, or restrict services, reimbursement for services or types of services available to all clients to remain within available funding and to provide effective and efficient administration. Discontinuation, limitation, or restriction may apply to selected provider types or services and not to others. If cutbacks in services are necessary and published notice is not required, clients and providers directly affected will be given a minimum of 30 days notice.

(e) Service authorization. The CSHCN program may require authorization of reimbursement for selected services for clients.

(1) Provider's responsibility. A CSHCN provider must request services in specific terms on department-prepared forms so that an authorization may be issued and sufficient monies encumbered to cover the cost of the service. If a service is authorized, payment may be made to the provider as long as the service is not covered by a third party resource, and all billing requirements are met. Program authorization should not be considered an absolute guarantee of payment.

(2) Required prior authorization for selected services. At the CSHCN program's option, selected services may require authorization prior to the delivery of services in order for payment to be made.

(3) Use of other benefits. The CSHCN program is the payer of last resort. The Children with Special Health Care Needs Services Act provides that any health insurance or other benefits including, but not limited to commercial health insurance, health maintenance organizations, preferred provider organizations, CHAMPUS/CHAMPVA, Medicaid or Medicaid waiver programs, CHIP, liability insurance, or worker's compensation insurance available to the client must be used prior to payment by CSHCN.

(f) Pilot projects. The CSHCN program may initiate and participate in pilot projects to determine the fiscal impact of changes in eligibility criteria and the types of services provided. New projects are

possible only if funds are available in the current fiscal year. All pilot projects are limited to no more than 10% of the fiscal year appropriation.

§38.6. Providers.

(a) General requirements for participation. The Children with Special Health Care Needs Services (CSHCN) Act, Health and Safety Code, §35.004, authorizes the Texas Board of Health to approve physicians, dentists, podiatrists, dietitians, facilities, specialty centers, and other providers to participate in the CSHCN program according to its criteria and procedures.

(1) Providers seeking approval for CSHCN program participation must submit a completed application to the CSHCN program or its designee, including a signed provider agreement and all documents requested on the application.

(2) All approved CSHCN program providers must agree to abide by CSHCN program rules and regulations, and not to discriminate against clients based on source of payment.

(3) All CSHCN program providers must agree to accept CSHCN program payment as payment in full for services. Providers may collect allowable insurance or health maintenance organization co-payments in accordance with those plan provisions.

(4) The CSHCN program is the payer of last resort, and CSHCN program providers must agree to utilize all other benefits available to the client, including Medicaid or Medicaid waiver programs, CHIP, or Medicare, prior to requesting payment from the CSHCN program. Program providers must agree to attempt to collect payment from the payer of other benefits. The CSHCN program may pay for certain CSHCN program services for which other benefits may be available but have not been definitively determined. If other benefits become available after the CSHCN program has paid for program services, the CSHCN program shall recover its costs directly from the payer of other benefits or shall request the provider of CSHCN program services to collect payment and reimburse the CSHCN program.

(5) Overpayments made on behalf of clients to CSHCN program participating providers must be reimbursed to the CSHCN program refund account by lump sum payment or, at the discretion of the department, in monthly installments or out of current claims due to be paid the provider. All providers must consent to on-site visits and/or audits by CSHCN program staff or its designees.

(6) All providers of CSHCN program services also covered by Medicaid must enroll and remain enrolled as Title XIX Medicaid providers. In order to be reimbursed by Medicaid as the primary payer, a provider must be enrolled on the date of service. The CSHCN program will not reimburse an enrolled provider for any service covered under Medicaid which was provided to a CSHCN client eligible for Medicaid at the time of service. If a CSHCN program service is not covered by Medicaid, the provider of that service is not required to enroll as a Medicaid provider. Any provider excluded by Medicaid for any reason shall be excluded by the CSHCN program.

(7) If a license or certification is required by law to practice in the State of Texas, the provider must maintain the required license or certification.

(8) All providers shall be responsible for the actions of members of their staffs who provide CSHCN program services.

(9) Any provider may withdraw from CSHCN program participation at any time by so notifying the CSHCN program in writing.

(b) Denial, modification, suspension, and termination of provider approval.

(1) The CSHCN program may deny, modify, suspend, or terminate a provider's approval to participate for the following reasons:

(A) submitting false or fraudulent claims;

(B) failing to provide and maintain quality services or medically acceptable standards;

(C) not adhering to the provider agreement signed at the time of application or renewal for CSHCN program participation;

(D) disenrollment as a Medicaid provider; or

(E) violation of the standards of this chapter.

(2) The CSHCN program may deny or suspend approved provider status based on the CSHCN program's knowledge of disciplinary action taken against the provider by the licensing authority under which the provider practices in the State of Texas or by the Texas Medicaid Program.

(3) Prior to taking an action to deny, modify, suspend, or terminate the approval of a provider, the CSHCN program shall give the provider written notice of an opportunity of appeal in accordance with §38.13 of this title (relating to Right of Appeal). In addition, a fair hearing is available to any provider for the resolution of conflict between the CSHCN program and the provider.

(c) Provider types. Approved providers include, but are not limited to:

(1) physicians;

(2) dentists;

(3) advanced practice nurses;

(4) mental/behavioral health professionals, including psychiatrists, licensed psychologists, licensed master level social worker-advanced clinical practitioners, licensed marriage and family therapists, and licensed professional counselors;

(5) podiatrists;

(6) hospitals;

(7) inpatient rehabilitation centers;

(8) ambulatory surgical centers;

(9) renal dialysis centers;

(10) orthotists and prosthetists;

(11) pharmacies;

(12) dietitians;

(13) medical supply and/or equipment companies;

(14) optometrists and opticians;

(15) licensed speech-language pathologists and audiologists;

(16) hearing aid professionals (limited to physicians and those audiologists who are fitters and dispensers and enrolled as Program for Amplification for Children of Texas providers);

(17) occupational therapists and physical therapists;

(18) certified respiratory care practitioners;

(19) certified home and community support services agencies;

(20) hospice care providers;

(21) ambulance providers;

(22) transportation companies or providers;

(23) meal and lodging facilities; and

(24) funeral homes.

(d) Requirements for specialty centers.

(1) The CSHCN program may accept as participating providers diagnostically specific specialty centers, such as bone marrow or other transplant centers, approved under the credentialing and/or approval standards and processes of the Texas Medicaid Program, if such specialty centers also submit a CSHCN provider enrollment application.

(2) Other specialty center standards. The CSHCN program may establish standards to insure quality of care for children with special health care needs in the comprehensive diagnosis and treatment of specific medical conditions for specialty centers with Texas Medicaid Program separate credentialing standards as well as other specialty centers for which the Texas Medicaid Program has not established separate credentialing or approval standards for providers.

(e) Out-of-state coverage.

(1) Within 50 miles. Clients who would otherwise experience financial hardship or be subject to clear medical risk may be transported to medical facilities in New Mexico, Oklahoma, Arkansas, or Louisiana located within 50 miles of the Texas state border. All CSHCN program policies and procedures will apply, including the requirement that all providers be Medicaid and CSHCN program participating providers.

(2) Outside 50 miles of the Texas state border. The commissioner of health may approve CSHCN program payment to out-of-state providers in unique circumstances in which the CSHCN program participating physician(s), the client, parent or guardian, and the CSHCN medical director agree that:

(A) an out-of-state provider is the provider of choice for quality care;

(B) the same treatment or another treatment of equal benefit or cost is not available from Texas CSHCN providers; and

(C) the out-of-state treatment should result in a decrease in the total projected CSHCN program cost of the client's treatment.

(3) The medical literature must indicate that the out-of-state treatment is accepted medical practice and is anticipated to improve the patient's quality of life.

(4) The cost of transportation, meals, and lodging may be reimbursed for the CSHCN approved out-of-state treatment. Travel costs will be negotiated, with approval of specific travel options based on overall cost effectiveness.

§38.7. Ambulatory Surgical Care Facilities.

(a) Ambulatory surgery services may be utilized by the CSHCN program as a cost-efficient means of providing surgical care, as long as quality of care is assured. Any hospital participating in the CSHCN program whose accreditation by the Joint Commission on Accreditation of Health Care Organizations includes hospital-sponsored ambulatory care services may provide ambulatory surgery services for CSHCN clients. Freestanding ambulatory surgical care (ASC) facilities, even if governed by or affiliated with a hospital participating in the CSHCN program, must apply for CSHCN program approval. The CSHCN program may contract with a limited number of facilities to contain program costs. For approval to participate in the CSHCN program, a freestanding ASC facility must meet the following criteria:

(1) State licensure requirements. Facilities must comply with state licensure requirements for ambulatory surgical centers at §§135.1-135.27 of this title (relating to Operating Requirements for Ambulatory Surgical Centers).

(2) Medicare certification. Facilities must comply with Medicare standards concerning ambulatory surgical services at 42 Code of Federal Regulations, Parts 405 and 416.

(3) Pediatric equipment. Pediatric facilities must maintain all necessary pediatric equipment including operating room, surgical tools, resuscitation apparatus, pharmaceutical services, beds, and other supplies that are appropriate for children.

(4) Staff requirements.

(A) Surgical staff participating in the CSHCN program must perform all surgical procedures.

(B) An anesthesiologist or certified registered nurse anesthetist participating in the CSHCN program must be present in the operating room for the induction and completion of anesthesia and must remain on the premises (immediately available) during the surgical procedure until the client leaves the facility.

(C) A registered nurse with documented clinical pediatric experience must be on the premises at all times the client is in the facility.

(5) Risk management principles. The facility must apply risk management principles to all client care.

(6) Client transfer. The facility must have client transfer agreements with CSHCN program participating hospitals in the area.

(b) ASC facilities seeking approval for CSHCN program participation must submit documentation concerning their compliance with the criteria stated in subsection (a)(1)-(6) of this section to the CSHCN program or its designee as required by the application process described in subsection (d) of this section.

(c) CSHCN reimbursement for care at freestanding ASC facilities shall be limited to:

(1) children 24 months of age or older; and

(2) Levels I and II surgical procedures so designated by the American Society of Anesthesiologists.

(d) Applications for approval for CSHCN program participation shall be processed according to the following procedures:

(1) Applications will be reviewed by the CSHCN program to assure that:

(A) all parts of the application form have been completed, including a signature and date;

(B) all criteria for program participation have been met; and

(C) copies of documents have been provided verifying the facility's state licensure, Medicare certification, and client transfer agreements with CSHCN program participating hospitals.

(2) The CSHCN program shall review all complete applications and shall approve or deny each application in writing within 15 working days of receipt. An incomplete application will be returned to the applicant with an explanation of the information required. The application may be resubmitted with the required documentation for reconsideration.

(3) Any ASC facility which disagrees with the result of the application review may appeal the decision in accordance with §38.13 of this title (relating to Right of Appeal).

(e) Those providers that have not received any CSHCN program payment for services rendered during the prior year will be given the option of withdrawing from CSHCN program approved status, becoming inactive, or providing updated information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not terminate a provider's approval, but the provider may be reinstated to active status only by providing current information to the CSHCN program.

(1) Updated information may include, but is not limited to, the following:

(A) current address, telephone number, state comptroller's vendor identification number, and administrator;

(B) current listing of CSHCN program participating medical staff;

(C) current listing of qualified staff or facilities available; and

(D) Medicare certification status.

(2) The provider will be given a current copy of CSHCN program rules to review at the time reinstatement is requested.

§38.10. Payment of Services.

The CSHCN program reimburses participating providers for covered services for CSHCN clients. Payment may be made only after the delivery of the service. Excluding allowable insurance or health maintenance organization co-payments, the client or client's family must not be billed for the service or be required to make a preadmission or pretreatment payment or deposit. Providers must agree to accept established fees as payment in full. The program may negotiate reimbursement alternatives to reduce costs through requests for proposals, contract purchases, and/or incentive programs.

(1) Payment or denial of claims without insurance or Medicaid. All payments made on behalf of a client will be for claims received by the CSHCN program or its payment contractor within 90 days of the date of service, 90 days from the date of discharge from inpatient hospital and inpatient rehabilitation facilities, or within the submission deadlines listed under paragraph (2) of this section. Claims will either be paid or denied within 30 days. The commissioner of health may waive the filing deadlines, if program criteria for good cause and exceptional circumstances have been shown. Waivers must be requested in writing, must identify the operational problem causing the inability to file on time, must state that the problem has been or is being resolved, and must acknowledge that the waiver request is made one-time only for the identified problem. All outstanding claims related to the identified problem must be considered at one time.

(A) Claims will be paid if submitted on the CSHCN program-approved claim form (including electronic claims submission systems), and if the required documentation is received with the claim.

(B) Denied claims are claims which are incomplete, submitted on the wrong form, lack necessary documentation, contain inaccurate information, fail to meet the filing deadline, and/or are for ineligible recipients, services, or providers.

(i) Corrected claims must be submitted on the CSHCN program-approved claim form along with required documentation within the filing deadline established in clause (ii) of this subparagraph.

(ii) Denied claims may be resubmitted within 180 days of denial for consideration on appeal. If the results of this review are unsatisfactory, denied claims may be appealed according to §38.13 of this title (relating to Right of Appeal).

(2) Claims involving health insurance coverage, CHIP or Medicaid. Any health insurance that provides coverage to the client must be utilized before the CSHCN program can pay for services. Providers must file a claim with health insurance, CHIP, or Medicaid prior to submitting any claim to the CSHCN program for payment. Claims with health insurance must be submitted to the CSHCN program within 90 days of the date of disposition by the other third party resource.

(A) Health insurance denial or nonresponse. If a claim is denied by health insurance, the provider may bill the CSHCN program, if the letter of denial also is submitted with the claim form. If the denial letter is not available, the provider must include on the claim form the date the claim was filed with the insurance company, the reason for the denial, name and telephone number of the insurance company, the policy number, the name of the policy holder and identification numbers for each policy covering the client, the name of the insurance company employee who provided the information on the denial of benefits, and the date of the contact. If the insurance company has not responded after 110 days, the bill may be submitted to the CSHCN program.

(B) Explanation of benefits (EOB). The health insurance EOB must accompany any claim sent to the CSHCN program for payment, if available. If the EOB is unavailable, the provider must include on the claim form the name and telephone number of the insurance company, the amount paid, the policy number, and name of the insured for each policy covering the client.

(C) Late filing. Claims denied by health insurance on the basis of late filing will not be considered for payment by the CSHCN program.

(D) Deductibles and coinsurance. If the client has other third party coverage, the CSHCN program may pay a deductible or coinsurance for the client as long as the total amount paid to the provider does not exceed the maximum allowed for the covered service, and conforms with current CSHCN program policies regarding third party resources, deductible, and coinsurance.

(3) CSHCN program fee schedules. The CSHCN program or its designee shall reimburse claims for covered medical, dental, and other services according to the following fee schedules and/or methodologies.

(A) meals, lodging, and transportation:

(i) meals--up to the amount specified in the current State of Texas Travel Allowance Guide as per diem meal expenses;

(ii) lodging:

(I) hotel--the amount as contracted with the Texas Medicaid Medical Transportation Program (MTP), not to exceed the amount specified in the current State of Texas Travel Allowance Guide as per diem lodging expenses plus all applicable hotel occupancy taxes; and

(II) Ronald McDonald House--the amount contracted with the MTP; and

(iii) transportation:

(I) mileage-- the distance and amount per mile as specified in the current State of Texas Travel Allowance Guide;

(II) by contract--the amount as negotiated by the MTP with contractors such as intercity buses, vans, cabs, or urban mass transit authorities;

(III) air fare--the ticket price reflecting the state discount if ordered by MTP, or the billed amount, if MTP had no opportunity to coordinate transportation in an emergency; and

(IV) cab fare--the billed amount, if other transportation is unavailable, or the MTP is unable to coordinate transportation;

(B) administrative fee to social service organizations--the percentage of the charge for meals, lodging, and transportation negotiated by the MTP with these entities;

(C) ambulance service--the lower of the billed amount or the maximum charge allowed by the Texas Medicaid Program;

(D) transportation of remains:

(i) first call--$75;

(ii) embalming--$100;

(iii) container--$75;

(iv) mileage billed by funeral home--$1.00 per mile; and

(v) air freight--the billed amount;

(E) nutritional products-the lower of the billed amount or the Average Wholesale Price (AWP) per unit according to the prices in the current edition of the Drug Topics Red Book, published by Medical Economics Company, Inc., Montvale, New Jersey 07645-1742, on file with the CSHCN program. For products not listed in the current edition of the Drug Topics Red Book, reimbursement shall be based on the same methodology using the AWP supplied by the manufacturer of the product;

(F) nutritional services--the lower of the billed amount or the maximum charge allowed by the Texas Medicaid Program;

(G) out-patient medications:

(i) medications covered by Medicaid when billed by pharmacies--the same drug costs and dispensing fees allowed by the Texas Medicaid Vendor Drug Program;

(ii) medications not covered by Medicaid when billed by pharmacies--the lower of the billed amount or the drug cost available through the database used by the Texas Medicaid Vendor Drug Program plus the same dispensing fees allowed by the Texas Medicaid Vendor Drug Program;

(iii) medications covered by Medicaid when billed by hospitals--(the lower of the billed amount or the drug cost available through the database used by the Texas Medicaid Vendor Drug Program plus $2.28) / 0.970; and

(iv) hemophilia blood factor products--the lower of the billed price or the United States Public Health Service (USPHS) price in effect on the date of service plus a dispensing fee of $.04 per unit of factor;

(H) expendable medical supplies--the lower of the billed amount or the amount allowable by the United States Department of Health and Human Services, Health Care Financing Administration (HCFA), if available, or by the Texas Medicaid Program;

(I) durable medical equipment:

(i) non-customized--the lower of the billed amount or the amount allowable by the HCFA, if available, or the Texas Medicaid Program;

(ii) customized:

(I) customized, non-powered equipment--the lower of the billed amount or the manufacturer's suggested retail price (MSRP) less 18%;

(II) power wheelchairs--the lower of the billed amount or the MSRP less 15%; and

(III) other--when no MSRP has been published, the lower of the billed amount or the dealer's cost plus 25%; and

(IV) delayed delivery penalty--a claim submitted for customized durable medical equipment that was delivered to the client more than 75 days after the authorization date shall be reduced by 10%;

(iii) orthotics and prosthetics--the lower of the billed amount or the amount allowed by the HCFA, if available, or the Texas Medicaid Program;

(J) total parenteral nutrition/hyperalimentation (including equipment, supplies and related services)--the lower of the billed amount or the maximum amount allowed by the Texas Medicaid Program;

(K) home health nursing services (provided only through CSHCN program participating home and community support service agencies)--reimbursement for a maximum of 200 hours per client per year, with an additional 200 hours per client per year available, if justification of need and cost effectiveness are documented;

(i) services provided by a registered nurse--the lower of the billed amount or $36 per hour;

(ii) services provided by a licensed vocational nurse--the lower of the billed amount or $28 per hour; and

(iii) services provided by a home health aide or home health medication aide (including those legally delegated by a supervising registered nurse)--the lower of the billed amount or $12 per hour;

(L) outpatient physical therapy, occupational therapy, speech-language pathology, and respiratory therapy:

(i) services provided by therapists other than physicians--the lower of the billed amount or the amount allowed by the Texas Medicaid Program; and

(ii) services provided by physicians--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(M) audiological testing and amplification devices:

(i) for clients under age 21--payment is made through the Program for Amplification for Children of Texas (PACT); and

(ii) for clients ineligible for PACT and those age 21 and over--the lower of the billed amount or the amount allowed by PACT;

(N) insurance premium payment assistance program--the lowest available premium for a plan which covers the client, if cost-effective;

(O) hospital and in-patient psychiatric care--reimbursed at the rate authorized by the Tax Equity and Fiscal

Responsibility Act of 1982 (TEFRA), which is equivalent to the hospital's Medicaid interim rate;

(P) inpatient rehabilitation care--reimbursed at TEFRA rates, for a maximum of 90 inpatient days per calendar year;

(Q) hospice services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(R) renal dialysis services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(S) freestanding ambulatory surgical centers--the lower of the billed amount or the amount allowed by the Texas Medicaid Program based upon Ambulatory Surgical Code Groupings approved by the HCFA and the Texas Department of Health;

(T) hospital ambulatory surgical centers--the lower of the amount billed or the amount allowed by the Texas Medicaid Program based upon Ambulatory Surgical Code Groupings approved by the HCFA and the Texas Department of Health;

(U) covered professional services by physicians, podiatrists, advanced practice nurses, psychologists, licensed professional counselors, or other providers that are not otherwise specified--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(V) independent laboratory--the lowest of the following:

(i) the amount allowed by the Texas Medicaid Program state fee schedule;

(ii) the amount allowed by the HCFA national fee schedule; or

(iii) the billed amount;

(W) radiology services--the lower of the billed amount or the amount allowed by the Texas Medicaid program;

(X) dental services--the lower of the billed amount or the amount allowed by the Texas Medicaid program; and

(Y) vision services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(4) Required documentation. The CSHCN program may require documentation of the delivery of goods and services from the provider.

(5) Overpayments.

(A) Overpayments are payments made by the CSHCN program due to the following:

(i) duplicate billings;

(ii) services paid by public or private insurance or other resources;

(iii) payments made for services not delivered;

(iv) services disallowed by the CSHCN program; and

(v) subrogation.

(B) Overpayments made to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, offset against current claims due to the provider for services to other clients. The department also shall require reimbursement of overpayments from any person or persons who have a legal obligation to support the client and have received payments from a payer of other benefits. Providers, clients, and person(s) responsible for clients may appeal proposed recoupment of overpayments by the department according to §38.13 of this title (relating to Right of Appeal).

§38.12. Denial/Modification/Suspension/Termination of Eligibility and/or Services.

(a) Any person applying for or receiving benefits from the CSHCN program shall be notified in writing if the CSHCN program proposes to deny, modify, suspend, or terminate such benefits because:

(1) the application or other requested information is intentionally erroneous or falsified;

(2) the applicant/family does not meet financial eligibility requirements;

(3) the person is no longer a resident of Texas;

(4) information, including the receipt for a purchased family support service, was not provided when requested;

(5) the applicant has a behavioral or emotional condition(s) but no physical or developmental condition(s);

(6) a person who has received third party or liability payments and has failed to reimburse the department for services provided to the client;

(7) the person attains the age of 21, except for adults with cystic fibrosis;

(8) utilization review indicates inappropriate use of CSHCN program services and the client/family fails to adhere to a plan established to direct and/or supervise the use of CSHCN program services; or

(9) CSHCN program funds are reduced or curtailed.

(b) The CSHCN program will notify the parent/foster parent/guardian/managing conservator or the adult applicant/client in writing of the action, the reasons for the action, and the right of appeal in accordance with §38.13 of this title (relating to Right of Appeal).

§38.13. Right of Appeal.

(a) Appeal procedures for providers.

(1) Administrative review. If the CSHCN program intends to deny, modify, suspend, or terminate a provider's participation in the CSHCN program, the CSHCN program shall give the provider 30 days written notice of the proposed action and shall offer the provider an opportunity for an administrative review. If the provider does not respond in writing within the 30-day period, the provider is presumed to have waived the administrative review as well as access to a fair hearing. If the provider so requests, the CSHCN program will conduct an administrative review of the circumstances on which the proposed denial, modification, suspension, or termination of program participation is based and give the provider written notice of the decision and the supporting reasons within ten days of receipt of the provider's request for administrative review.

(2) Fair hearing. If the provider is dissatisfied with the CSHCN program's decision and supporting reasons following the administrative review, the provider may request a fair hearing in writing addressed to the Children with Special Health Care Needs Program, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 within 20 days of receipt of the administrative review decision notice. If the provider fails to request a fair hearing within the 20-day period, the provider is presumed to have waived the request for a fair hearing, and the CSHCN program may take final action. A fair hearing requested by a provider shall be conducted

in accordance with §§1.51-1.55 of this title (relating to Fair Hearing Procedures).

(b) Appeal procedures for clients.

(1) Administrative review. If the CSHCN program intends to deny, modify, suspend, or terminate a client's eligibility for services, the CSHCN program shall give the client written notice of the client's right to request an administrative review of the proposed action within 30 days. If the client does not respond in writing within the 30-day period, the client is presumed to have waived the administrative review as well as access to a fair hearing, and the CSHCN program may take the proposed action. If the client so requests in writing, the CSHCN program shall conduct an administrative review concerning the circumstances on which the proposed denial, modification, suspension, or termination of the client's eligibility for services is based within ten days after receiving the request and shall give the client written notice of the decision and the supporting reasons.

(2) Fair hearing. If the client is dissatisfied with the CSHCN program's decision and supporting reasons following the administrative review, the client may request a fair hearing in writing addressed to the Children with Special Health Care Needs Program, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 within 20 days of receipt of the administrative review decision notice. If the client fails to request a fair hearing within the 20-day period, the client is presumed to have waived the request for a fair hearing, and the CSHCN program may take final action. A fair hearing requested by a client shall be conducted in accordance with §§1.51-1.55 of this title (relating to Fair Hearing Procedures).

§38.14. Development and Improvement of Standards and Services.

To ensure that cost-effective, quality, appropriate medical and related services are available and delivered to clients, the CSHCN program may establish a system of program evaluation to obtain management information about the CSHCN program's operation and effectiveness; to establish guidelines and standards for CSHCN program health care services; to monitor compliance with these established standards and guidelines; to identify and analyze patterns and trends in provider billing and service delivery; and to develop systems which promote family-centered, community-based alternatives that nurture and support children with special health care needs.

(1) Quality assurance. The CSHCN program may establish a system of monitoring the quality, medical necessity, and effectiveness of services.

(A) Standards and guidelines. The CSHCN program may develop standards and guidelines for services and providers reimbursed by the CSHCN program to ensure that quality services are available.

(B) Review of services. The CSHCN program may conduct or contract for concurrent and/or retrospective review of client care services reimbursed by the CSHCN program.

(C) Provider review. The CSHCN program may conduct periodic quality assurance reviews for provider services.

(D) Survey of clients and families. The CSHCN program shall survey clients periodically to assess the availability, appropriateness, effectiveness, accessibility, and cultural sensitivity of provided services.

(2) Utilization review. Utilization review will assess the appropriateness of services provided to CSHCN program clients by monitoring systems developed or contracted by the CSHCN program. Suspected fraud and abuse cases will be evaluated by the Office of the General Counsel for possible prosecution.

(3) Task forces. The CSHCN program may establish task forces to advise the CSHCN program.

(4) Cooperation with other agencies. The department cooperates with public and private agencies and with persons interested in the welfare of children with special health care needs. The CSHCN program will make every effort to establish cooperative agreements with other state agencies to define the responsibilities of each agency in relation to specific programs to avoid duplication of services.

(5) Collaboration with stakeholders. The CSHCN program values the participation of all stakeholders who have an interest in children with special health care needs and will make every effort to work collaboratively with stakeholders in the design, development, and implementation of program rules and policies.

(6) Systems development activities. The CSHCN program may conduct population-based systems development activities to improve and support the state's infrastructure for serving all children with special health care needs and their families by program staff or through contractors.

(A) Population-based systems development activities include, but are not limited to the development and maintenance of community-based systems such as case management, parent case management, parent networks, parent resource centers, parent/provider training, voucher programs, permanency planning, or other systems that may directly or indirectly support any family in Texas with CSHCN.

(B) The CSHCN program may establish wellness centers, which are programs and/or physical locations of community-based service organizations which provide specific support services for children with special health care needs and their families.

(i) Community-based service organizations that serve as wellness centers may include, but are not limited to: hospitals, churches, boys/girls organizations, health centers, or school-based centers. Existing community-based service organizations that provide services to children with special health care needs and their families within a community shall receive preference in funding by the CSHCN program.

(ii) Services provided in community-based wellness centers may include, but are not limited to:

(I) case management or social services;

(II) psychological services, particularly for child or family groups;

(III) sibling support;

(IV) dietary counseling;

(V) recreation or fitness programs and physical conditioning;

(VI) a meeting place for family or child groups school liaison support;

(VII) a parent/family information or resource center;

(VIII) parent to parent referrals and/or networking;

(IX) health promotion education and/or training; and

(X) family or individual health planning, including permanency planning.

(iii) Wellness center services may include direct services as well as population-based 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.

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

TRD-200102011
Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: October 27, 2000
For further information, please call: (512) 458-7236

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.124

The Texas Natural Resource Conservation Commission (commission or agency) adopts new §7.124, Natural Resource Trustees Memorandum of Understanding (MOU). This MOU is between the commission and the state and federal natural resource trustees. Section 7.124 is adopted with changes to the proposed text as published in the October 13, 2000 issue of the *Texas Register* (25 TexReg 10294).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The agency, Texas Parks and Wildlife Department, Texas General Land Office, National Oceanic and Atmospheric Administration, and the United States Department of the Interior are all designated to act on behalf of the public as trustees for natural resources (Trustees) pursuant to several environmental statutes, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code (USC) §§9601 et seq.; the Clean Water Act (CWA), 33 USC §§1251 et seq.; and the Oil Pollution Act of 1990 (OPA), 33 USC §§2701 et seq.

In September of 1999, the commission adopted Chapter 350, the Texas Risk Reduction Program (TRRP) rules. These rules and the preamble to the rules (24 TexReg 7436) reference certain interactions between the executive director and the Trustees in regard to an ecological risk assessment (ERA) and an ecological services analysis (ESA).

Specifically, the preamble to the TRRP rules states that the Trustees plan to develop an MOU that facilitates the coordination of the Trustees and their interaction in the ERA and ESA processes. The preamble also states that the Trustees may choose to participate in the ERA process to ensure that natural resources under their jurisdiction are adequately protected and that the agency will notify the Trustees of affected property with chemicals of concern which remain after a particular stage of development within the Tier 2 screening-level ERA.

Additionally, §350.33(a)(3)(B) and §350.77(f)(2) require the executive director to consult with the Trustees prior to approval of a person's request to conduct an ESA. Furthermore, §350.33(a)(3)(B) requires the person to conduct any compensatory ecological restoration and other activities associated with the ESA with the approval of and in cooperation with the Trustees.

Thus, this MOU sets forth the procedures by which the agency and the Trustees will interact regarding the ERA and the ESA processes under the TRRP rules.

SECTION BY SECTION DISCUSSION

Adopted §7.124(a) sets forth the purpose of the MOU as facilitating the interactions between the agency and the Trustees in the ERA and the ESA processes.

Adopted §7.124(b) names the parties to the MOU as the agency, Texas Parks and Wildlife Department, Texas General Land Office, National Oceanic and Atmospheric Administration, and the United States Department of the Interior.

Adopted §7.124(c) recites the authority, both state and federal, by which the parties enter into the MOU.

Adopted §7.124(d) sets forth and defines acronyms used in the MOU.

Adopted §7.124(e) sets forth and defines certain terms used in the MOU. In response to comments, the following sentence was added to the end of the definition of Paragraph 7 (§7.124(e)(2)) to provide both clarity and flexibility if the TRRP rules are amended or replaced: "Any reference in this MOU to Paragraph 7 shall not only include the current 30 TAC §350.77(c)(7) but also the point at which the equivalent actions occur under other TNRCC risk reduction rules in the event that TRRP is amended or replaced and the specific reference is revised."

Adopted §7.124(f) sets forth the procedure by which each Trustee designates a primary and secondary contact to facilitate interaction under the MOU.

Adopted §7.124(g) sets forth the procedure by which the agency and the Trustees will interact during the ERA process. The first step in this process is the agency's initial notification to the Trustees. The agency then sends pertinent documents to Trustees which elect to participate on a particular affected property. Trustees then have an opportunity to comment on the ERA for that affected property. This section also sets forth the process for the coordination of the parties on any meetings pertaining to the ERA. In response to comments, the last sentence of the first paragraph in this subsection was revised to read as follows: "Furthermore, the Trustees acknowledge that the potential for continuing injury to ecological resources should be negligible at sites where the remedial decisions were based on appropriate application of the proposed ecological risk assessment process." Additionally, in response to comments, the first sentence in §7.124(g)(1) was revised to read as follows: "After the TNRCC learns through a person's submittal that the ecological risk assessment at an affected property has progressed to Paragraph 7 and prior to approval of the ecological risk assessment by the TNRCC, the TNRCC Trustee shall provide timely notification to the other Trustees."

Adopted §7.124(h) sets forth the procedure by which the agency and the Trustees will interact during the ESA process. This section is divided into two main parts, with a small third part outlining how a Trustee may waive its role in the ESA process. The first part establishes the interaction process when the executive director is consulting with the Trustees, as required, prior to approval of a person's request to conduct an ESA. This process is very similar to the interaction under the ERA process, with notification, document exchange, opportunity for comments, and coordination of meetings. The second part addresses the parties' interaction while the ESA is actually being conducted, including performance of any compensatory restoration. In response to comments, the second sentence in §7.124(h)(2)(C) was revised to read as follows: "The agreement will include issues such as the payment of Trustees' costs associated with the ecological risk assessment and ecological services analysis processes, public participation requirements, and a mechanism for addressing natural resource damages liability, as applicable."

Adopted §7.124(i) explains that certain procedures under subsections (g) and (h)(1) may be combined to achieve efficiencies.

Adopted §7.124(j) sets forth the procedures by which a Trustee may exit or re-enter the ERA and ESA processes. In response to comments, the last sentence of §7.124(j)(1) was revised and another sentence added as follows: "However, upon a deferred entry or a re-entry to the ecological risk assessment or ecological services analysis processes, the Trustee involvement in the TRRP process shall be prospective only and may not challenge previous decisions regarding the ecological risk assessment and ecological services analysis. Additionally, a Trustee may not challenge joint decisions made within the TRRP process on the ecological risk assessment or ecological services analysis during that Trustee's prior participation in the process."

Adopted §7.124(k) sets forth the requirements for notifying or coordinating with the agency's project manager prior to certain activities on an affected property. In response to comments, "site visits" was added as one example of Trustee activities.

Adopted §7.124(l) states that the natural resource Trustees' 1995 Memorandum of Agreement governs issues, responsibilities, or activities not specifically addressed in this MOU.

Adopted §7.124(m) explains that the MOU does not compromise or affect any legal rights of the parties or narrow the scope of any party's authority or jurisdiction unless it is specifically stated in the MOU. In response to comments, the following sentence was added: "This MOU does not compromise or affect any rights of the parties with regard to natural resource damage actions."

Adopted §7.124(n) explains that the MOU may not be the basis for third party challenges or appeals and that it does not create any rights or causes of action in any persons not parties to the MOU.

Adopted §7.124(o) clarifies that the MOU does not obligate the parties to expend funds beyond those appropriated.

Adopted §7.124(p) allows for the termination and amendment of the MOU pursuant to appropriate rulemaking.

Adopted §7.124(q) allows the MOU to be signed in counterparts and identifies the effective date as the date of the last signature.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The adopted rule would not adversely effect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule will formalize the requirement and procedures for cooperation between the Trustees and the agency regarding ERA and ESA matters. The adopted rule does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this adopted rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this adopted rule is to set forth the procedures by which the agency and the natural resource Trustees will interact regarding the ERA and the ESA processes under the TRRP rules. The adopted rule will substantially advance this specific purpose by setting forth detailed procedures for such interaction including initial notification, document exchange, comments, and meetings. The adopted rule will not burden private real property and the action under the adopted rule does not constitute a taking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the CMP.

HEARINGS AND COMMENTERS

There were no public hearings held on this rulemaking. Campbell, George, and Strong, L.L.P. (CGS); Groundwater Services, Incorporated (GSI); Texas Chemical Council (TCC); and Texas Oil and Gas Association (TxOGA) all submitted written comments recommending changes to the MOU.

ANALYSIS OF TESTIMONY

TCC and TxOGA commented that the commission should re-evaluate the MOU six months after implementation to give the agencies and stakeholders an opportunity to identify areas for improvement in the process.

The commission agrees that a review of the MOU based on practical experience would be beneficial. However, the suggested review period is too short to meaningfully evaluate the MOU process as a whole. The commission agrees that the agency will re-evaluate the MOU two years after adoption.

TCC and TxOGA commented that a statement in the fiscal note of the proposal preamble referencing "...accidents involving a release of potentially hazardous chemicals of concern..." was unclear and should be changed to read, "...incidents involving a release of chemicals of concern...".

The commission agrees with the comment but the change is not reflected in this preamble because the fiscal note, as is the usual practice, is not included in the adoption preamble.

TCC, TxOGA, and CGS commented that a statement in the preamble regarding chemicals of concern (COCs) left in place was not accurate and should be clarified.

The commission agrees with the recommended revision so that the sentence should read as follows, "If COCs are proposed to be left at the affected property in excess of established ecological PCLs with the potential for continuing exposure, an ESA must be conducted." However, this sentence was contained in the fiscal note of the proposal preamble and, as is the usual practice, the fiscal note is not included in the adoption preamble.

TCC and TxOGA commented that the Trustees have not included in the MOU any language that would acknowledge that a person's successful completion of the ESA process (with or without restoration) resolves a person's natural resource damages (NRD) liability for future ecological injuries. TCC and TxOGA further commented that this sentiment is included in the preamble to the TRRP rules (24 TexReg 7529 - 7531) and in the final interim ERA guidance document (see §5.3.2). TCC and TxOGA commented that they interpreted this language to say that after Trustees' reasonable costs are reimbursed, a person is resolved of NRD liability for future ecological injuries. TCC and TxOGA recommended that the MOU include language consistent with preamble language that recognizes that the Trustees will not pursue an action for future ecological injuries in the NRD law context when a person successfully completes the ESA process.

Similarly, CGS commented that the preamble of the MOU should clearly indicate that a person's participation in the ESA and performance of compensatory ecological restoration will, in effect, completely resolve that person's potential liability for future ecological injuries that are recoverable under NRD law (CERCLA, OPA, CWA, and any other federal or state law). CGS further commented that this was the underlying agreement for the Trustees' inclusion throughout the ESA process and is reflected in the comments submitted to the TRRP rules by several Trustees. CGS commented that the preamble of the TRRP rules echoes this sentiment by stating that "(t)hrough Trustee involvement, it is the intent of the commission to provide finality to the level of restoration required to compensate for future ecological injuries associated with a given risk management decision." Additionally, CGS commented that the exception pointed out in the preamble to the TRRP rules relates solely to the Trustees' ability to recover their reasonable assessment costs. CGS commented that at the September 1, 2000 meeting with representatives from the Trustee agencies to discuss the draft of this MOU, they were told by several of the Trustee representatives that the agencies never agreed that a person who partakes in the ESA process and provides compensatory restoration for future ecological risks would have essentially resolved his/her potential NRD liabilities for future ecological injuries. CGS further commented that this was completely contrary to agreements struck at arms length with the Trustees, the agency, and industry stakeholders over the prior two plus years and was in conflict with the Trustees' own comments on the TRRP rules.

The commission disagrees with the comments that Trustee involvement in the ESA is a de facto settlement of NRD liability for future ecological injuries. In fact, the adoption preamble to the TRRP rules stated that the "..commission disagrees with the Campbell, George, and Strong comments pertaining to the Trustees involvement in the ESA being considered a de facto settlement of natural resource damages (NRD) for future ecological injuries." (24 TexReg 7531) The fact that the Trustees' costs of assessment are not specifically addressed in the ESA process and are clearly a statutory component of NRD liability is only one reason that Trustee involvement in the ESA does not result in an automatic settlement of NRD liability for future ecological injuries. The statutes and regulations pertaining to NRD are complex and involve specific components not addressed in the ESA process. Some examples of these specific components are the development of Damage Assessment Restoration Plans, alternatives analyses, public participation requirements, and the Trustees' reasonable costs of assessment. Although the ESA process and the NRD assessment process have similarities, these processes are not one and the same. Involvement in one process cannot be interpreted as automatic satisfaction of the other process. The ESA process was not written to address all of the components of NRD liability. Additionally, settlements and liability releases are inherently case specific and language stating that some action is a settlement or a release for a third party is not appropriate for an MOU that is primarily procedural in nature and not binding upon any third party. Additionally, the commission disagrees that this was the underlying agreement for the Trustees' inclusion in the ESA process. As stated in the adoption preamble to the TRRP rules, "It is only the presumed Trustee involvement which gives the commission a comfort level in including the ESA option in the rule." (24 TexReg 7530) It is still the intent of the commission, through Trustee involvement, to provide finality to the level of restoration required to compensate for future ecological injuries associated with a given risk management decision. Additionally, the Trustees intend to offer a person the opportunity of resolving their NRD liability through a formal written settlement agreement concurrent with their participation in the ESA process.

GSI commented that §7.124(a)(4), (g), and (h)(2)(C) could cause confusion between risk and injury because risk does not equate to injury. GSI further commented that the ERA process is designed to address potential ecological risks at sites managed under the TRRP rules and a finding of ecological risk (i.e., COC concentrations above ecological protective concentration levels (PCLs)) does not indicate that ecological injury will occur or that liability for NRD has been incurred. GSI recommended that a definition of "ecological injury" or "natural resource damages" be added to the MOU which clarifies that a finding of ecological risk does not indicate that ecological injury has occurred or will occur.

The commission agrees that risk does not necessarily indicate that ecological injury has occurred or will occur. However, the commission disagrees with GSI's recommendation because definitions such as those suggested are not appropriate in a coordination document and may cause confusion if they conflict with similar definitions in substantive rules or statutes. Additionally, the MOU does not state a position contrary to the one stated by GSI. Although the commission agrees that risk does not necessarily indicate that ecological injury has occurred or will occur, risk does indicate the potential for ecological injury (service

losses). As §5.3.2 of the agency's ERA guidance jointly developed with stakeholders states, "For expediency and cost-effectiveness, it is the intention of the ESA process that risk estimation and remedial effects be used to determine potential ecological services losses." (Guidance for Conducting Ecological Risk Assessments at Remediation Sites in Texas, August 28, 2000) For these reasons, the commission has made no changes in response to these comments.

GSI commented that the last sentence of the first paragraph in §7.124(g) implies that the Trustees do not acknowledge that the potential for continuing injuries should be negligible at those sites where the appropriate application of the ERA process indicates that no corrective action is required. GSI recommended that the sentence be revised to acknowledge negligible future injury at both sites where corrective action has been completed and sites where corrective action is not required.

The commission agrees with the comment and the sentence has been revised appropriately.

GSI, TCC, and TxOGA commented on the trigger and timing of Trustee notification in §7.124(g). GSI commented that the trigger for Trustee notification (i.e., conservative HQ>1) is not directly related to the potential for injury to ecological resources and therefore is not an appropriate trigger for notification. GSI further commented that with appropriate application of the ERA process, only development of ecological PCLs (Paragraph 9) provides a reasonable indication of potential injury to ecological resources and that requiring Trustee notification for sites which proceed to Paragraph 7, but not Paragraph 9, will make it more difficult for the Trustees to identify sites which pose a risk for future injury to ecological resources and to focus available resources on those sites. GSI recommended that the trigger for Trustee notification be modified to include only sites which progress to calculation of ecological PCLs (i.e., Paragraph 9 in the current TRRP rules).

TCC and TxOGA commented that Step 7 is too early in the process for notification because PCLs developed from Step 7 assumptions are still conservative and should not be a litmus test for review. Additionally, TCC and TxOGA commented that notification is more appropriate when the decision has been made to leave concentrations of COCs that exceed an appropriately derived ecological PCL in place where these environmental levels have the potential for continuing exposure. TCC and TxOGA recommended that notification only be required when concentrations of COC's above an appropriately derived ecological PCL are left in place with the potential for continuing exposure and that §7.124(e)(2) and (g) should be deleted.

The commission disagrees with the comments on the trigger and timing of notification because Paragraph 7 (Step 7) is directly related to the potential for injury to ecological resources and is therefore an appropriate trigger for notification. The Trustees originally believed that it would be appropriate to be notified much earlier in the process. The proposal preamble to the TRRP rules suggested notification after the initial Tier 2 screening step (Paragraph 2) (24 TexReg 2232). Due to public comments on the proposed TRRP rules saying that this was too early in the process for notification, the adoption preamble to the TRRP rules stated that the Trustees would be notified prior to the development of PCLs, which occurs at Paragraph 9 (24 TexReg 7455). Paragraph 7 was chosen as a compromise because it is the point at which less conservative assumptions are utilized and Trustee involvement at that stage helps to ensure that their jurisdictional resources are adequately protected. Paragraph 7 was determined to be the latest point in the process in which the Trustees could become involved and not question what had occurred in the previous steps. Although the Trustees will be notified after the agency learns through a person's submittal that an ERA has progressed to Paragraph 7, the scope of the Trustees' involvement in the TRRP process for an affected property will be determined on a case-by-case basis. For these reasons, the commission has made no changes in response to these comments.

TCC and TxOGA also recommended that, at a minimum, PCLs derived under the following conditions should be acceptable and not trigger notification: 1) the LOAEL and NOAEL differ by a factor of ten or less, and 2) the midpoint or less between these values is used as the effect level.

The commission disagrees with this comment because it is in direct conflict with a previous commitment that the commission has with the Trustees, as stated in the adoption preamble of the TRRP rules (24 TexReg 7455), that the Trustees would be notified prior to development of ecological PCLs. While the commission agrees that this reasoning may be an appropriate method for deriving PCLs, it is not an appropriate trigger for notification. The Trustees should be involved at an earlier point in the process to insure that the process is reliable and the assumptions used in the development of the LOAEL and NOAEL PCLs are valid. For these reasons, the commission has made no changes in response to these comments.

TCC and TxOGA commented that although they agree that Trustees should be notified when it is beneficial, they do not believe that the notification needs to be formal and routine. TCC and TxOGA commented that the mechanism proposed by the MOU for notification is administratively burdensome, wastes resources from the different agencies and industry, and would result in many more sites being subject to review than would benefit from additional scrutiny. TCC and TxOGA further commented that formalizing the notification process adds a new step in the remediation process and adds additional responsibilities on agency staff. Additionally, TCC and TxOGA commented that the Trustees' involvement in the risk assessment process will increase the cost of remediation to both agencies and the regulated community without an increase in benefit.

The commission disagrees that the notification adds a new step to the remediation process because notification is currently taking place under the present process, albeit in a much less systematic manner. In many ways, having an agreed upon and recognized process will make it easier for the agencies involved to carry out their duties to the public. The commission also disagrees that there is no added benefit in having the Trustees involved in the risk assessment process. The Trustees will bring certain expertise to that process to help ensure that a person's actions are ecologically protective and are not second guessed at a later period in time. It should also be noted that simply because the Trustees are notified of a site, it does not necessarily mean that the site will undergo additional Trustee scrutiny. As is true currently, the Trustees must focus their finite resources on a select number of sites. For these reasons, the commission has made no changes in response to these comments.

GSI commented that the notification sentence in §7.124(g)(1) is confusing because the person will typically submit a single report.

The commission has revised this sentence in response to GSI's comment.

GSI also commented that linking the notification trigger directly to the current TRRP rules is problematic because any revision to the TRRP rules will require revision to the MOU.

The commission agrees that this could be problematic but determined that the specific reference to Paragraph 7 is important for clarity. Therefore, a sentence was added to the end of the definition of Paragraph 7 (§7.124(e)(2)) to provide both clarity and flexibility if the TRRP rules are amended or replaced.

CGS commented on the "TNRCC-approved ecological PCLs" language in §7.124(g)(1). CGS commented that the TRRP rules never state that the ecological PCLs must be approved by the agency.

The commission has revised the sentence in response to another comment and the language at issue was removed. However, the commission disagrees with CGS' comment that ecological PCLs do not have to be approved by the agency under the TRRP rules. In fact, approval of PCLs is an inherent and principal point of the TRRP rules. For example, §350.2(a) of the TRRP rules states: "All actions undertaken and demonstrations required by this chapter must be performed and documented to the reasonable satisfaction of the executive director." Additionally, the figure contained in §350.3(4) illustrates the procedural requirements for the TRRP rules and identifies submittal of the response action plan with the affected property assessment report for agency approval as a step in this process. Pursuant to §350.91(b)(7), ecological PCLs would be submitted and approved as part of the Affected Property Assessment Report.

TCC, TxOGA, and CGS commented that the sentence in §7.124(g) that states that the ERA should be conducted in a "...manner that is designed to result in the protection of ecological receptors that may be subject to management by federal and state agencies..." is superfluous and potentially conflicts with the ERA guidance. TCC, TxOGA, and CGS further commented that the focus of the ERA is on ecological risks first and it is not designed to address Trustee resources in every case. TCC and TxOGA recommended removing the sentence from the MOU.

The commission does not agree that the sentence is superfluous or that it potentially conflicts with ERA guidance. The sentence is not superfluous because it is important to the Trustees that the MOU contain such an acknowledgment about a process in which they agree that the potential for continuing injury to ecological resources should be negligible if the remedial decisions were based on appropriate application of the ERA process. The sentence (with minor modification) was actually taken from §3.13 of the agency's ecological guidance document which was negotiated amongst the agency, the Trustees, and industry stakeholders (Guidance for Conducting Ecological Risk Assessments at Remediation Sites in Texas, August 28, 2000). The substantially similar sentence from the guidance reads as follows: "The ERA should be conducted in a manner that results in the protection of ecological receptors subject to management by other federal and state agencies and consistent with these agencies statutory authority." The commission has made no changes in response to this comment.

TCC, TxOGA, and CGS commented that the sentence in §7.124(g)(1)(B) that references the "deadline constraints of the TNRCC remedial/corrective action project manager" in the context of initial notification should be revised to replace "constraints" with "requirements."

The commission has made no changes in response to this comment. The commission considers the word "constraints" to be more appropriate in this context and notes that the word preference does not affect the tight deadlines that the Trustees are required to meet throughout the ERA process.

TCC, TxOGA, and CGS commented that the person submitting the request should be entitled to a copy of the comments submitted by the Trustees to the agency ecological risk assessor in §7.124(h)(1)(C). TCC and TxOGA recommended that language be added so that the person gets a copy of the comments submitted by the Trustees.

The commission agrees that the person should be entitled to the written comments concerning the Trustees' recommendation on a person's request to perform an ESA. Such comments will be made available upon request. It should be noted, however, that Trustee comments may be revised or withdrawn as a result of comment compilation meetings between the Trustees and the agency ecological risk assessors.

TCC, TxOGA, and CGS commented on the Trustee interaction in §7.124(h)(2)(A). TCC, TxOGA, and CGS commented that if the Trustees cannot all agree, then the MOU should allow for the process to continue if at least one of the Trustees agrees and the risk of going forward without the other Trustees is the person's. TCC and TxOGA recommended adding language so that the process can continue even if only one Trustee agrees.

The commission disagrees with the comment that a person should be able to continue in the ESA process if multiple Trustees have chosen to participate and only one Trustee agrees to go forward. This is why a Trustee may not arbitrarily determine that a person should not move forward, but must provide a reasoned justification if they decide not to approve a person's ESA. The Trustee process in Texas is consensus-based which leads to better finality for the person. Additionally, the risk inherent in moving forward with one Trustee is not only the person's risk but is also a risk to the other Trustees' claim should they decide to pursue different compensation. However, if only a single Trustee chooses to become involved with a site, the person may move forward with only that participating Trustee's approval. For these reasons, the commission has made no changes in response to these comments.

TCC and TxOGA commented that they support the formation of the Trustee Technical Team (TTT) in §7.124(h)(2)(B) and find the requirements of authority and expertise necessary for participation to be conducive to the efficient completion of ecological risk/ecological services evaluations. TCC, TxOGA, and CGS commented that the TTT process seems fairly elaborate and needs to align itself with the TRRP process and Figure 5-4 in the ecological guidance document.

The commission disagrees with the comment that the TTT process is fairly elaborate. The Trustees have successfully used a similar process for many years on other interactions and it has adapted well to a variety of sites and circumstances. The commission does not agree that the TTT process is inconsistent with the TRRP process or Figure 5-4 in the ecological guidance document. For these reasons, the commission has made no changes in response to these comments.

GSI, TCC, TxOGA, and CGS commented on the written agreement referenced in §7.124(h)(2)(C). GSI commented that negotiation of site-specific written agreements between the Trustees and the person at a significant portion of the sites proceeding with an ESA is impractical and has the potential to cause significant delays in the ESA process. GSI recommended adding language to indicate the (limited) situations where the Trustees

would attempt to negotiate a written agreement prior to proceeding with an ESA and clarifying that the failure of the person to reach written agreement with the Trustees will not limit the person's ability to proceed with the ESA and will not effect the timing of the ESA process. GSI also recommended clarifying that entry into the ESA process does not necessarily indicate that any NRD have occurred and that payment of Trustees' costs and public participation are not required under the TRRP rules.

TCC and TxOGA commented that it must be clear that a person can use the ESA without ever addressing NRD at a site and the Trustees should not hold back approval in the process if the person simply wants to deal with his/her remedial obligations. TCC further commented that the Trustees should not pursue payment of costs associated with the risk assessment because they are serving as technical experts providing support to TNRCC to insure that the natural resources under their jurisdiction are adequately protected. TCC recommended that the second sentence in §7.124(h)(2)(C) be revised to delete any reference to the ERA and add the words "as appropriate" to the end of the sentence. CGS commented that the inclusion of a written agreement should be eliminated because the entire process is predicated on the fact that the ERA and risk management requirements are derived from the agency's authority to require remedial actions for the protection of "human health and the environment" and though similar, it is not a process for the Trustees to assert and pursue claims for NRD. CGS further commented that under no event should a person be required to enter into an agreement with the Trustees for the performance of an ESA under the TRRP rules and if the person has no intention of addressing his or her potential NRD liabilities, then the Trustees must not withhold approval or participation in the ESA process based solely on that fact.

The commission responds that a responsible party may use an ESA without addressing NRD at their own risk of duplicative expenses associated with investigation of NRD's, risk of additional or alternative compensation for past lost use, and public rejection of the compensatory ecological restoration in a NRD context. The commission also responds that the Trustees will not prevent approval of an acceptable ESA based solely on whether or not an NRD agreement is reached with responsible party. It is neither the commission's nor the Trustees' intent to require an agreement, but to simply allow persons the opportunity of resolving their NRD liability in an efficient manner at the same time they are moving through the ESA process. For this reason, the commission agrees with TCC's recommendation to add "as applicable" to the end of the second sentence in §7.124(h)(2)(C). However, for settlement of any NRD liability, entry into a formal written agreement with the Trustees will be necessary. The commission disagrees with TCC's comment that the Trustees should not pursue payment of costs associated with the risk assessment because the Trustees' involvement in the risk assessment is assessment work and thus the costs of that work are recoverable under NRD statutes and regulations.

GSI also recommended adding language to §7.124(h)(2)(C) to clarify that entry into the ESA process does not necessarily indicate that any NRD have occurred.

This comment has been previously addressed under an earlier comment of GSI's pertaining to risk and injury.

Additionally, GSI recommended adding language to clarify that payment of Trustees' costs and public participation are not required under the TRRP rules.

The commission responds that the payment of Trustees' costs is a function of federal and state law and is not the subject of this MOU. As to public participation, it is required under certain parts of the TRRP rules, may be required by statute depending upon specific program requirements (e.g., state superfund), and is required if the person would like to resolve their NRD liability in conjunction with the ESA process. As to payment of Trustees' costs, the TRRP rules do not require the payment of such costs, but the adoption preamble to the TRRP rules does state that the "...commission recognizes that the Trustees' reasonable costs of assessment are a statutory component of NRD liability." (24 TexReg 7531) Therefore, the commission determined that the recommended statements may lead to confusion and are not necessary in a primarily procedural agreement among the participating agencies.

TCC, TxOGA, CGS commented that the dispute resolution process in §7.124(h)(2)(D) cannot interfere with remedial time frames established by the Texas Natural Resource Conservation Commission Remedial/Corrective Actions Project Manager (TNRCC PM). TCC and TxOGA recommended that language should be included in the MOU so that dispute resolution does not interfere with time frames established by TNRCC PM.

The commission has made no changes as a result of these comments for several reasons: 1) the dispute resolution process only applies to Trustee coordination and approval of the ESA and does not apply to Trustee involvement in the ERA or in the ESA consultation process; 2) the dispute resolution process holds the parties to extremely tight time frames to facilitate an efficient ESA process; and 3) in the negotiation of the MOU, this result was the best compromise that could be reached between all the signatories to the MOU.

TCC, TxOGA, CGS commented on the Trustee re-entry and early exit from the process in §7.124(j). TCC and TxOGA commented that overall, as a tool facilitating such timely resolution, the proposed MOU provides authority and time lines to the lead agency (TNRCC) to initiate and carry on the process independent of the Trustees, should any or all Trustees elect not to participate. TCC and TxOGA further commented that they support §7.124(j)(1) concerning re-entry where Trustee involvement is prospective only and the Trustee may not challenge previous decisions as being an important provision that should be kept in the MOU. TCC, TxOGA, and CGS commented that after a Trustee withdraws, it loses its right to challenge decisions made on the ERA or ESA during its participation in the group. TCC and TxOGA recommended language clarifying that the Trustee loses its right to challenge decisions made on the ERA or ESA during its participation in the group when the Trustee withdraws.

In response to these comments, the sentence at issue in §7.124(j)(1) has been revised and an additional sentence added to clarify that a Trustee may not challenge joint decisions made within the TRRP process on the ERA or ESA during that Trustee's prior participation in the process.

TCC, TxOGA, and CGS commented that it is unclear what is meant in §7.124(k) by "Trustee activities" on affected properties. TCC and TxOGA recommended that the MOU provide examples of "Trustee activities" on the property.

In response to these comments, an example of site visits has been added to the sentence at issue.

TCC and TxOGA commented that it should be recognized in §7.124(m), Reservation of rights, that rights are affected if a person goes through the ESA with the cooperation of Trustee parties. TCC and TxOGA recommended that language be added to the MOU to reflect that rights are affected if a person goes through the ESA with cooperation of the Trustees. Specifically, TCC and TxOGA recommended that the sentence be changed to read, "...this MOU does not compromise or affect any legal rights of the parties or persons undergoing an ESA, nor does it narrow the scope of any party's authority or jurisdiction." CGS commented that it should be recognized that the rights of the Trustees are affected if a person goes through the ESA with the cooperation of the Trustees.

As this is a procedural MOU amongst five specific parties, the commission has made no changes in response to these comments. The Trustees did not think it appropriate to address a third party's rights in the MOU's reservation of rights provision. The commission also disagrees that the rights of the Trustees are affected if a person goes through the ESA process and that issue is not presented by this MOU between governmental entities. To clarify this issue, the Trustees have added an additional sentence to §7.124(m).

On §7.124(o), Appropriated funds, TCC and TxOGA commented that, although not directly related to this provision, they believe that inappropriate notification and Trustee involvement in the ERA process will increase costs for remediation projects for both the agencies involved and the person.

Although the comment does not relate to this provision, the commission disagrees that the notification and Trustee involvement in the ERA process will necessarily increase costs for remediation projects for both the agencies involved and the person. As the adoption preamble to the TRRP rules states, "Persons may benefit from timely Trustee involvement in the Ecological Risk Assessment process through decreased costs associated with the coordination of risk assessment and injury determination, reduction of residual natural resources injury, and timely resolution of natural resource damages liability." (24 TexReg 7455)

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties. Additionally, the new section is adopted under TWC, §5.104 and Texas Health and Safety Code, §361.016, which provide the commission with the authority to enter into an MOU.

§7.124. Natural Resource Trustees Memorandum of Understanding.

(a) Purpose. The Texas Risk Reduction Program (TRRP) rules (30 Texas Administrative Code (TAC) Chapter 350) and the preamble to those rules (24 TexReg 7436) reference certain interactions between the Texas Natural Resource Conservation Commission (TNRCC) and the natural resource trustees (Trustees) in regard to an ecological risk assessment and an ecological services analysis. The purpose of this memorandum of understanding (MOU) is to facilitate these interactions between the TNRCC and the Trustees in both these processes. In addition, the parties recognize the following as pertinent to the development of this MOU.

(1) The TNRCC is the agency of the State of Texas given the primary responsibility for implementing the constitution and laws of the state relating to the conservation of natural resources and the protection of the environment.

(2) As public trustees for natural resources, the Trustees have statutory authority to pursue claims for injury to, destruction of, or loss of natural resources as a result of a release of a hazardous substance or a discharge of oil, seek restoration or replacement of such natural resources, and pursue recovery of reasonable assessment costs.

(3) Due to some dependent and even overlapping responsibilities, it is beneficial for the TNRCC and the Trustees to coordinate on the performance of certain tasks concerning the ecological risk assessment and ecological services analysis.

(4) Integration of natural resource damages considerations into risk reduction decisions may efficiently and cost effectively resolve certain natural resource damages liability and alleviate the need for further investigations or legal proceedings.

(b) Parties. The parties to this MOU are as follows:

(1) TNRCC, both as administrator of TRRP and a natural resource trustee;

(2) Texas Parks and Wildlife Department, solely as a natural resource trustee;

(3) Texas General Land Office, solely as a natural resource trustee;

(4) National Oceanic and Atmospheric Administration of the United States Department of Commerce, solely as a natural resource trustee; and

(5) United States Department of the Interior, solely as a natural resource trustee.

(c) Authorities.

(1) The Trustees enter into this MOU in accordance with the legal authorities provided to each Trustee by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code (USC) §§9601 et seq.; the Clean Water Act (CWA), 33 USC §§1251 et seq.; the Oil Pollution Act of 1990 (OPA), 33 USC §§2701 et seq.; the National Contingency Plan, 40 Code of Federal Regulations (CFR) Part 300; the Natural Resource Damage Assessment Regulations, 43 CFR Part 11; and 15 CFR Part 990; and any other applicable laws or authorities.

(2) The State of Texas Trustees also enter into this MOU in accordance with the legal authorities provided by the Texas Natural Resources Code, Oil Spill Prevention and Response Act of 1991, §40.107; the Texas Natural Resource Damage Assessment Regulations, 31 TAC Chapter 20; and any other applicable laws or authorities.

(3) The TNRCC additionally enters into this MOU in accordance with the legal authority provided to it by the Texas Water Code, §5.104 and Texas Health and Safety Code, §361.016.

(d) Acronyms.

(1) COCs--chemicals of concern;

(2) CFR--Code of Federal Regulations;

(3) CERCLA--Comprehensive Environmental Response, Compensation, and Liability Act;

(4) CWA--Clean Water Act;

(5) LOAEL--lowest observed adverse effect level;

(6) MOA--memorandum of agreement;

(7) MOU--memorandum of understanding;

(8) NOAEL--no observed adverse effect level;

(9) OPA--Oil Pollution Act of 1990;

(10) PCLs--protective concentration levels;

(11) TAC--Texas Administrative Code;

(12) TNRCC--Texas Natural Resource Conservation Commission;

(13) TRRP--Texas Risk Reduction Program;

(14) TNRCC PM--Texas Natural Resource Conservation Commission Remedial/Corrective Actions Project Manager; and

(15) TTT--Trustee technical team.

(e) Definitions. Any words not specifically defined herein which are defined in 30 TAC §350.4, shall have the same meaning as defined in that section.

(1) Person--An individual, corporation, organization, government, or governmental subdivision or agency, business trust, partnership, association, or any other legal entity utilizing the TRRP rules or any other equivalent TNRCC rules.

(2) Paragraph 7--30 TAC §350.77(c)(7) corresponds to a point in the Tier 2 screening-level ecological risk assessment where the initial risk estimate is refined based on the use of less conservative exposure assumptions. Paragraph 7 is a requirement that the person must perform as part of the Tier 2 screening-level ecological risk assessment if the assessment progresses past 30 TAC §350.77(c)(6). Paragraph 7 reads as follows: (The person shall:) "...justify the use of less conservative assumptions to adjust the exposure and repeat the hazard quotient exercise in paragraph (6) of this subsection, once again eliminating COCs that pose no unacceptable risk and adding comparisons to the LOAELs for those COCs indicating a potential risk (i.e., NOAEL hazard quotient >1); however, when multiple members of a class of COCs are present which exert additive effects, it is also appropriate to utilize an ecological hazard index methodology (if all COCs are eliminated at this point, the ecological risk assessment process ends and the items listed in paragraphs (8) - (9) of this subsection are not required);" Any reference in this MOU to Paragraph 7 shall not only include the current 30 TAC §350.77(c)(7) but also the point at which the equivalent actions occur under other TNRCC risk reduction rules in the event that TRRP is amended or replaced and the specific reference is revised.

(3) Trustees--The federal agencies as designated by the President of the United States and the state agencies as designated by the Governor of the State of Texas pursuant to the OPA and CERCLA to act on behalf of the public as trustees of natural resources (e.g., water, air, land, wildlife).

(4) Parties--The signatories to this MOU as specified in subsection (b) of this MOU.

(f) Trustee contacts. The TNRCC Natural Resource Trustee Program (TNRCC Trustee) shall designate a primary TNRCC Trustee contact in writing to the other Trustees no later than ten calendar days after the effective date of this MOU. The TNRCC shall designate a secondary TNRCC Trustee contact in the initial notifications of both an ecological risk assessment and an ecological services analysis. Each of the other Trustees shall designate a primary and a secondary contact in writing to the other Trustees no later than ten calendar days after the effective date of this MOU. Initial notifications and all subsequent electronic mail correspondence shall be sent to both the primary and secondary contacts for each Trustee. The TNRCC Trustee shall send copies of pertinent documents to the primary contacts by regular mail (unless an alternate contact or method is identified in advance). A Trustee may change its primary or secondary contact by providing the other Trustees not less than ten calendar days written notice of such change.

(g) Ecological risk assessment process. The preamble to TRRP rules (24 TexReg 7455) states that the Trustees may choose to participate in the ecological risk assessment process to ensure that natural resources under their jurisdiction are adequately protected. The preamble also states that the TNRCC will notify the Trustees of affected property with chemicals of concern (COCs) which remain after a particular stage of development within the Tier 2 screening-level ecological risk assessment. The purpose of an ecological risk assessment is to characterize the ecological setting of the affected property, identify complete or reasonably anticipated to be completed exposure pathways and representative ecological receptors, scientifically eliminate COCs that pose no unacceptable risk, and develop protective concentration levels (PCLs) for selected ecological receptors where warranted. The parties agree that an ecological risk assessment should be conducted in a manner that is designed to result in the protection of ecological receptors that may be subject to management by federal and state agencies. Furthermore, the Trustees acknowledge that the potential for continuing injury to ecological resources should be negligible at sites where the remedial decisions were based on appropriate application of the proposed ecological risk assessment process.

(1) Initial notification. After the TNRCC learns through a person's submittal that the ecological risk assessment at an affected property has progressed to Paragraph 7 and prior to approval of the ecological risk assessment by the TNRCC, the TNRCC Trustee shall provide timely notification to the other Trustees. The parties agree that further evaluation of ecological risk at an affected property is not warranted for purposes of making response or corrective action decisions under the TRRP rules when: 1) an appropriately applied ecological risk assessment is conducted consistent with the most recent TNRCC guidance on the subject at the time the ecological risk assessment is performed; and 2) the affected property does not progress to Paragraph 7.

(A) Method of initial notification. Notification by the TNRCC Trustee shall be provided via electronic mail, or via another mutually agreed upon method, to the primary and secondary contacts for each Trustee.

(B) Content of initial notification. The initial notification shall include the affected property name, location, status of the ecological risk assessment, and to the extent practical, the type of habitat, receptors at risk, COCs, and other relevant information necessary to allow the Trustees to evaluate their level of interest in the affected property. The TNRCC secondary contact, the TNRCC ecological risk assessor, and the deadline constraints of the TNRCC remedial/corrective actions project manager (TNRCC PM) shall also be provided in the initial notification.

(C) Trustee response to initial notification. A written response (electronic mail is acceptable) from each Trustee to the initial notification must be provided to both the primary and secondary TNRCC Trustee contacts within five working days of the initial notification. This response shall specifically state the Trustee's intent as to whether or not the Trustee chooses to participate in the ecological risk assessment process. In the event that any Trustee fails to respond within the five working days, the TNRCC will proceed as if the Trustee chose not to participate in the ecological risk assessment process for that affected property. Subsection (j) of this MOU explains how a Trustee may enter the process at a later date.

(2) Documents. After the timely receipt of a Trustee's written intent to participate in the ecological risk assessment process, the

TNRCC Trustee shall send copies of pertinent documents to the primary contacts by regular mail (unless an alternate contact or method is identified in advance). The TNRCC Trustee shall provide the primary and secondary contacts with electronic mail notification (unless an alternate method of notification has been mutually agreed to in advance) that the documents have been mailed. The TNRCC shall provide documents in a timely manner to ensure that the Trustees have the maximum time available for the review of documents. The TNRCC Trustee shall coordinate the review of ecological risk assessment work plans, reports, and other relevant documents with the Trustees.

(3) Trustee comments. Unless otherwise mutually agreed, the participating Trustees shall submit a unified set of written comments, if any, on the ecological risk assessment to the TNRCC ecological risk assessor. Trustee comments on ecological risk assessment documents must be technically defensible and relevant to the ecological risk assessment process.

(A) Deadline for comments and extensions.

(i) The Trustees shall have 20 calendar days from the date of postmark on any documents received to respond to both the TNRCC Trustee contacts with comments. This time period may be reduced to coincide with a deadline of less than 20 calendar days if necessary to meet the TNRCC PM's deadline. In the event that a greater period of time is available, as determined by the TNRCC PM, an extended deadline shall be provided to the Trustees.

(ii) The Trustees may request an extension of the comment period of up to seven calendar days by writing (electronic mail is acceptable) to both the TNRCC Trustee contacts not less than three calendar days prior to the comment deadline. The TNRCC may, in its sole discretion, grant or deny such requests for extensions. The TNRCC will respond to all participating Trustees regarding such requests within 24 hours after receipt. If the Trustees do not receive a response from the TNRCC, the request for an extension is presumed to be denied.

(iii) In the event that any Trustee fails to provide comments within the prescribed deadline (including any extension), the TNRCC will proceed as if the Trustee has no comments.

(B) Reconciliation of comments. Prior to submitting comments to the TNRCC ecological risk assessor, the participating Trustees shall first coordinate all comments among themselves and provide a unified Trustee response through a mutually agreed upon Trustee representative. In the event that the TNRCC ecological risk assessor or TNRCC PM disagrees with any comments provided by the Trustees, the TNRCC will make diligent efforts to reach resolution between the parties. The TNRCC ecological risk assessor shall be responsible for coordinating the resolution of conflicting comments and shall schedule and coordinate comment resolution meetings as appropriate. Each participating Trustee's primary contact shall be copied on all ecological risk assessment related correspondence to the person and shall be provided copies of all ecological risk assessment related correspondence from the person to the TNRCC. In the event that differences cannot be resolved, the Trustees maintain the right to independently provide comments to the TNRCC PM and/or person conducting the ecological risk assessment, either as a unified group of two or more Trustees or as a single Trustee.

(C) Recognition of comments. The TNRCC ecological risk assessor shall evaluate the Trustee comments and the TNRCC PM shall incorporate them into the TNRCC's response to the person, as appropriate. The TNRCC shall use its regulatory authority to ensure that the incorporated Trustee comments are recognized in the development of the ecological risk assessment. If any Trustee comments are not incorporated, the Trustees shall be informed.

(4) Coordination of meetings. After the timely receipt of a Trustee's written intent to participate in the ecological risk assessment process, the TNRCC shall, to the extent practical, coordinate with the Trustees concerning their availability at least ten calendar days in advance of meetings concerning the ecological risk assessment. The TNRCC shall provide the Trustees notification of the ecological risk assessment meetings via electronic mail or via another mutually agreed upon method. The TNRCC and the Trustees shall work together to ensure that all parties to this MOU which are participating in the ecological risk assessment process have input into that process and that reasonable timelines are established and met to ensure that Trustee involvement in the ecological risk assessment does not impede progression of the ecological risk assessment. In the event that any participating Trustee is unable to attend a meeting concerning the ecological risk assessment, any absent Trustee shall contact the other Trustees to obtain information regarding the meeting, and if necessary, shall contact the TNRCC ecological risk assessor within a reasonable time after the meeting to be briefed on the issues discussed.

(h) Ecological services analysis process. The TRRP rules require that the TNRCC consult with the Trustees prior to approval of a person's request to conduct an ecological services analysis (30 TAC §350.33(a)(3)(B) and §350.77(f)(2)). Furthermore, TRRP rules also require the person to conduct any compensatory ecological restoration and other activities associated with the ecological services analysis with the approval of and in cooperation with the Trustees (30 TAC §350.33(a)(3)(B)). The parties agree that an ecological services analysis must be conducted whenever concentrations of COCs which exceed ecological PCLs are proposed to be left in place with the potential for continuing exposure in accordance with 30 TAC §350.33(a)(3)(B).

(1) Consultation on person's request to perform an ecological services analysis. Although the following sets forth a separate process for consultation on a person's request to perform an ecological services analysis, subsection (i) of this MOU explains how the processes under subsections (g) and (h)(1) of this MOU may be combined to achieve efficiencies.

(A) Notification. After the TNRCC receives a person's written request to perform an ecological services analysis, the TNRCC Trustee shall provide timely notification to the other Trustees.

(i) Method of notification. Notification by the TNRCC Trustee shall be provided via electronic mail, or via another mutually agreed upon method, to the primary and secondary contacts for each Trustee.

(ii) Content of notification. The notification shall include the affected property name, location, the fact that the person is requesting to perform an ecological services analysis, and to the extent practical, the type of habitat, receptors at risk, COCs, and other relevant information necessary to evaluate the level of interest in the affected property. The TNRCC secondary contact, the TNRCC ecological risk assessor, and the deadline constraints of the TNRCC PM shall also be provided in the notification.

(iii) Trustee response to notification. A written response (electronic mail is acceptable) from each Trustee to the notification must be provided to both the TNRCC Trustee contacts within five working days of the notification. This response shall specifically state the Trustee's intent as to whether or not the Trustee chooses to be consulted on the person's request to perform an ecological services analysis. In the event that any Trustee fails to respond within the five working days, the TNRCC will proceed as if the Trustee chose not to participate in the consultation on the person's request to perform an ecological services analysis. Subsection (j) of this MOU explains how a Trustee may enter the process at a later date.

(B) Documents and other information. After the timely receipt of a Trustee's written intent to be consulted on the person's request to perform an ecological services analysis, the TNRCC Trustee shall send copies of pertinent documents to the primary contacts by regular mail (unless an alternate contact or method is identified in advance). The TNRCC Trustee shall provide the primary and secondary contacts with electronic mail notification that the documents have been mailed.

(i) The TNRCC shall provide documents in a timely manner to ensure that the Trustees have the greatest time available for the review of documents. The TNRCC Trustee shall coordinate the review of such documents with the Trustees.

(ii) Any participating Trustee may make a request for additional information not less than three calendar days prior to the comment deadline, but such request must be very specific as to the type of information requested.

(C) Trustee comments. Unless otherwise mutually agreed, the participating Trustees shall submit a unified set of written comments, if any, on the person's request to perform an ecological services analysis to the TNRCC ecological risk assessor. Trustee comments must be technically defensible and relevant to the ecological services analysis process. Such Trustee responses shall specifically include a statement of each participating Trustee's recommendation for approval or disapproval of the person's request to perform an ecological services analysis. If feasible, the Trustee responses shall also include any response action recommendations for the affected property. If the person's request to perform an ecological services analysis is not recommended for approval by any Trustee, a reasoned explanation must be provided.

(i) Deadline for comments and extensions. The Trustees shall have 20 calendar days from the date of postmark on any documents received to respond to the TNRCC primary and secondary contacts with comments. The TNRCC may request that the Trustees respond within a shorter time. In the event that a greater period of time is available, as determined by the TNRCC PM, an extended deadline shall be provided to the Trustees. The Trustees may request an extension of the comment period of up to seven calendar days by writing (electronic mail is acceptable) to the TNRCC primary and secondary contacts not less than three calendar days prior to the comment deadline. The TNRCC may, in its sole discretion, grant or deny such requests for extensions. The TNRCC will respond to all participating Trustees regarding such requests within 24 hours after receipt. If the Trustees do not receive a response from the TNRCC, the request for an extension is presumed to be denied. In the event that any Trustee fails to provide comments within the prescribed deadline (including any extension), the TNRCC will proceed as if the Trustee concurs with the TNRCC's decision on the person's request to perform an ecological services analysis.

(ii) Reconciliation of comments. Prior to submitting comments to the TNRCC, the participating Trustees shall first coordinate all comments among themselves and provide a unified Trustee response through a mutually agreed upon Trustee representative. In the event that the TNRCC ecological risk assessor or TNRCC PM disagrees with any comments provided by the Trustees, the TNRCC shall make diligent efforts to reach resolution between the parties. The TNRCC ecological risk assessor shall be responsible for coordinating the informal resolution of conflicting comments and shall schedule and coordinate comment resolution meetings as appropriate. Each participating Trustee's primary contact shall be copied on all ecological services analysis related correspondence to the person and shall be provided copies of all ecological services analysis related correspondence from the person to the TNRCC. In the event that differences cannot be resolved, the Trustees maintain the right to independently provide comments to the TNRCC PM and/or person requesting to conduct the ecological services analysis, either as a unified group of two or more Trustees or as a single Trustee.

(iii) Recognition of comments. The TNRCC ecological risk assessor shall evaluate the Trustee comments and the TNRCC PM shall incorporate them into the TNRCC's response to the person, as appropriate. The TNRCC PM shall inform the person in writing of the results of the TNRCC/Trustee consultation and shall copy the Trustees on such correspondence. If any Trustee comments are not incorporated, the Trustees shall be informed.

(D) Coordination of meetings. After the timely receipt of a Trustee's written intent to participate in the consultation on the person's request to perform an ecological services analysis, the TNRCC shall, to the extent practical, coordinate with the Trustees concerning their availability at least ten calendar days in advance of meetings concerning the person's request to perform an ecological services analysis. The TNRCC shall provide the Trustees notification of these meetings via electronic mail or via another mutually agreed upon method. The TNRCC and the Trustees shall work together to ensure that all parties to this MOU which are participating in the ecological services analysis process have input into that process and that reasonable time lines are established and met to ensure that Trustee involvement in the ecological services analysis does not impede progression of the ecological services analysis. In the event that any participating Trustee is unable to attend a meeting concerning the ecological services analysis, any absent Trustee shall contact the other Trustees to obtain information regarding the meeting and if necessary, shall contact the TNRCC ecological risk assessor within a reasonable time after the meeting to be briefed on the issues discussed.

(2) Ecological services analysis cooperation and approval process. To enhance the coordination between the Trustees and the person and provide efficiencies in the development of the ecological services analysis, the Trustees will initiate a dialogue with the person in a timely manner to establish the nature and scope of a cooperative ecological services analysis. The Trustees will maintain open communications with the person and actively participate in the entire ecological services analysis.

(A) Trustee interaction. Unless otherwise specified herein, cooperation between the Trustees in the development, review, and approval of the ecological services analysis shall be consistent with the September 1995 Memorandum of Agreement between the Trustees. The Trustees shall strive for consensus on all decisions related to the development and implementation of the ecological services analysis. The Trustees shall coordinate their efforts to ensure a single unified Trustee position is provided on all written comments/statements to the person.

(B) Trustee technical team (TTT). For each affected property involving significant participation by two or more Trustees, the Trustees shall create a TTT to which a representative shall be designated by each Trustee. The Trustees agree to designate representatives to the TTT who, at a minimum, have: 1) the level of knowledge and expertise needed to effectively guide the ecological services analysis process; and 2) the level of authority necessary to make decisions on issues presented to the TTT. The TTT shall be responsible for, among other things, communications with the person, outlining the scope and objectives of the ecological services analysis with the person, identifying additional data needs, reviewing and approving ecological services analysis reports and work plans, overseeing implementation of such plans, and certifying the satisfactory completion of the compensatory ecological restoration, where appropriate. The TTT may take any other actions as necessary to carry out its duties under

this MOU. The TNRCC Trustee shall act as Trustee team leader unless otherwise agreed to by all Trustees. The Trustee team leader shall be responsible for, among other things, the coordination and monitoring of the progress of the development of technical comments, and implementation of the ecological services analysis. The Trustee team leader shall also be responsible for the scheduling of meetings of the TTT and notifying TTT members of those meetings on a timely basis, preparing agendas for those meetings, acting as a central contact point for the TTT, and establishing and maintaining records and relevant documents related to the ecological services analysis. The Trustee team leader may delegate any of his or her duties to another Trustee with the concurrence of the TTT. The duties of the Trustee team leader do not provide the Trustee team leader with any decision-making rights beyond those normally held by each Trustee member of the TTT.

(i) Approval and performance of the ecological services analysis. The Trustees agree that the TTT shall act timely to either approve the ecological services analysis or disapprove with comments which may include a recommendation for additional work. This process shall be repeated each time the revised ecological services analysis report is resubmitted until the ecological services analysis report is approved, rejected, or is withdrawn. If the TTT cannot reach agreement with the person or the person fails to perform the ecological services analysis as proposed, the Trustees shall refer the affected property back to the TNRCC for further decisions on remedial/corrective action. The TNRCC PM shall be kept informed of all TTT activities, shall be copied on all comments, and shall be invited to participate in all meetings with the person concerning performance of the ecological services analysis.

(ii) Approval and completion of the compensatory ecological restoration. Upon reaching a final decision on all reports which involve compensatory ecological restoration, the Trustees shall provide a written statement to the person and the TNRCC PM of the Trustees' final decision. When the compensatory ecological restoration is completed consistent with Trustee-approved criteria, the TTT shall also provide a written statement to both the person and the TNRCC PM certifying satisfactory completion of the compensatory ecological restoration. If the compensatory ecological restoration is not completed to the Trustees' satisfaction, the Trustees shall refer the affected property back to the TNRCC for further decisions on remedial/corrective action.

(C) Agreement. Where determined appropriate by the Trustees, the Trustees shall pursue a written agreement with a person conducting an ecological services analysis to govern Trustee coordination with that person. The agreement will include issues such as the payment of Trustees' costs associated with the ecological risk assessment and ecological services analysis processes, public participation requirements, and a mechanism for addressing natural resource damages liability, as applicable.

(D) Dispute resolution. In the event of a dispute between any of the parties concerning activities under subsection (h)(2) of this MOU, the Trustee contacts shall attempt to resolve the dispute informally. If the dispute is not resolved informally at the Trustee contact level, any Trustee may invoke the following dispute resolution procedures by sending notice to all primary Trustee contacts involved in the dispute. Such notice must include a brief description of the disputed issue(s) and acceptable alternatives for resolution. The Trustee contacts shall elevate the dispute to the appropriate first tier agency representatives with successive elevations to second tier agency representatives and third tier agency representatives as necessary.

(i) Within four calendar days after receiving the notice invoking dispute resolution, the Trustees involved in the dispute shall designate the names and titles of their first, second, and third tier agency representatives via electronic mail (or another mutually agreed upon method) to all primary Trustee contacts involved in the dispute.

(ii) Within 14 calendar days after receiving the notice invoking dispute resolution, the first tier agency representatives involved in the dispute shall discuss the disputed issue(s), assisted by other technical or legal staff as appropriate. If the disputed issue(s) cannot be resolved by the first tier agency representatives within the 14 calendar days after receiving the notice, the disputed issue(s) shall be elevated by the first tier agency representatives to the second tier agency representatives within five calendar days after the expiration of the discussion period. The second tier agency representatives shall have 14 calendar days within which to discuss and attempt to resolve the disputed issue(s), assisted by other technical or legal staff as appropriate. If the disputed issue(s) cannot be resolved by the second tier agency representatives within the 14 calendar days after it is elevated, the disputed issue(s) shall be elevated by the second tier agency representatives to the third tier agency representatives within five calendar days after the expiration of the discussion period. The third tier agency representatives shall have 14 calendar days within which to discuss and attempt to resolve the disputed issue(s), assisted by other technical or legal staff as appropriate. If the third tier agency representatives cannot resolve the dispute, then the dispute resolution process is terminated and each agency may proceed independently according to its rights under state and federal law.

(iii) Each Trustee may automatically obtain one 14-calendar-day extension in this process by sending notice of such to all primary Trustee contacts involved in a particular dispute. Additionally, the 14- calendar-day period may be extended by mutual agreement of all Trustees involved in a particular dispute.

(3) Waiver of a Trustee's role in the ecological services analysis process. If a Trustee has waived its involvement in the ecological services analysis process outlined in this MOU (either specifically or through failure to respond to notification within the required time frame) and has not reentered the process pursuant to subsection (j) of this MOU, then the Trustee has waived its role in the ecological services analysis process as set forth by TRRP rules, specifically 30 TAC §350.33(a)(3)(B) and §350.77(f)(2).

(i) Efficiencies. The parties recognize that due to the nature of a person's submittal, efficiencies may be gained by combining the notification and other processes under subsections (g) and (h)(1) of this MOU. Any such combined notification shall be clearly identified as such and shall serve to satisfy both of these subsections.

(j) Trustee re-entry and early exit from process.

(1) If a Trustee has waived its involvement in the ecological risk assessment or ecological services analysis process (either specifically or through failure to respond to notification within the required time frame), the Trustee may resume its involvement in the process by advising the TNRCC Trustee in writing (electronic mail *not* acceptable) of its intent to participate in subsequent notification and coordination activities. However, upon a deferred entry or a re-entry to the ecological risk assessment or ecological services analysis processes, the Trustee involvement in the TRRP process shall be prospective only and may not challenge previous decisions regarding the ecological risk assessment and ecological services analysis. Additionally, a Trustee may not challenge joint decisions made within the TRRP process on the ecological risk assessment or ecological services analysis during that Trustee's prior participation in the process.

(2) Likewise, a Trustee participating in the ecological risk assessment or ecological services analysis process may decline future involvement by advising the TNRCC Trustee in writing (electronic

mail *not* acceptable) of its intent not to participate in future notification and coordination activities.

(3) In the event that all the Trustees have waived involvement in the ecological services analysis process (either specifically or through failure to respond to notification within the required time frame), the TNRCC Trustee shall provide oversight of and approval or disapproval with comments on the compensatory ecological restoration and other activities associated with the ecological services analysis.

(k) Affected property activities. The Trustees shall promptly notify the TNRCC PM prior to initiating any Trustee activities (e.g., site visits) on an affected property and shall coordinate with the TNRCC PM on any such activities which may affect the remedial/corrective action at an affected property.

(l) September 1995 Memorandum of Agreement. Any Trustee activities, issues, or responsibilities not specifically addressed herein, shall be governed by the September 1995 Memorandum of Agreement between the Trustees.

(m) Reservation of rights. Except as specifically stated herein, this MOU does not compromise or affect any legal rights of the parties, nor does it narrow the scope of any party's authority or jurisdiction. This MOU does not compromise or affect any rights of the parties with regard to natural resource damage actions.

(n) Third party challenges or appeals. The rights and responsibilities contained in this MOU may not be the basis of any third party challenge or appeal. Nothing in this MOU creates any rights or causes of action in persons not parties to this MOU.

(o) Appropriated funds. Nothing in this MOU shall be construed as obligating the United States, the State of Texas, or any public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

(p) Termination and amendment. This MOU shall terminate by written agreement of all the parties. Any party may withdraw from this MOU for any reason. In the event that any party withdraws from the MOU, it must provide written notice to the other parties. In the event of such withdrawal, the MOU remains in full force and effect for the remaining parties. This MOU may also be amended by written agreement of all the parties. Any termination, withdrawal, or amendment must be preceded by appropriate rulemaking.

(q) Effective date and signatures. This MOU may be signed by each of the parties in two or more counterparts which together shall constitute one and the same document and shall become effective upon the date of last signature.

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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Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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CHAPTER 303. OPERATION OF THE RIO GRANDE

The Texas Natural Resource Conservation Commission (commission) adopts amendments to 30 TAC §303.2, Definitions; §303.21, Accounts--Amistad/Falcon Reservoirs; §303.22, Allocations to Accounts; §303.41, Sale of Water Rights; and §303.42, Amendments. The commission adopts these amendments to correct the spelling of two of the reaches in the Rio Grande, to limit the conveyance of water rights until all fees are paid, to prohibit the transfer of water rights from the Upper Rio Grande to the Lower or Middle Rio Grande below International Amistad Reservoir except for rights holders meeting certain requirements meant to protect other water rights, and to adjust the minimum operating reserve from 150,000 to 75,000 acre-feet. The amendments to §303.2 and §303.21 are adopted *with changes* to the proposed text as published in the January 26, 2001 issue of the *Texas Register* (26 TexReg 920). Sections 303.22, 303.41, and 303.42 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Water rights in the portions of the Rio Grande Basin and the Nueces--Rio Grande Basin which are regulated by this chapter are allocated by a watermaster employed by the commission. Water rights in these basins were allocated under the provisions of a judicial adjudication of water rights. *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen,* 443 S.W.2d 728 (Tex.Civ.App.-Corpus Christi 1969) (*Hidalgo*). Water in portions of the Rio Grande River is shared with the United States of Mexico (Mexico) under several treaties, including the Treaty of 1944 which most specifically addresses the issue of water allocation. The International Boundary and Water Commission (IBWC) oversees the allocations of water between the United States (U.S.) and Mexico, and notifies the watermaster of the amounts of water available for allocation to water rights holders under U.S. jurisdiction.

Water for the allocated water rights in these basins is stored in two international reservoirs, Amistad and Falcon. The U.S. portion of the water is allocated under a schedule established in *Hidalgo*. In this case, the court created several classes of water rights holders under the jurisdiction of the U.S. which have since been modified to Domestic, Municipal, and Industrial (DMI) water users, and Class A and Class B water users. The DMI users have priority rights over Class A and Class B water users. Rules in Chapter 303 apply only to water under U.S. jurisdiction and are not applicable to the Mexican portion of water in the International Amistad and Falcon Reservoirs.

This chapter establishes the levels of the DMI reserve and the operating reserve. The DMI reserve is the minimum amount of water under U.S. jurisdiction which must be stored in the reservoirs to ensure that DMI users have adequate water. When the court determined the allocation of water rights in these basins in the *Hidalgo* adjudication, the court established a DMI reserve of 60,000 acre-feet. The commission in July 1986 increased the DMI reserve to its current reserve of 225,000 acre-feet which remains unchanged with these amendments. The operating reserve is a minimum volume of acre-feet of water which is required to be maintained in the reservoirs to allow for losses of water from evaporation, seepage, and conveyance; to allow for emergencies; and for adjustments of storage accounts. The operating reserve is being decreased in these rules to 75,000 acre-feet.

The remaining water under U.S. jurisdiction in the reservoirs is allocated to water rights holders where it is used for beneficial uses or maintained in their storage accounts. If the unallocated

water in the reservoirs drops to the minimum operating reserve, the watermaster adjusts allocations for the Class A and Class B water users by deducting water from their storage account balances, called negative allocations, and adding it to the operating reserve. This reallocation ensures that sufficient water is available for losses due to evaporation, seepage, and conveyance; to allow for emergencies; and for adjustments of storage accounts.

In 1986, the commission promulgated rules setting the operating reserve between 275,000 and 380,000 acre-feet, and under drought conditions, setting the operating reserve at 150,000 acre-feet. Because of the existence of severe to extreme drought conditions in the Middle and Lower Rio Grande Basins over the past six years, the commission determined there was a need to assess the operational requirements of this system. The adopted rule changes are based on historic data, and for the first time, models of actual reservoir operations over the past six years. Staff reviewed historic data showing actual uses of water in the Rio Grande and the Nueces--Rio Grande Basins from 1988 - 1998, system inflows reported by the IBWC, and other hydrologic data for the same period. Evaluation of this data revealed several important facts which were considered. The greatest amount of evaporative losses which would have occurred in this system was during May 1998, when the total losses from evaporation, conveyance, channel operation, and emergencies would have reduced the operating reserve to 34,471 acre-feet, well above the zero acre-feet in the operating reserve which will trigger the implementation of negative allocation in these adopted amendments.

Historic data also shows that monthly evaporative losses average 39,623 acre-feet. The lowest monthly inflow into the reservoirs averaged over five years of drought is 66,000 acre-feet. Because the average monthly evaporative loss is approximately 40,000 acre-feet, and the lowest average monthly inflow is 66,000 acre-feet, the commission anticipates that the inflow of any one month will exceed the evaporative loss for that month. A minimum operating reserve of 75,000 acre-feet should exceed the difference between the evaporative loss and restorative inflow of any one month.

Based on this data, the commission determined that the operating reserve may be safely changed to 75,000 acre-feet with a trigger for negative allocations at zero acre-feet, while still protecting DMI water rights. With these adopted amendments, the commission establishes a restoration operating reserve of 48,000 acre-feet, which is anticipated to provide sufficient water reserves for any single month's evaporative losses. The commission also anticipates that monthly inflows will then reestablish the operating reserve at 75,000 acre-feet within one month, since the average monthly inflow has always exceeded the average monthly evaporative loss.

Therefore, the commission adopts amendments to Chapter 303 lowering the existing operating reserve to 75,000 acre-feet. This modification will relieve some of the economic effects of the drought on Class A and Class B water rights holders in these basins. Additionally, the commission adopts amendments lowering the trigger for negative allocations to zero acre-feet in the operating reserve from 150,000 acre-feet and creating a minimum restoration volume of 48,000 acre-feet. A negative allocation occurs when the watermaster subtracts allocations from storage accounts to ensure that sufficient water is available for losses due to evaporation, conveyance, seepage, and emergencies. The commission further adopts amendments requiring the operating reserve to be reestablished to 75,000 acre-feet by inflows before the watermaster can make any allocations to Class A and Class B accounts.

SECTION BY SECTION DISCUSSION

Section 303.2 is amended to delete the phrase "unless the context clearly indicates otherwise," to eliminate ambiguity.

Section 303.2(11)(C) is amended to correct the spelling of "Progreso" in Progreso Bridge.

Section 303.2(11)(D) is amended to correct the spelling of "Progreso" in Progreso Bridge.

Section 303.2(12) is amended to make grammatical corrections.

Section 303.2(22) is amended to add subparagraphs (A) and (B), which define Class A and Class B water rights. Class A and B water rights are rights in the Lower and Middle Rio Grande River held under certificates of adjudication that were granted either in the adjudication of the Lower and Middle Rio Grande River in *State v. Hidalgo Co. Water Con. & I. Dist. No. Eighteen*, 443 S.W.2d 728 (Tex. Civ. App.-Corpus Christi 1969, writ ref'd n.r.e.), or issued by the commission. The majority of these water rights are irrigation rights, but in recent years some have been converted to other uses. These definitions are being added to define the terms "Class A" and "Class B" water rights, which are currently used in the rules but not defined. Paragraph (22)(A) is amended to make a grammatical correction.

Section 303.21(b)(2) is adopted to establish an operating reserve of 75,000 acre-feet. This is a change from the current reserve which fluctuates between 380,000 and 275,000 acre-feet, or under drought conditions, as low as 150,000 acre-feet. This change is based in part on recommendations from the Region M Water Planning Group and the Rio Grande Watermaster Advisory Committee to provide additional water to Class A and Class B water rights holders. That recommendation is also based on a study of previous droughts, system inflows, and analyses of the water levels in the system. According to historical data during drought conditions, and modeling of water use in this basin, this change should not affect DMI users. A portion of §303.21(c) is deleted from the rule. This language describes the calculation process for the fluctuating operating reserve. This portion of the rule will no longer be necessary, because with these amendments, the new operating reserve will be established as 75,000 acre-feet.

Section 303.22(a) is amended to clarify that dead storage is water behind the dams that cannot be released due to hydrologic restrictions.

Sections 303.22(a)(3) and (4) (relating to Allocations to Accounts) describe how the water for the accounts described in §303.21(b) (relating to Operating Reserve), will be calculated and allocated. Section 303.22(a)(3) is changed to reflect the change in the operating reserve. Paragraph (4) changes irrigation and mining to Class A and Class B accounts. This paragraph is also amended to clarify that the remaining amount of water will be allocated after the deduction of the operating reserve.

Section 303.22(b) clarifies that the remaining water available for allotment after the deductions under §331.22(a), shall be divided into Class A and Class B water rights, which are defined. The adopted amendment deletes the phrase "for irrigation and mining uses" which is unnecessary because the commission has added definitions for Class A and Class B water rights holders.

Section 303.22(f)(2) is adopted as new language. The rule states that the watermaster may not allocate water to Class A and Class B water rights holders until the operating reserve is 75,000 acre-feet, which is the new operating reserve amount adopted with this rulemaking.

Section 303.22(f)(3) is renumbered and adopted to modify the amount of the operating reserve. Under this chapter, the commission sets an operating reserve and a DMI reserve for the minimum amount of water which must be stored in the reservoirs to ensure that DMI users have adequate water. The operating reserve is a minimum volume of acre-feet of water which is required to be maintained in the reservoir to allow for losses of water from evaporation, seepage, and conveyance; to allow for emergencies; and for adjustments of storage accounts. With the adoption of these amendments, the new operating reserve will be 75,000 acre-feet. The trigger for negative allocations will be zero acre-feet in the operating reserve. If the operating reserve is reduced to zero acre-feet, the watermaster adjusts, through negative allocations, the Class A and Class B water accounts to restore the operating reserve to 48,000 acre-feet. When the operating reserve has been restored to 48,000 acre-feet, negative allocations will cease. Inflows must restore the operating reserve to 75,000 acre-feet before any positive allocations may be made. Only Class A and Class B accounts are subject to negative allocations.

Section 303.41 is adopted to clarify that all fees must be paid prior to the sale of water rights. This change is necessary because payment of fees before use is a statutory requirement in Texas Water Code (TWC), §11.329(e).

Section 303.42 has been rearranged for clarity. To create a logical flow, new paragraphs (3) and (4) have been created, and some language has been moved from the existing §303.42 to paragraph (1) and to new paragraph (3) of this section. Section 303.42 currently prohibits the transfer of the water rights from the point of diversion, or place of use of water rights from the Lower and Middle Rio Grande Basins to above International Amistad Reservoir. New language is adopted in §303.42(4) to define the conditions for an inverse sale (from above International Amistad Reservoir to the Lower and Middle Rio Grande Basins). These transfers would be prohibited unless the transfer request uses a conversion factor approved by the commission which would not impair other water rights or water available for allocation. This change is necessary to clarify that such a transfer is not allowed without an approved conversion factor and a showing of no impairment of other water rights because water rights in the Lower and Middle Rio Grande Basins are administered under a totally different system than exists above International Amistad Reservoir. These rights can only be transferred in a manner that ensures protection of other water rights.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that a full regulatory impact analysis (RIA) is not required for the amendments currently adopted to Chapter 303.

The commission's determination is based upon the premise that an RIA is required only for a rule amendment meeting the definition of "major environmental rule" in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225(g)(3) states that for a rule change to qualify under that definition, its specific intent would have to be "to protect the environment or reduce risks to human health from environmental exposure." Additionally, the same subsection requires that, once either or both of those two intentions exist, the possibility must exist that the amended rule "may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

Generally speaking, the rule changes impact Chapter 303 in three ways by: 1) reducing the Rio Grande system's arbitrarily determined minimum operating reserve, the impact of which is to reduce waste in the reservoir system and to increase the amount of water available for Class A and Class B water rights holders in times of drought; 2) providing procedures for the maintenance and replenishment of an appropriate operating reserve once reservoir levels fall below a specified minimum amount of acre-feet; and 3) clarifying the limits on the ability of the holders of Rio Grande water rights upstream of International Amistad Reservoir to transfer water through the system, or to convert such water rights for use and withdrawal from the reservoirs or downstream from International Amistad Reservoir.

None of these rule amendments are specifically intended to protect the environment or reduce risks to human health from environmental exposure; therefore, none of the amendments meet the definition of "major environmental rule" in Texas Government Code, §2001.0225, and further analysis of impact is unwarranted.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is a modification of a program or regulation that does not affect a recognized interest in private real property, (TWC, §2007.003(b)(5)), and because the government action being taken does not affect an owner's real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the action (TWC, §2007.002(5)(B)(i)).

Among other things, Texas Government Code, §2007.043, Takings Impact Assessment requires: 1) a description of the specific purpose of the adoption; an identification of how the action substantially advances its stated purpose; a description of the burdens imposed on private real property, if any, "...resulting from the proposed use of private real property..." (Texas Government Code, §2007.043(b(1)(B)); and 2) a determination of whether the action will constitute a taking.

For the purpose of this assessment, the actions being taken constitute the following: changes to required procedures and volumes related to the Rio Grande system's minimum operating reserve; and clarification of the conversion of water rights upstream from the International Amistad Reservoir and the transfer of water rights by owners with unpaid fees. The purpose of the operating reserve is to reduce waste in the reservoir system and to increase the amount of water available for Class A and Class B water rights holders in times of drought. The purpose of the clarification of water rights is to bring consistency to the rules' application to water rights in the Lower, Middle, and Upper Rio Grande Basins.

With regard to the changes in the operating reserve volume and procedures, these changes do not affect any private real property in any manner that restricts or limits any owner's right to

such property that would exist in the absence of these changes. If anything, the reduction of the operating reserve will result in an increase in the likelihood that private rights will be fully satisfied. No private property right exists to water contained in the operating reserve; it cannot be allocated for private use. Thus, these changes do not constitute a taking under Texas Government Code, §2007.002(5)(B)(i).

Because water rights are included in the definition of "private real property" in Texas Government Code, §2007.002(4), the clarification of the right to convert or transfer those water rights requires a more detailed analysis. The adopted rule amendments clarify the conditions under which water from upstream water rights holders could be sent to downstream users. The watermaster has not allowed such a transfer in the past, nor does the watermaster intend to allow such a transfer in the future absent an approved conversion factor or a showing that existing water rights below International Amistad Reservoir will not be impaired because of the uniqueness of the court-adjudicated system of allocation. Likewise, a water rights owner could currently believe that his or her rights may be conveyed prior to all delinquent fees and penalties being paid. Such a belief is contrary to TWC, §11.329(e). Therefore, these amendments do not affect an owner's real property in a manner which restricts or limits the owner's right to the property that would otherwise exist in the absence of the rulemaking.

The TWC, §11.122(a), Amendments to Water Rights Required, requires that holders of permits, certified filings, and certificates of adjudication "shall obtain from the commission, authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right." The Austin Court of Civil Appeals held that these limitations on water rights do not constitute a taking. *Clark v. Briscoe Irr. Co.,* 200 S.W.2d 674 (Tex.Civ.App. Austin 1947). Thus, a holder of water rights in the upper regions of the Rio Grande has a defined right to divert a specific volume of water from a specific diversion point and use that water for a specific authorized purpose. However, the holder *does not* have an absolute right to change the point of diversion or the purpose of use because the possibility exists that an amendment for the purpose of making such changes would not be granted. Under TWC, §11.134, water rights amendments are not authorized if other water rights would be impaired. No amendments to transfer Upper Rio Grande rights to Middle or Lower Rio Grande rights have ever been granted. The granting of such amendments would require complicated calculations in order to ensure that other rights would not be affected. No conversion factors currently exist for volumes of water transferred into the system. Such conversion factors would have to be formulated to determine the amount of water that could be diverted hundreds of miles downstream. The reality is that the Amistad/Falcon system is already a fully allocated administratively-closed system and the introduction of new water rights into the system may be very difficult to accomplish without impairing existing rights to water already allocated within the system. The commission would only consider granting such a transfer if it had a workable approved conversion factor and a showing that no water rights in the system would be impaired.

In summary, the rule changes do not constitute a taking. The changes related to the operating reserve pertain to water owned by the State of Texas. The clarification related to Upper Rio Grande water rights is not a taking because there is no absolute right to transfer this water without the express approval of both the Rio Grande Watermaster and the commission. No mechanism currently exists for calculating either the reduction of water volume from upstream through the administratively-closed and fully-allocated system or for measuring the extent of impairment of existing allocated water rights.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11(a)(6). Therefore, the adopted rule amendments are not subject to the CMP.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Harlingen on February 23, 2001, at 2:00 p.m. at the commission's regional office located at 1804 West Jefferson Avenue. A Spanish translator was provided by the commission at the hearing. Five commenters provided oral testimony: Wayne Halbert representing Harlingen Irrigation District, Rio Grande Watermaster Advisory Committee, Lower Rio Grande Valley Water District Managers Association, and Texas Irrigation Council (Halbert); Gordon R. Hill representing Bayview Irrigation District Number 11 (Hill); Charles Browning representing DMI users, the Region M Water Planning Group, and North Alamo Water Service Company (Browning); Max Phillips representing Delta Lake Irrigation District (Phillips); and Ray Prewett representing DMI users and Texas Citrus Mutual (Prewett).

The public comment period closed at 5:00 p.m., February 26, 2001. Two commenters provided written comments: Hidalgo and Cameron Counties Irrigation District No. 9 (I.D. No. 9), and the Rio Grande Watermaster Advisory Committee (WAC).

RESPONSE TO COMMENTS

All five commenters who presented oral testimony supported the rule changes and urged the commission to adopt the rules as proposed. Both written commenters supported the proposed amendments to the rules. No commenters expressed opposition to the proposed amendments.

The commission appreciates the support for these rule amendments.

The WAC stated that the executive director of the commission established the Rio Grande Watermaster Committee (Committee) which is composed of 15 members who are water rights holders or representatives of water rights holders representing the different types of water rights throughout the entire Rio Grande Watermaster jurisdiction. The WAC also stated that the Committee has been actively involved in the planning, study, and review of the proposed amendments. The members of the WAC recommended that the commission adopt the proposed amendments to Chapter 303 as presented at the public hearing on February 23, 2001, at the Rio Grande Watermaster Office, Harlingen, Texas.

The commission agrees with this comment and appreciates the support of the WAC for these rule amendments.

Concerning §303.21(b)(2), I.D. No. 9 stated that they strongly support the proposed rule change on the amount of water to be held in the operational reserve pool. I.D. No. 9 also stated that historical data conclusively shows that the present operational

reserves have been too high, and this rule change will allow excess water to be available for beneficial uses.

The commission agrees with this comment and appreciates the support of I.D. No. 9 for these rule amendments.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

30 TAC §303.2

STATUTORY AUTHORITY

Chapter 303 applies to water rights in portions of the Rio Grande Basin and portions of the Nueces--Rio Grande Coastal Basin. Chapter 303 establishes the regulatory functions of the watermaster in these basins. The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §§11.325 - 11.458, which establish the duties of the watermaster. For additional legal authority, refer to *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen,* 443 S.W.2d 728 (Tex.Civ.App.-Corpus Christi 1969).

§303.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings.

(1) Account--The record of municipal and operating reserves; or the record of an allottee's water in storage in the Amistad-Falcon system, and the diversion of such water.

(2) Accounting period--From the last Saturday of a month at midnight to the last Saturday of the following month at midnight.

(3) Agent--A person designated by a water right holder to have the authority to request certification to divert, make diversions, and/or pay assessment charges.

(4) Allocation--The distribution of the United States' share of water stored in the Amistad-Falcon system to the various accounts.

(5) Allottee--A water right holder who has an account and who has the right to call on releases of water from the associated accounts.

(6) Assessment--The authorized charges against water rights holders levied by the commission to finance watermaster operations.

(7) Certification--Written authorization issued by the watermaster to divert water from the Rio Grande or its tributaries for a specific period of time.

(8) Diversion facility--Any pump, canal system, or other device.

(9) Diverter--A water right holder, an agent, or an exempt domestic and livestock user who takes water from the Rio Grande or its tributaries.

(10) Hydroelectric rights--A water right that authorizes the use of available flow for hydroelectric power generation. No account will be established for the holders of hydroelectric rights.

(11) Lower Rio Grande Valley--That portion of the Rio Grande Basin, including tributaries, in Texas from Falcon Dam downstream to the Gulf of Mexico, including that portion of the Nueces-Rio Grande Coastal Basin located in Starr, Hidalgo, Willacy, and Cameron Counties, Texas, whose source of water is the Rio Grande.

(A) Reach I is that portion of the Lower Rio Grande between Falcon Dam and the International Boundary and Water Commission streamflow gage at Fort Ringgold.

(B) Reach II is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage at Fort Ringgold and Anzalduas Dam.

(C) Reach III is that portion of the Lower Rio Grande between Anzalduas Dam and the Progreso Bridge.

(D) Reach IV is that portion of the Lower Rio Grande between the Progreso Bridge and the International Boundary and Water Commission streamflow gage near San Benito.

(E) Reach V is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage near San Benito and the Cameron County Water Control and Improvement District 6 river pumps.

(F) Reach VI is that portion of the Lower Rio Grande between Cameron County Water Control and Improvement District 6 river pumps and the International Boundary Commission streamflow gage near Brownsville.

(G) Reach VII is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage near Brownsville and the Gulf of Mexico.

(12) Measuring device--A device designed to indicate flow rate and amount, with instantaneous readout in cubic feet per second (cfs) or gallons per minute (gpm) and a flow totalizer with a readout in acre-feet or gallons, to be accurate within 5.0%, said device to be approved by the watermaster. Any device operated and maintained by the International Boundary and Water Commission is considered satisfactory. On tributaries, any device approved by the watermaster is sufficient.

(13) Middle Rio Grande--That portion of the Rio Grande Basin including tributaries, in Texas upstream from Falcon Dam to Amistad Dam.

(A) Reach I is that portion of the Middle Rio Grande between Amistad Dam and the International Bridge at Del Rio.

(B) Reach II is that portion of the Middle Rio Grande between the International Bridge at Del Rio and the International Bridge at Eagle Pass.

(C) Reach III is that portion of the Middle Rio Grande between the International Bridge at Eagle Pass and the International Boundary and Water Commission streamflow gaging station at San Antonio Crossing.

(D) Reach IV is that portion of the Middle Rio Grande between the International Boundary and Water Commission streamflow gaging station at San Antonio Crossing and the International Bridge at Laredo.

(E) Reach V is that portion of the Middle Rio Grande between the International Bridge at Laredo and San Ygnacio.

(F) Reach VI is that portion of the Middle Rio Grande between San Ygnacio and Falcon Dam.

(14) No charge water--Storm and flood water in the Rio Grande downstream from Amistad Dam that is designated by the watermaster, in accordance with the Texas Water Code, §11.0871, and with Texas Water Commission order dated August 4, 1981, and any subsequent orders, as being available for diversion and use by water rights holders.

(15) Nondiverter--An agent or a water right holder who has water delivered to him by a diverter.

(16) Proration period--The period determined on a monthly basis, when the United States' share of water in the Amistad-Falcon system is less than 50% of the total United States conservation storage.

(17) Pump operation report--That part of the certification which the diverter returns to the watermaster after recording the amount of water actually diverted during the certification period.

(18) Travel time--The time for released water to travel downstream to designated reaches on the Middle or Lower Rio Grande.

(19) Tributary diverter--A water right holder, an agent, or an exempt domestic and livestock user on the Rio Grande below Fort Quitman and above Amistad Reservoir or on a tributary of the Rio Grande with no right to call for releases from Amistad or Falcon Reservoirs.

(20) Upper Rio Grande--That portion of the Rio Grande Basin, including tributaries, in Texas from Amistad dam upstream to Fort Quitman, excluding the Pecos and Devils watersheds.

(21) Usable balance--The quantity of water in acre-feet an allottee has available for use, and is based upon whichever is less:

(A) the sum of allottee's annual authorized amount of water minus actual use for the year to date, plus the allottee's contract water balance; or

(B) the amount in the allottee's storage account.

(22) Water right--A right acquired under the laws of the state to impound, divert, and/or use water.

(A) Class A water right--A water right in the Lower or Middle Rio Grande Basin designated as a Class A right and held under a certificate of adjudication, granted in the Adjudication of the Lower and Middle Rio Grande River in *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen*, 443 S.W.2d 728 (Tex. Civ. App.-Corpus Christi 1969, writ ref'd n.r.e.), or issued by the commission. If converted to a domestic, municipal, and industrial (DMI) water right, a Class A water right is converted to 50% of the existing water right.

(B) Class B water right--A water right in the Lower or Middle Rio Grande Basin designated as a Class B right and held under a certificate of adjudication, granted in the Adjudication of the Lower and Middle Rio Grande River in *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen*, 443 S.W.2d 728 (Tex. Civ. App.-Corpus Christi 1969,writ ref'd n.r.e.), or issued by the commission. If converted to a DMI water right, a Class B water right is converted to 40% of the existing water right.

(23) Water right holder--One who owns a water right.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-5017

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SUBCHAPTER C. ALLOCATION AND DISTRIBUTION OF WATERS

30 TAC §303.21, §303.22

STATUTORY AUTHORITY

Chapter 303 applies to water rights in portions of the Rio Grande Basin and portions of the Nueces-Rio Grande Coastal Basin. Chapter 303 establishes the regulatory functions of the watermaster in these basins. The amendments are adopted under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §§11.325 - 11.458, which establish the duties of the watermaster. For additional legal authority, refer *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen,* 443 S.W.2d 728 (Tex.Civ.App.-Corpus Christi 1969).

§303.21. Accounts--Amistad/Falcon Reservoirs.

(a) For the purpose of establishing accounts in Amistad and Falcon Reservoirs, the two reservoirs are considered to constitute a single storage system. Accounts in the Lower and Middle Rio Grande are based upon a water right's annual authorization in acre-feet. Water rights for irrigation and mining purposes are considered as having irrigation priority rights and therefore are included in the irrigation accounting system.

(b) When there is adequate water to do so, the watermaster shall maintain the following accounts:

(1) a reserve of 225,000 acre-feet of water for domestic, municipal, and industrial uses;

(2) an operating reserve of 75,000 acre-feet; and

(3) the accounts for irrigation uses and all other uses.

(c) The operating reserve is necessary to cover losses of water charged to the United States. These losses are the result of seepage, evaporation, and conveyance; emergency requirements; and adjustments of amounts in storage as may be necessary by finalization of provisional computations by the International Boundary and Water Commission.

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

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SUBCHAPTER E. AMENDMENTS TO AND SALES OF WATER RIGHTS

30 TAC §303.41, §303.42

STATUTORY AUTHORITY

Chapter 303 applies to water rights in portions of the Rio Grande Basin and portions of the Nueces-Rio Grande Coastal Basin. Chapter 303 establishes the regulatory functions of the watermaster in these basins. The amendments are adopted under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §§11.325 - 11.458, which establish the duties of the watermaster. For additional legal authority, refer to *State v. Hidalgo Co. Water Con. & Irr. Dist. No. Eighteen,* 443 S.W.2d 728 (Tex.Civ.App.-Corpus Christi 1969).

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. LICENSE FEES AND BOAT AND MOTOR FEES

31 TAC §§53.1 - 53.10

The Texas Parks and Wildlife Commission adopts amendments to §§53.1-53.10, concerning License Fees and Boat and Motor Fees, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12600).

The amendment to §53.1 is necessary to eliminate confusion about whether license sales by telephone are electronic transactions; to recover the administrative cost of operating an electronic point-of-sale system for the sale of licenses and permits; and to eliminate a possible misconception that Louisiana residents are permitted to fish for free in Texas. The amendment to §53.2 is necessary because the agency's new electronic licensing system renders the license type numbers unnecessary and obsolete. The amendment to §53.3 is necessary to accurately reflect the provisions of Parks and Wildlife Code, Chapter 42, with respect to persons eligible to purchase the special resident hunting license; to eliminate a provision that is already a provision of Parks and Wildlife Code, Chapter 42; to establish concrete definitions for specific requirements related to eligibility for the special resident fishing license; and to eliminate license-type designations that are no longer necessary. The amendment to §53.4 is necessary to eliminate redundancy and because the agency's new electronic licensing system renders the license type numbers obsolete and unnecessary. The amendment to §53.5 is necessary to eliminate redundancy and because the agency's new electronic licensing system renders the license type numbers obsolete and unnecessary. The amendment to §53.6 is necessary to eliminate an outdated fee schedule that should have been eliminated when the provisions of subsection (c)(2) were originally adopted; to create a fee for permits to sell non-game fish as required by Parks and Wildlife Code, §67.0041; and to eliminate license-type numbers because the agency's new electronic licensing system renders the license type numbers obsolete and unnecessary. The amendment to §53.7 is necessary to delete reference to the shrimp house operator's license and license transfer, which were eliminated by the legislature; to implement the fees for the bait-dealer-place of business/building license (and license transfer) and the bait dealer-place of business/motor vehicle license (and license transfer), which are authorized by statute; and to eliminate license-type numbers because the agency's new electronic licensing system renders the license type numbers obsolete and unnecessary. The amendment to §53.8 is necessary to eliminate duplication; to relocate the provisions of §53.80 to a more logical and appropriate area of the chapter; and to eliminate license-type numbers because the agency's new electronic licensing system renders the license-type numbers obsolete and unnecessary. The amendment to §53.9 is necessary to provide greater latitude for investment opportunities. The amendment to §53.10 is necessary because the agency no longer has statutory authority to impose a fee for state-assigned Hull Identification Numbers.

The amendment to §53.1, concerning License Issuance Procedures, Fees, Possession and Exemption Rules, License Year will function by establishing that electronic license sales include sales by telephone; increasing the range of the convenience fee charged to license buyers from $3.00 to $5.00; and clarifying that a Louisiana resident must possess a valid Louisiana recreational fishing license to qualify for reciprocal licensing privileges in Texas. The amendment to §53.2, concerning Combination Hunting and Fishing Licenses, Packages, and Conservation Permits, will function by eliminating obsolete numerical designations of license types. The amendment to §53.3, concerning Other Recreational Hunting and Fishing Licenses, Stamps, and Tags, will function by establishing the categories of persons who qualify to purchase a special resident hunting license and by furnishing a definitive qualification for eligibility to purchase a special resident fishing license. The amendment to §53.4, concerning Commercial Hunting/Trapping Licenses and Permits, will function by eliminating duplication and removing obsolete numerical designations of license types. The amendment to §53.5, concerning Public Lands Hunting Permits and Fees, will function by eliminating references to fees contained in other chapters and numerical designations of license types. The amendment to §53.6, concerning Commercial Fishing Licenses and Tags, will function by implementing a permit fee for the sale of non-game fish and eliminating numerical designations of license types. The amendment to §53.7, concerning Business Licenses and Permits, will function by creating permit fees for the bait-dealer-place of business/building license (and license transfer) and the bait dealer-place of business/motor vehicle license (and license transfer), by eliminating the fees for the shrimp house operator's license and license transfer, and by eliminating numerical designations of license types. The amendment to §53.8, concerning Miscellaneous Wildlife Licenses and Permits, will function by removing references to fees contained in other chapters and eliminating license-type numbers. The

amendment to 53.9, concerning Investment of Lifetime License Endowment Fund, will function by authorizing the executive director to invest the Lifetime License Endowment Fund as directed by the commission. The amendment to §53.10, concerning Vessel and Motor Fees Set by Commission, will function by eliminating the fee for state-assigned Hull Identification Numbers.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §11.065, which authorizes the commission to adopt rules for the investment of the lifetime license endowment account; §12.702, which authorizes the commission to set by rule collection and issuance fees for a license, stamp, tag, permit, or other similar item issued under any chapter of the code; §41.006, which authorizes the commission to make regulations conforming to a reciprocal fishing license agreement with a border state; Chapter 42, which authorizes the commission to prescribe by rule the requirements relating to possessing a hunting license and to establish fees; §46.001, which authorizes the commission to prescribe by rule the requirements relating to possessing a fishing license; §46.004, which authorizes the commission to set fees for fishing licenses; Chapter 47, which authorizes the commission to establish rules governing the issuance, use, and fees for commercial fishing licenses; Chapter 50, which authorizes the commission to establish fees for combination licenses; and Chapter 67, which authorizes the commission to establish permits and fees for possession taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife;

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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SUBCHAPTER B. STAMPS

31 TAC §53.14, §53.16

The Texas Parks and Wildlife Commission adopts amendments to §53.14, concerning Stamp Purchaser Identification and Possession Requirements, and §53.16, concerning Obsolete Stamps and Decals. Section 53.16 is adopted with changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12606). Section 53.14 is adopted without changes and will not be republished. The change to §53.16 allows the department to sell collector's edition stamp packages at fees determined by the commission. This rulemaking was subjected to review as required by Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

The amendment is necessary to make clear that requirements concerning license and stamp sales by telephone also apply to transactions made electronically, and to allow the public the opportunity to purchase obsolete stamps for collecting and memorabilia purposes.

The amendment to §53.14 clarifies that stamp requirements apply to electronic sales. The amendment to §53.16, concerning Obsolete Stamps and Decals, allows obsolete nongame and endangered species stamps to be sold under the current provisions for all other stamps and decals, and provides for the sale of collector's edition packages.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §11.055, which requires the commission to provide for the widespread availability of art prints, decals, and stamps, §11.056, which authorizes the commission to establish fees for art decals and stamps, and §12.703, which authorizes the department to issue a license, stamp, tag, permit, or another similar item authorized by the code through the use of automated equipment and a point-of-sale system.

§53.16. Obsolete Stamps and Decals.

(a) Obsolete stamps and decals shall be sold for informational purposes, either at an established fee for collector's edition stamp package, or at face value for individual stamps, plus a processing charge sufficient to recover shipment, postage, and sales tax.

(b) Stamps and decals shall remain on sale for a maximum of one fiscal year after expiration. During the second year, obsolete stamps and decals shall be sold only by book.

(c) Previous issues of Nongame and Endangered Species stamps may be made available for sale at $10 for individual stamps or decals, and $75 or less for a complete set of the 11 stamps issued from 1985 through 1995. The Department may sell a limited number of collector's sets of the 11 stamps issued from 1985 through 1995, framed and mounted, for $300 or less per set. The Department may add to this price a processing charge sufficient to recover shipment, postage, and sales tax. The Department may give away earlier issues of decals and use previously issued stamps in merchandise items that are offered for sale or as promotional items.

(d) Nongame and Endangered Species stamps issued during and after 1996 are one of eight stamps issued as collectors series set and are subject to the same rules as other obsolete stamps.

(e) The executive director may maintain a limited number of stamps and decals of each type and year.

(f) All other obsolete stamps and decals shall be destroyed.

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER C. VESSEL REGISTRATION AGENTS AND SURETY BONDS

31 TAC §53.17, §53.18

The Texas Parks and Wildlife Commission adopts amendments to §53.17, concerning Authorized Vessel Registration Agent for the Department, and §53.18, concerning Surety Bond Requirements, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12607).

The amendments to §53.17 and §53.18 are necessary because the department has determined that it does not have statutory authority to offer or require the option of a letter of credit in lieu of a surety bond for vessel registration or vessel registration agents.

The amendment to §53.17 will function by eliminating the option of the use of a letter of credit to qualify as an authorized agent of the department for the purpose of registering vessels. The amendment to §53.18 will function by removing the option of providing a letter of credit in lieu of a surety bond for person desiring to be approved as vessel registration agents.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §31.006, which authorizes the department to authorize a dealer who holds a dealer's or manufacturer's number to act as the agent of the department under Chapter 31, Subchapter B and under Tax Code, Chapter 160, for the issuance of certificates of number and the collection of fees and taxes for boats sold by that dealer.

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

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SUBCHAPTER D. LICENSE DEPUTIES

31 TAC §53.22

The Texas Parks and Wildlife Commission adopts the repeal of §53.23, concerning Surety Bond Requirements, and an amendment to §53.22, concerning License Deputy Appointment and Cancellation Procedures, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12608).

The repeal of §53.23 is necessary because under the department's new licensing system, surety bonds will no longer be required for license deputies. The amendment to §53.22 is necessary to provide for an approval process for license deputy applications and to eliminate the requirement for applicants to provide a surety bond or letter of credit.

The repeal of §53.23 will function by eliminating unnecessary regulations. The amendment to §53.22 will function by providing for an approval process for license deputy applications and by eliminating the requirement for applicants to provide a surety bond or letter of credit.

The department received no comments concerning adoption of the proposed rules.

The amendment is adopted under Parks and Wildlife Code, Chapter 12, which authorizes persons designated by or contracted with by the department to issue and collect money received for a license, stamp, permit, tag, or other similar item is a license deputy and may issue and collect money for a license, stamp, permit, tag, or other similar item issued under the code.

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

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31 TAC §53.23

The repeal is adopted under Parks and Wildlife Code, Chapter 12, which authorizes persons designated by or contracted with by the department to issue and collect money received for a license, stamp, permit, tag, or other similar item is a license deputy and may issue and collect money for a license, stamp, permit, tag, or other similar item issued under the code.

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

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SUBCHAPTER E. SELLING PRICE OF DEPARTMENTAL INFORMATION

The Texas Parks and Wildlife Commission adopts the repeal of §§53.31-53.33, and an amendment to §53.35, concerning Selling Price of Department Information, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12608).

The repeal of §§53.31-53.33 is necessary to eliminate regulations that recapitulate provisions of the Parks and Wildlife Code.

The amendment to §53.35 is necessary to prevent customer information from being published by third parties and to make clear the obligations incurred by the department in instances where information is sold or given for research purposes.

The repeal of §§53.31-53.33 will function by eliminating regulations that are unnecessary. The amendment to §53.35 will function by stipulating that a designee may act on behalf of the executive director for the purposes of the section, by clarifying that information acquired from the department and published on the Internet by a third party will be removed, and by clarifying that information supplied by the department will be at no cost or at the cost of the department to provide the information.

The department received no comment concerning adoption of the proposed rules

31 TAC §§53.31 - 53.33

The repeals are adopted under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies relating to the release of customer information, the use of customer information by the department, and the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or 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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Gene McCarty
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31 TAC §53.35

The amendment is adopted under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies relating to the release of the customer information, the use of the customer information by the department, and the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or 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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SUBCHAPTER G. TEXAS FRESHWATER FISHERIES CENTER ADMISSION FEES

31 TAC §53.50

The Texas Parks and Wildlife Commission adopts an amendment to §53.50, concerning Texas Freshwater Fisheries Center Admission; Fees and Other Entrance Requirements, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12610).

The amendment is necessary to allow the department to reduce admissions fees during off-peak seasons and in response to visitation situations in which the waiver or reduction of fees would serve to enhance visitation.

The amendment will function by eliminating fixed fees in favor of establish a flexible fee schedule not to exceed the current cap of $6.00 per person.

The department received no comment concerning adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide by rule for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

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

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SUBCHAPTER I. PROTEST PROCEDURES FOR VENDORS

The Texas Parks and Wildlife Commission adopts the repeal of §53.80, concerning Miscellaneous Wildlife Licenses and Permits, and an amendment to §53.70, concerning Vendor Protest Procedure, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12611).

The repeal of §53.80 is necessary to avoid duplicating regulatory language that has been moved to §53.3, where it is more germane. The amendment to §53.70 is necessary to accurately reflect the title of the department employee to whom protests should be directed, and to make the provisions read coherently.

The repeal of §53.80 will function by eliminating provisions that are being relocated into a more appropriate and logical subchapter. The amendment to §53.70 will function by altering a reference to an occupational title in response to a redesignation of that title within the department, and restores grammatical sense to an incomplete sentence that was inadvertently overlooked in a previous rulemaking.

The department received no comments concerning adoption of the proposed rule.

31 TAC §53.70

The amendment is adopted under Parks and Wildlife Code, §11.0171, which requires the commission to adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts, and under Chapter 67, which authorizes the department to charge a fee for a permit issued under that chapter.

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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31 TAC §53.80

The repeal is adopted under Parks and Wildlife Code, Chapter 67, which authorizes the department to charge a fee for a permit issued under that chapter.

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 59. PARKS
SUBCHAPTER C. ACQUISITION AND DEVELOPMENT OF HISTORIC SITES, BUILDING AND STRUCTURES

31 TAC §59.42, §59.44

The Texas Parks and Wildlife Commission adopts an amendment to §59.42, concerning Chronology and Thematic Organization, and §59.44, concerning Development Guidelines, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12613).

The amendment to §59.42 is necessary to reflect accurate terminology in the regulations. The amendment to §59.44 is necessary to safeguard visitors and make department facilities and sites accessible.

The amendment to §59.42 will function by replacing the term 'late prehistoric' for 'neo-American Texas.' The amendment to §59.44 will function by authorizing the department to alter historic sites and structures in compliance with rules or statutes concerning health, safety, or architectural barriers.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §13.101, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

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

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SUBCHAPTER D. ADMINISTRATION OF THE STATE PARK SYSTEM

31 TAC §59.63, §59.64

The Texas Parks and Wildlife Commission adopts amendments to §59.63, concerning Definitions, and §59.64, concerning Classification and Guidelines, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12615).

The amendment to §59.63 is necessary because 'sustainability' is a biological term inappropriate for describing cultural systems. The amendment to §59.64 is necessary to safeguard visitors and make department facilities and sites accessible

The amendment to §59.63 will function by removing the applicability of the term 'sustainability' to cultural systems. The amendment to §59.64 will function by authorizing the department to alter historic sites and structures in compliance with rules or statutes concerning health, safety, or architectural barriers.

No comments were received concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §13.101, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

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

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SUBCHAPTER E. OPERATION AND LEASING OF PARK CONCESSIONS

31 TAC §§59.101, 59.103 - 59.108

The Texas Parks and Wildlife Commission adopts amendments to §§59.101 and 59.103-59.108, concerning Operation and Leasing of Park Concessions. Sections 59.103, 59.106, and 59.108 are adopted with changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12618). Sections 59.101 and 59.104, 59.105, and 59.107 are adopted without changes and will not be republished. The change to §§59.103, 59.106 and 59.108 replaces the word concessionaire with the word concessioner, to be consistent with terminology employed in other sections.

The amendment to §59.101, concerning Definitions, is necessary to clarify that a prospectus is required only for leased concession, and to define a special class of concessioner. The amendment to §59.103, concerning Selection of a Concessioner, is necessary because the department is implementing a process of reapplication in lieu of renewal, and because a policy for evaluation and recommendation is prudent. The amendment to §59.104, concerning Types of Concession Contracts is necessary to provide reasonable security to prospective concessioners facing major investments as a consequence of selection, and to allow the department to conduct a more thorough evaluation of minor contracts as the situation dictates. The amendment to §59.105, concerning Contract Terms, is necessary to provide security to prospective concessioners, and thereby encourage applications. The amendment to §59.106, concerning Franchise Fee Rates and Charges, is necessary to ensure that the department receives franchise fees and to prevent financial disruptions caused by non-payment of franchise fees. The amendment to §59.107, concerning Accounting, is necessary to make the provisions of the sections as clearly understandable as possible. The amendment to §59.108, concerning Bond and Insurance, is necessary to ensure completion of projects in the event that the concessioner is unable to fulfill the terms of a contract.

The amendment to §59.101 will function by altering the definition of 'prospectus' to make the definition more accurate, and by adding a new definition for 'Partnership Concessions.' The amendment to §59.103 will function by altering subsection (a) to make better grammatical sense and by removing a reference to renewal, and by altering subsection (c) to remove a reference to renewal and adding new language to create a policy for reviewing applications and selecting a concessioner. The amendment to §59.104 will function by altering subsection (a) to require long-term contracts for major concessions, and by altering subsection (b) to provide the department with the option of issuing a prospectus for short-term contracts at the agency's discretion. The amendment to §59.105 will function by altering subsection (a) to require the department to provide a sufficient duration of a standard contract to permit a reasonable opportunity for a concessioner to realize a return on investment, and by altering subsection (b) to require revocable short-term contracts to be two years, rather than one year, in duration. The amendment to §59.106 will function by providing a mechanism for assessing penalties for delinquent payments to the department under the terms of a contract, and by providing for a waiver of such penalties for good cause. The amendment to §59.107 will function by making non-substantive grammatical change to improve the sense of the section. The amendment to §59.108, concerning Bond and Insurance, will function by requiring a payment from concessioners whose contracts require the construction of public accommodations.

No comments were received by the department concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §13.015, which authorizes the department to grant contracts to operate concessions in state parks or on causeways, beach drives, or other improvements in connection with state park sites, and to make regulations governing the granting or operating of concessions.

§59.103. Selection of a Concessioner.

(a) When it is determined by the executive director that the leasing of a park concession is necessary, desirable, and financially feasible for furnishing visitor services and accommodations in a park area, or when it is necessary to secure a new concessioner for a leased concession, a prospectus announcing the availability of such concession shall be issued to all interested persons, detailing essential information about the concession, and the procedure to follow in submitting a proposal. The executive director or his designee shall fully publicize the availability of a concession in the immediate area of the park and on a state or national level when circumstances warrant a broader coverage.

(b) A concessioner will be selected with great care to insure that he has ability to operate the concession in an entirely satisfactory manner. In addition to ample financing and ability to conduct the concession in an economical manner, the concessioner should conduct his operation in accordance with the ideals and objectives of the department by adhering to business practices that emphasize public service in addition to a profit motive, and are consistent to the highest practical degree with the preservation and conservation of the area. The department may disregard any or all proposals submitted, or make any counter proposal it may consider reasonable or desirable in accordance with commission policy.

(c) The granting, termination, amendment, transfer, assignment, and enforcement or all concession contract requirements and provisions of such contracts is delegated to the executive director. Program staff will conduct a comprehensive review of all information contained within the submitted proposal. Following review, the agency will conduct personal interviews of each submitter for the purpose of recommending a candidate as the prospective concessionaire. The agency, at its discretion, may empanel a review board consisting of agency staff, and the local community, industry experts, or other individuals relevant or pertinent to the selection.

(d) The executive director may terminate a contract upon finding that a material breach of the contract has occurred.

§59.106. Franchise Fee Rates and Charges.

(a) Franchise fee rates shall be determined by the executive director or his designee in an equitable and fair manner, giving consideration to the various types of operations, gross receipts, net profit, and capital invested. Single or multiple percentages applied to all or

various kinds of gross receipts will be considered in new or amended contracts.

(b) A penalty of 5.0% of the franchise fee due shall be imposed on a leased concessionaire who fails to pay the fee as required under the signed contractual agreement, and if that person fails to pay the fee within 30 days after the day when the fee is sue, an additional 5.0% penalty shall be imposed.

(c) Delinquent fees accrue interest beginning on the 61st day after their due date.

(d) The yearly interest on all delinquent franchise fees is the prime rate plus one per cent, as published in the Wall Street Journal on the first day of the calendar year that is not a Saturday, Sunday or a legal holiday.

(e) The penalties and interest assessed for delinquent franchise fees may not exceed the penalties and interest rate established in the Texas Tax Code §111.060 and §111.061.

(f) Penalties and/or interest under this section may be waived by the executive director for a good cause.

(g) The right to reconsider and renegotiate franchise fees of concession contracts on an annual basis shall be considered standard practice when conditions warrant an adjustment.

(h) The rates and charges prescribed by the concessioner shall be subject to the approval of the executive director or his designee. The reasonableness of the concessioner's rates and charges to the public shall be judged primarily by comparing with current charges for facilities and services of comparable character under similar conditions. Consideration shall be given to:

(1) length of season;

(2) provisions for peakloads;

(3) average percentage of occupancy;

(4) accessibility;

(5) availability and costs of labor and materials;

(6) type of patronage; and

(7) other factors deemed significant as related to the type of concession.

§59.108. Bond and Insurance.

(a) The executive director may require the concessioner to furnish a bond conditioned upon the faithful performance of his contract. When the contract award involves construction of public accommodations, the concessionaire will be required to obtain a payment bond.

(b) The concessioner shall carry such insurance against losses by fire, public liability, employee liability, and other hazards as is customary among prudent operators of similar businesses under comparable circumstances, and in amounts satisfactory to the department. The minimum limit for public liability shall be $300,000. The executive director has the authority to increase this limitation when conditions warrant such action.

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

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SUBCHAPTER F. STATE PARK OPERATIONAL RULES

31 TAC §59.131

The Texas Parks and Wildlife Commission adopts an amendment to §59.131, concerning Definitions, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25TexReg 12620).

The amendment is necessary to replace archaic and imprecise terminology with accurate art-historical nomenclature.

The amendment will function by altering the definition of 'cultural features' by referring to 'pictographs and petroglyphs' rather than 'Indian rock art or historic rock art.'

The department received no comments concerning adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §13.101, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

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CHAPTER 69. RESOURCE PROTECTION
SUBCHAPTER C. WILDLIFE REHABILITATION PERMITS

31 TAC §69.47, §69.51

The Texas Parks and Wildlife Commission adopts an amendment to §69.47, concerning Qualifications, and §69.51, concerning Release of Rehabilitated Wildlife, without change to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12621).

The amendment to §69.47 is necessary to prevent persons with a history of wildlife violations from being entrusted with the care of protected wildlife. The amendment to §69.51 is necessary to

ensure consistency with the spirit and intent of wildlife rehabilitation, which is to return wildlife to the wild when rehabilitation has been effected.

The amendment to §69.47 will function by allowing the department at its discretion to refuse permit issuance to any person finally convicted of violating a local, state, or federal law concerning wildlife. The amendment to §69.51 will function by requiring permittees to release wildlife determined by the department to be capable of surviving in the wild.

No comments were received by the department concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

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

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SUBCHAPTER G. COMPLIANCE WITH COASTAL MANAGEMENT PLAN

31 TAC §69.91, §69.93

The Texas Parks and Wildlife Commission adopts amendments to §69.91, concerning Consistency, and §69.93, concerning Thresholds for Referral. The amendment to §69.93 is adopted with changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12622). The amendment to §69.91 is adopted without changes and will not be republished. The change to §69.93 removes an erroneous TAC citation from paragraph(2).

The amendments are necessary to maintain factually accurate regulations.

The amendments will function by correcting outdated legal citations.

No comments were received by the department concerning adoption of the proposed rules.

The amendments are adopted under Natural Resources Code, §33.2052, which authorizes the department by rule to establish a process by which the agency may submit rules to the Coastal Coordination Council for review and certification for consistency with the goals and policies of the coastal management program.

§69.93. Thresholds for Referral.

The thresholds for referral of actions of the Texas Parks and Wildlife Department listed in §505.11(7)(A)-(D) of this title (relating to Actions and Rules Subject to Coastal Management Program) shall be as follows.

(1) For oyster leases issued pursuant to §58.30 of this title (relating to Private Oyster Leases), the threshold for referral shall be an administratively complete application for a lease.

(2) For permits issued pursuant to §§69.301-69.311 of this title (relating to Scientific, Educational and Zoological Permits) as they concern the taking, transporting, or possession of threatened or endangered species; §§65.171-65.176 and §§69.43-69.53 of this title (relating to Threatened and Endangered Nongame Species); or permits issued pursuant to §§69.1-69.9 of this title (relating to Endangered, Threatened, and Protected Native Plants; Wildlife Rehabilitation Permits), the threshold shall be an administratively complete application.

(3) For permits authorizing the disturbance or removal of sand, shell, gravel, and marl issued pursuant to §§69.101-69.121 and 69.201-69.209 of this title (relating to Shell Dredging on the Texas Gulf Coast and Issuance of Marl, Sand, and Gravel Permits), the threshold shall be an administratively complete application for a permit.

(4) For approval of development which requires the use or taking of any public land in state parks, wildlife management areas, and preserves by a person or entity other than the Texas Parks and Wildlife Department and which would be subject to Parks and Wildlife Code, Chapter 26, and §§59.41-59.47, 59.61-59.64, and 59.75 of this title (relating to Acquisition and Development of Historic Sites, Buildings, and Structures, and Administration of the Texas State Park System), the threshold for referral shall be initial approval by the Texas Parks and Wildlife Commission of the project concept.

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

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SUBCHAPTER H. ISSUANCE OF MARL, SAND, AND GRAVEL PERMITS

31 TAC §69.120, §69.121

The Texas Parks and Wildlife Commission adopts amendments to §69.120, concerning Exemptions, and §69.121, concerning Prices, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register*.

The amendment to §69.120 is necessary to make the regulation read coherently. The amendment to §69.121 is necessary to correct a previous typographical error during rulemaking.

The amendment to §69.120 will function by making nonsubstantive grammatical changes in the interest of clarity. The amendment to §69.121 will function by restoring the commission's intent in setting the department's actual cost of monitoring the dredging operations from state-owned submerged tidelands, to be assessed against each permittee in proportion to the quantity (percentage of the total) of shell removed by each permittee, not to exceed $50,000 per year, rather than $50,000 total.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §86.021, which requires the commission to exempt by rule the projects listed in subsection (b) of that section from any permit requirement or payment to the department for materials removed if the commission finds that the state will not be deprived of significant revenue and there will be no significant adverse effects on navigation, the coastal sediment budget, riverine hydrology, erosion, or fish and wildlife resources or their habitat, and §86.0191, which authorizes the commission to adopt rules to govern consideration of applications; setting and collection of application fees; assessment of transcript costs in contested cases; permit conditions; issuance of permits by rule; pricing of and terms for payment for substrate materials; assignability of permits; payment of refunds; permit renewal; and any other matter necessary for the administration of the chapter.

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 April 3, 2001.

TRD-200101948
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 23, 2001
Proposal publication date: December 22, 2000
For further information, please call: (512) 389-4775

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SUBCHAPTER I. SHELL DREDGING ON THE TEXAS GULF COAST

31 TAC §69.201, §69.203

The Texas Parks and Wildlife Commission adopts amendments to §69.201, concerning Contents, and §69.203, concerning Definitions. Section 69.201 is adopted with changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12623). Section 69.203 is adopted without changes and will not be republished. The change to §69.201 alters paragraph (1)(D). As proposed, this sentence read "For purposes of this subparagraph, live oysters are considered to be present on an exposed reef within a state tract when three department samples, one bushel or more each, samples produce an average of one or more market oyster (three inches or larger) per bushel, or ten or more seed oysters (3/4 inch to three inches), and spat (below 3/4 inch) combined per bushel sample'. The second occurrence of the word 'samples' makes the sentence difficult to understand. The change results in a sentence reading, "For purposes of this subparagraph, live oysters are considered to be present on an exposed reef within a state tract when three department samples, one bushel or more each, produce an average of one or more market oyster (three inches or larger) per bushel, or ten or more seed oysters (3/4 inch to three inches), and spat (below 3/4 inch) combined per bushel sample".

The amendments to §69.201 and §69.203 are necessary to maintain factually accurate regulations.

The amendments to §69.201 and §69.203 would correct spelling and grammatical errors.

The department received no comments concerning adoption of the proposed rules.

The rules are adopted under Parks and Wildlife Code, §86.020, which authorizes the commission to adopt rules to govern consideration of applications; setting and collection of application fees; assessment of transcript costs in contested cases; permit conditions; issuance of permits by rule; pricing of and terms for payment for substrate materials; assignability of permits; payment of refunds; permit renewal; and any other matter necessary for the administration of this chapter.

§69.201. Contents.

The following provisions shall apply to all shell dredging in state-owned submerged tidelands of this state.

(1) The director of the department is expressly authorized to issue shell dredging permits in all the coastal waters of Texas except that at the director's discretion the commission may be requested to consider the issuance of a permit and except that in no event will shell dredging operations be conducted in those areas described as follows.

(A) In Galveston and Trinity Bays within 300 feet of the exposed portions of what are known as Dollar's Reef, Todd's Dump Reef, Hanna's Reef, Fisher's Reef, No Name Reef (located south of the Texas City Dyke), and Moody's Reef and further in no event will dredging operations be conducted in Trinity Bay within 2,000 feet of what is known as Vingtune Island.

(B) In no event will shell dredging operations be conducted in that portion of San Antonio Bay and tributary water bodies north of North Latitude 28 and 22 minutes except that shell dredging operations may be conducted in state Tracts 74, 101, 102, and 106.

(C) Permittee will map and mark the edges of all exposed reefs within 1,500 feet of the proposed dredge operating site prior to the commencement of any dredging within an authorized tract. All mapping and marking will be verified and approved by the department prior to any dredging.

(D) Those sections relating to siltation and to minor violations for siltation of exposed reefs are suspended for operations which occur in state Tracts 74, 101, 102, and 106 in San Antonio Bay when no live oysters are present on an exposed reef at any time during the dredging operation. Permittee will remove all silt from an exposed reef or at the department's option will resurface the entire area of the exposed reef with clean, coarse shell to the satisfaction of the department. If live oysters are present on any exposed reef and siltation occurs to the reef as a result of the dredging operation or related dredging activities of permittee, those sections relating to siltation and minor violations will remain in full force and effect. For purposes of this subparagraph, live oysters are considered to be present on an exposed reef within a state tract when three department samples, one bushel or more each, samples produce an average of one or more market oyster (three inches or larger) per bushel, or ten or more seed oysters (3/4 inch to three inches), and spat (below 3/4 inch) combined per bushel sample. The director will designate the period of time when the shell will be furnished to the department. The quantity of shell referred to in this subparagraph is in addition to the shell permittee is required to furnish for reef enhancement by §69.121 of this title (relating to Prices).

(E) In any single bay system, no more than one dredge per permittee will be authorized to operate at any time and not more than one dredge will operate at one time regardless of the number of

permittees. The director will determine the periods of operation allotted to each permittee and all periods will be distributed equally as nearly as possible.

(F) Permittee will be required to use a silt screen around the discharge pipe of the dredge at such times as it is determined by the department agent having responsibility for shell management that this procedure is necessary to diminish the silt load in the water column.

(G) Permittee will pay the costs incident to the monitoring of shell dredging operations and for monitoring the biological, physical, and chemical parameters deemed essential by the department to maintain water quality and fisheries production in San Antonio Bay as required by §69.121 of this title (relating to Prices). Monitoring of shell dredging activities and biological, physical, and chemical parameters includes, but is not limited to: surveying of exposed reefs, placement and checks of siltation baskets to determine sediment transport and deposit, sampling of reef surfaces to determine deposition of dredge-suspended sediments, and such other similar activities deemed appropriate by the director. Factors such as dredge distance from reefs, length of operation, direction and depth, extent of plume, turbidity, type and composition of suspended solids, water depth, tidal current and direction, wind direction and velocity, salinity and temperatures may be determined as necessary in evaluating siltation and assuring compliance with department regulations.

(2) Shell dredging operators will be required to secure permits from the director of the department to dredge shell and mudshell in areas authorized to be dredged under these sections and under such terms and conditions as may be prescribed from time to time by the director, except that north of north latitude 28 degrees and 22 minutes in San Antonio Bay only state Tracts 74, 101, 102, and 106 may be opened to dredging, but only one of the previously numbered state tracts will be designated for dredging at any one time. Once dredging has been completed within a designated state tract, no further dredging will be authorized in that state tract without written permission of the director.

(3) Dredging operations for the removal, taking, and carrying away of shell and mudshell may be conducted except that:

(A) Operations may not be conducted within 300 feet of any exposed reef of within 100 feet of an exposed reef in state Tracts 74, 101, 102, and 106 in San Antonio Bay.

(B) Operations may not be conducted within 1/2 mile of any shoreline.

(C) Operations may not be conducted in marginal water less than four feet in depth.

(4) The commission authorizes the director to carry out and enforce these rules as enacted or amended.

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 April 3, 2001.

TRD-200101949
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 23, 2001
Proposal publication date: December 22, 2000
For further information, please call: (512) 389-4775

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SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

31 TAC §69.303, §69.305

The Texas Parks and Wildlife Commission adopts amendments to §69.303 and §69.305, concerning Scientific, Educational, and Zoological Permits, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 1625).

The amendment to §69.303, concerning Application for Permit, is necessary to ensure that research involving live protected wildlife is consistent with the protocols of the organization sponsoring the research and to ensure that research involving protected wildlife is scientifically justified. The amendment to §69.305, concerning Facility Standards, is necessary to acknowledge that small raptors need not be kept in enclosures larger than what is needed.

The amendment to §69.303 will function by requiring an applicant for a permit to submit an approval statement from a university Animal Use Committee or enter into a memorandum of understanding with the department when the permittee intends to use live protected wildlife for research purposes, and would broaden the current requirement for a justification statement for any research involving endangered species to apply to all research involving protected wildlife Code. The amendment to §69.305, concerning Facility Standards, will function by allowing permittees to house screech owls and kestrels in smaller enclosures than those currently specified for raptors other than eagles.

No comments were received by the department concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

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 April 3, 2001.

TRD-200101950
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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Proposal publication date: December 22, 2000
For further information, please call: (512) 389-4775

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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 State Board of Plumbing Examiners

Title 22, Part 17

Filed: April 11, 2001

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter C, High School, §§111.31, 111.32, 111.33, and 111.34, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 111, Subchapter C, §§111.31, 111.32, 111.33, and 111.34, in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1757).

The TEA finds that the reason for adopting continues to exist. The TEA received the following comment related to the rule review requirement as to whether the reason for adopting the rules continues to exist.

Comment. One individual commented that these rules should continue to exist and went on to advise that content experts should be enlisted and utilized whenever the State Board of Education conducts the comprehensive update to the Texas Essential Knowledge and Skills.

Agency Response. The agency agrees with this comment and plans to involve teachers, school administrators, parents, the community, and subject area experts such as mathematicians and scientists in the future comprehensive update to the state curriculum rules.

No changes are being proposed to the rules as a result of the review. This concludes the review of 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter C, High School, §§111.31, 111.32, 111.33, and 111.34.

TRD-200102009
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: April 6, 2001

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Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas (ERS) has completed its review of Chapter 74, concerning Qualified Domestic Relations Orders, in accordance with the Appropriations Act, Article IX, §§9-10.13, as passed by the 76th Texas Legislature. ERS readopts Chapter 74 as the agency's reason for adopting this Chapter continues to exist. The proposed review was published in the September 7, 2000, issue of the *Texas Register* (25TexReg 9648). No comments were received regarding this review.

TRD-200101995
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: April 5, 2001

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The Employees Retirement System of Texas (ERS) has completed its review of Chapter 81, concerning the Uniform Group Insurance Program, in accordance with the Appropriations Act, Article IX, §§9-10.13, as passed by the 76th Texas Legislature. ERS readopts Chapter 81 as the agency's reason for adopting this Chapter continues to exist. The proposed review was published in the September 7, 2000, issue of the *Texas Register* (25TexReg 9648). No comments were received regarding this review.

TRD-200101996
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: April 5, 2001

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 303, Operation of the

Rio Grande in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 13011).

CHAPTER SUMMARY

Chapter 303, Subchapter A contains introductory provisions; Subchapter B outlines the regulatory functions of the watermaster for the Rio Grande; Subchapter C specifies the allocation and distribution of waters of the Rio Grande; Subchapter D provides for enforcement of watermaster operations; Subchapter E addresses amendments and sales of water rights; Subchapter F addresses contractual sales of water; Subchapter G authorizes an excess flow permit; and Subchapter H provides for financing of the Rio Grande Watermaster operations.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 303 continue to exist. The rules are necessary to implement the procedures and powers provided to the commission relating to watermaster operations contained in Texas Water Code, §§11.325 - 11.458. During the review of these rules, the commission identified some necessary revisions and clarifications. These amendments were proposed for public comment in a separate rulemaking published in the January 26, 2001, issue of the *Texas Register* (26 TexReg 920).

PUBLIC COMMENT

The public comment period closed on January 29, 2001, and no comments were received.

TRD-200101998
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 6, 2001

♦ ♦ ♦

The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 304, Watermaster Operations in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the January 19, 2001 issue of the *Texas Register* (26 TexReg 782).

CHAPTER SUMMARY

Chapter 304, Subchapter A contains introductory provisions; Subchapter B outlines the regulation of the use of state water; Subchapter C specifies the allocation of available waters; Subchapter D provides for enforcement of watermaster operations; Subchapter E addresses administration of watermaster operations; Subchapter F addresses appeal of watermaster actions; and Subchapter G provides for financing of watermaster operations.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 304 continue to exist. The rules are needed to implement the duties and responsibilities of watermaster operations in Texas Water Code (TWC), §§11.325 - 11.458, which establish water divisions; the watermaster for these water divisions; the duties, responsibilities, and compensation of the watermaster; the commission's authority to establish water divisions and the watermaster; and all duties and responsibilities necessary to carry out the authority of the commission through watermaster operations. The rules are also needed in accordance with TWC, §5.103 which states, "The commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state."

PUBLIC COMMENT

The public comment period closed on February 20, 2001, and no comments were received.

TRD-200101999
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 6, 2001

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The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readoption of Chapter 314, Toxic Pollutant Effluent Standards, in accordance with Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the January 19, 2001, issue of the *Texas Register* (26 TexReg 783).

CHAPTER SUMMARY

Chapter 314 adopts by reference 40 Code of Federal Regulations (CFR) Part 129.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 314 continue to exist. The rules adopt by reference 40 CFR, Part 129, Subpart A, Toxic Pollutant Effluent Standards and Prohibitions.

PUBLIC COMMENT

The public comment period closed on February 19, 2001. No comments on whether the reasons for the rules continue to exist were received.

TRD-200102008
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 6, 2001

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Texas Parks and Wildlife Commission

Title 31, Part 2

CHAPTER 53. FINANCE

The Texas Parks and Wildlife Commission adopts the rules review of the contents of Chapter 53, Finance, as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 10199). As a result of the review, the commission readopted the contents of the chapter without change, except as noted:

Subchapter A. License Fees and Boat and Motor Fees

§53.1. License Issuance Procedures, Fees, Possession and Exemption Rules.

§53.2. Combination Hunting and Fishing Licenses, Packages, and Conservation Permits.

§53.3. Other Recreational Hunting and Fishing Licenses, Stamps, and Tags.

§53.4. Commercial Hunting/Trapping Licenses and Permits.

§53.5. Public Land Hunting Permits and Fees.

§53.6. Commercial Fishing Licenses and Tags.

§53.7. Business Licenses and Permits.

§53.8. Miscellaneous Wildlife Licenses and Permits.

§53.9. Investment of Lifetime License Endowment Fund.

§53.10. Vessel and Motor Fees Set by Commission.

NOTE: Rule action affecting these sections appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to establish fees by rule for the permits, licenses, and registrations affected by the provisions of this subchapter.

Subchapter B. Stamps

§53.11. Stamp Form.

§53.12. Stamp Design.

§53.13. Stamp Manner of Issuance.

§53.14. Stamp Purchaser Identification and Possession Requirements.

§53.15. Stamp Exemptions.

§53.16. Obsolete Stamps and Decals.

NOTE: The adoption of amendments to §53.14 and §53.16 appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to establish fees by rule for the stamps affected by the provisions of this subchapter.

Subchapter C. Vessel Registration Agents and Surety Bonds

§53.17. Authorized Vessel Registration Agent for the Department.

§53.18. Surety Bond Requirements.

NOTE: Rule action affecting these sections appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that the requirements of Parks and Wildlife, Chapter 31, make it is necessary to establish fees for vessel registration by rule.

Subchapter D. License Deputies

§53.22. License Deputy Appointment and Cancellation Procedures.

§53.23. Surety Bond Requirements.

§53.25. License Deputy Collection and Issuance Fees.

NOTE: The adoption of an amendment to §53.23 and the repeal of §53.22 appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to maintain regulations governing the appointment and payment of license deputies, as a significant portion of the agency's revenue is derived as a result of license deputy activities.

Subchapter E. Selling Price of Departmental Information

§53.31. Sales Price Establishment and Adjustment.

§53.32. Magazine and Audio-Visual Products, Publications, and Services.

§53.33. Fee Exempt Informational Materials.

§53.35. Release and Sale of Customer Information.

NOTE: Rule action affecting these sections appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to maintain regulations governing the release and sale of customer information in order to prevent the undesired dissemination of personal information to third parties.

Subchapter F. Commercial Fishing Boat Numbers

§53.41. Composition and Issuance.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Parks and Wildlife Code, §47.007, it is required to establish rules for commercial fishing boat numbers and is required to charge a fee for that activity.

Subchapter G. Texas Freshwater Fisheries Center Admission Fees

§53.50. Texas Freshwater Fisheries Center Admission; Fees and Other Entrance Requirements.

NOTE: The adoption of an amendment to §53.50 appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to establish fees for the operation and maintenance of the Athens Freshwater Fisheries Center.

Subchapter H. Marine Safety Enforcement - Training and Certification Fees

§53.60. Law Enforcement Training and Certification Fees.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Parks and Wildlife Code, §31.121, it is necessary to establish fees by rule for Marine Safety Enforcement Training and Certification.

Subchapter I. Protest Procedures for Vendors

§53.70. Vendor Protest Procedure.

§53.80. Miscellaneous Wildlife Licenses and Permits.

NOTE: The adoption of an amendment to §53.70 and the repeal of §53.80 appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Parks and Wildlife Code, §11.0171, it is required to adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts.

The department received no comments concerning the review of this chapter.

This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

TRD-200101931

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: April 3, 2001

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CHAPTER 59. PARKS

The Texas Parks and Wildlife Commission adopts the rules review of the contents of Chapter 59, Parks, as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 10199). As a result of the review, the commission readopted the contents of the chapter without change, except as noted:

Subchapter A. Park Entrance And Park User Fees

§59.1. General Statement.

§59.2. Park Entrance and Use Fees.

§59.3. Activity and Facility Use Fees.

§59.4. Reservation of State Park Facilities.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to maintain regulations governing reservation and use of state parks and state park facilities.

Subchapter B. Local Park Planning Assistance

§59.10. Eligibility.

§59.11. Limitations.

§59.12. Application for Assistance.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to maintain regulations for the administration of the Local Park Planning Assistance program.

Subchapter C. Acquisition and Development Of Historic Sites, Buildings and Structures

§59.41. General Statement.

§59.42. Chronology and Thematic Organization.

§59.43. Acquisition Guidelines.

§59.44. Development Guidelines.

§59.45. Methods of Additional Funding Other Than Departmental.

§59.46. Maintenance Guidelines.

§59.47. Personnel Selection and Training Guidelines.

NOTE: The adoption of §59.42 and §59.44 appear elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to establish and maintain regulations to administer the provisions of Parks and Wildlife Code, §13.005.

Subchapter D. Administration of the State Park System

§59.61. General Objectives.

§59.62. Parks and Wildlife Land Classification--Policy.

§59.63. Definitions.

§59.64. Classification and Guidelines.

§59.75. Coastal Management Program.

NOTE: The adoption of amendments to §59.63 and §59.64 appear elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to maintain regulations governing the administration of the state park system.

Subchapter E. Operation and Leasing of Park Concessions

§59.101. Definitions.

§59.102. General Requirements for Park Concessions.

§59.103. Selection of a Concessioner.

§59.104. Types of Concession Contracts.

§59.105. Contract Terms.

§59.106. Franchise Fee Rates and Charges.

§59.107. Accounting.

§59.108. Bond and Insurance.

§59.109. Furnishing Utilities.

NOTE: The adoption of amendments to §§59.101 and 59.103-59.108 appear elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to establish and maintain regulations to manage the concessions activities in the state park system.

Subchapter F. State Park Operational Rules

§59.131. Definitions.

§59.132. General Rules.

§59.133. Closing Hours and Overnight Use.

§59.134. Rules of Conduct in Parks.

§59.135. Vehicles, Trailers, Motor Homes, Camping Equipment, or Personal Belongings.

§59.136. Penalties.

NOTE: The adoption of an amendment to §59.131 appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to maintain regulations to ensure the health, safety, and protection of persons and property in state parks.

Subchapter G. Relocation Assistance in Park Acquisition Projects

§59.191. Definitions.

§59.192. Purpose.

§59.193. Procedures.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to maintain regulations governing the relocation of persons displaced from lands acquired by the department.

Subchapter H. Sea Rim State Park Hunting, Fishing, And Trapping Proclamation

§59.201. Application.

§59.202. Authority.

§59.203. Finding of Fact.

§59.204. Consent.

§59.205. Definitions.

§59.206. Means and Methods: Migratory Birds.

§59.207. Means and Methods: Fur-Bearing Animals.

§59.208. Hunting from Vehicle.

§59.209. Hunting Permits.

§59.210. Checking Game.

§59.211. Open Seasons and Bag Limits: Migratory Birds.

§59.212. Open Seasons and Bag Limits: Fur-Bearing Animals.

§59.213. Fish: Means and Methods; Open Seasons; Bag and Size Limits.

§59.214. General.

§59.215. Effective Date.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is necessary to maintain regulations governing the times, places, quantity, species, sex, and means and methods of taking wildlife resources on Sea Rim State Park.

The department received no comments concerning the review of this chapter. This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

TRD-200101930
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: April 3, 2001

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CHAPTER 69. Resource Protection

The Texas Parks and Wildlife Commission adopts the rules review of the contents of Chapter 69, Resource Protection, as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 10199). As a result of the review, the commission readopted the contents of the chapter without change, except as noted:

Subchapter A. Endangered, Threatened, and Protected Native Plants

§69.1. Permit Required.

§69.2. Scientific Plant Permit.

§69.3. Reporting Requirements.

§69.4. Renewal.

§69.5. Commercial Plant Permit.

§69.6. Permit and Tag Fees.

§69.7. Period of Validity.

§69.8. Endangered and Threatened Plants.

§69.9. Penalties.

NOTE: The contents of this subchapter are currently proposed for rule action and await adoption at a later date.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that it is required by Parks and Wildlife Code, Chapter 88, to maintain regulations to administer that chapter.

Subchapter B. Fish and Wildlife Values

§69.19. Restitution and Restoration.

§69.20. Application.

§69.21. Definitions.

§69.22. Wildlife--Recovery Values.

§69.23. Endangered and Threatened Species.

§69.24. Basic Value.

§69.25. Aquatic Life--Recovery Value.

§69.26. Commercial Species--Recovery Value.

§69.27. Updating Existing Recovery Values.

§69.28. Savings Clause.

§69.29. Computed Values for Selected Species.

§69.30. Trophy Wildlife Species.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that Parks and Wildlife Code, Chapter 12, requires it to maintain regulation to establish regulations to administer the civil restitution program.

Subchapter C. Wildlife Rehabilitation Permits

§69.43. Definitions.

§69.44. General Provisions.

§69.45. Permit Required.

§69.46. Application for Permit.

§69.47. Qualifications.

§69.48. Permit Renewals.

§69.49. General Facilities Standards.

§69.50. Transfers.

§69.51. Release of Rehabilitated Wildlife.

§69.52. Reports.

§69.53. Violations and Penalties.

NOTE: The adoption of amendments to §69.47 and §69.51 appear elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that Parks and Wildlife Code, Chapter 43, Subchapter C, requires it to maintain regulations to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

Subchapter D. Memorandum of Understanding

§69.71. Memorandum of Understanding.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that the provisions of Transportation Code, §201.607 require Texas Parks and Wildlife to enter into a memorandum of understanding with the Department of Transportation by rule.

Subchapter E. Natural Resource Damages

§69.73. Natural Resource Damage Assessment for Coastal Oil Spills.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Natural Resources Code, §40.107, it is necessary to maintain regulations adopting by reference the provisions of 31 TAC §§20.1-20.44.

Subchapter F. Health Certification of Native Shellfish

§69.75. Definitions.

§69.77. Health Certification of Native Penaeid Shrimp.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Parks and Wildlife Code, §66.007, it is necessary to maintain regulations for the certification of native shellfish.

Subchapter G. Compliance with Coastal Management Plan

§69.91. Consistency.

§69.93. Thresholds for Referral.

NOTE: The adoption of amendments to §69.91 and §69.93 appear elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Natural Resources Code, §33.2052, it is necessary to establish a process by rule for the agency to submit rules to the Coastal Coordination Council for review and certification for consistency with the goals and policies of the coastal management program.

Subchapter H. Issuance of Marl, Sand and Gravel Permits

§69.101. Management and Protection.

§69.102. Definitions.

§69.103. Delegation of Authority.

§69.104. Permit Required.

§69.105. Application Procedures: Individual Permit.

§69.106. Public Comment Hearing Procedures.

§69.107. Contested Case Hearings.

§69.108. Criteria.

§69.109. Findings of Fact.

§69.110. Period of Validity.

§69.111. Requirements.

§69.112. Restrictions.

§69.113. Claims of Private Ownership.

§69.114. Sedimentary Material Permit Application Fees.

§69.115. General Permits.

§69.116. Conditions.

§69.117. Notification and Reporting for General Permits.

§69.118. Best Management Practices.

§69.119. Fees.

§69.120. Exemptions.

§69.121. Prices.

NOTE: The adoption of amendments to §69.120 and §69.121 appear elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Parks and Wildlife Code, Chapter 86, it is necessary to maintain regulations to manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state.

Subchapter I. Shell Dredging on the Texas Gulf Coast

§69.201. Contents.

§69.202. Previous Shell Dredging Orders.

§69.203. Definitions.

§69.204. Permit Applications.

§69.205. Department Requirements.

§69.206. Violations.

§69.207. Administrative Action and Penalties.

§69.208. Renewal of Permits.

§69.209. Existing Permits.

NOTE: The adoption of amendments to §69.201 and §69.203 are proposed for rule action elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Parks and Wildlife Code, Chapter 86, it is necessary to maintain regulations to administer the provisions of the chapter.

Subchapter J. Scientific, Educational and Zoological Permits

§69.301. Definitions.

§69.302. General Rules.

§69.303. Application for Permit.

§69.304. Qualifications.

§69.305. Facility Standards.

§69.306. Restrictions.

§69.307. Final Disposition of Specimens.

§69.308. Reports.

§69.309. Inspections.

§69.310. Fees.

§69.311. Violations and Penalties.

NOTE: The adoption of amendments to §69.303 and §69.305 appear elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that Parks and Wildlife Code, Chapter 43, Subchapter C, requires it to maintain regulations to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation

Subchapter K. Sale of Nongame Species

§69.401. Applicability.

§69.402. Definitions.

§69.403. Permit Required.

§69.404. Permit Application, Issuance, and Fees.

§69.405. Permit Renewal.

§69.406. Reports.

§69.407. Disposition of Stock.

§69.408. Violations and Penalties.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The Commission finds that under the provisions of Parks and Wildlife Code, Chapter 67, it is required to develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully.

The department received no comments concerning the review of this chapter.

This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

TRD-200101929

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: April 3, 2001

♦ ♦ ♦

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: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction deadline	Destruction Method (also see footnotes)
1	Feb. 1 - March 31	September 1	shred and plow a,b
2 - Area 1	No dates set	**September 1** [September 15]	shred and plow a,b
2 - Area 2	No dates set	**September 1** [September 15]	shred and plow a,b
2 - Area 3	No dates set	**September 1** [September 25]	shred and plow a,b
2 - Area 4	No dates set	October 1	shred and plow a
3 - Area 1	March 5 - May 15	October 1	shred and plow a,b
3 - Area 2	March 5 - May 15	October 15	shred and plow a,b
4	No dates set	October 10	shred and plow a,b
5	No dates set	October 20	shred and/or plow a,c
6	No dates set	October 31	shred and/or plow a,c
7	March 20 - May 31	November 30	shred and/or plow a,c
8	March 20 - May 31	November 30	shred and/or plow a,c
9	No dates set	March 15	shred and plow b,d
10	No dates set	February 1	shred and plow b,d

a/ Alternative destruction methods are allowed (see paragraph (b)).

b/ Destruction shall be performed in a manner to prohibit the presence of live cotton plants.

c/ Destruction shall periodically be performed to prevent presence of fruiting structures.

d/ Soil shall be tilled to a depth of 2 or more inches in Zone 9, and to a depth of 6 or more inches in Zone 10.

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.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 04/16/01 - 04/22/01 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 04/16/01 - 04/22/01 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200102043
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 10, 2001

♦ ♦ ♦

Texas Education Agency

Request for Proposals Concerning Evaluation of the Technology Integration in Education (TIE) Initiative: the Texas Technology Literacy Challenge Fund (TLCF) Initiative

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-01-017 from nonprofit organizations, institutions of higher education, private companies, and individuals to determine the impact of the Technology Integration in Education (TIE)/Texas Technology Literacy Challenge Fund (TLCF) awards on Texas students, educators, campuses, and districts. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of this RFP is to select a contractor who will gather, analyze, summarize, and submit data from the fiscal agents and collaborative members and subgrantees awarded TIE/TLCF grants from 1997 to 2001. Information about the grant recipients is available at http://www.tea.state.tx.us/technology/rfa/TIE/. The contractor will develop quantitative and qualitative survey instruments, conduct site visits as appropriate, conduct interviews, and gather data. Based on the gathered data and data provided to the contractor by the TEA, the contractor will prepare and submit reports identified and defined through the RFP process and by TEA.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than July 17, 2001, and an ending date of no later than July 31, 2002.

Project Amount. This project is funded 100% from Technology Literacy Challenge funds authorized by federal law, the Elementary and Secondary Education Act (ESEA).

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and upon the reasonableness of the proposed fee. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP and that are most advantageous to the project.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-01-017 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, or e-mailing dcc@tea.state.tx.us. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact Anita Givens, Division of Educational Technology, TEA, at (512) 463 9400 or by email at agivens@tea.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, June 5, 2001, to be considered.

TRD-200102088
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: April 11, 2001

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Employees Retirement System of Texas

Request for Qualifications (RFQ) for Independent Audit Services

The Employees Retirement System of Texas ("the System") is requesting an offer from independent certified public accountants ("the Auditor") to perform a financial audit of the System for the fiscal years ended August 31, 2001, 2002 and 2003. The selected Auditor will enter into a contract with the System for a period of three (3) years.

Contact Person

Interested Auditors must either fax their request on their company letterhead to the attention of Marci B. Sundbeck, Director of Internal Auditing, Employees Retirement System of Texas, at (512) 867-7480, or send their request via email to msundbeck@ers.state.tx.us. An email request must include the name of the company, mailing address, telephone number, fax number and email address, if applicable. Upon receipt of request, a copy of the RFQ will be forwarded to the requesting Auditor via U. S. Mail.

Please refer any requests for further information about the RFQ to Marci B. Sundbeck, Director of Internal Auditing, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, TEL. 512-867-7302, FAX 512-867-7480.

The System will not be responsible for expenses incurred in preparing and submitting the responses to the RFQ. Such costs will not be included in the response to the RFQ.

Closing Date

The Auditor will submit seven (7) copies of the completed response to the RFQ by 3:00 p.m. CST on May 11, 2001, to the Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, to the attention of Marci B. Sundbeck, Director of Internal Auditing, or hand-carried to the ERS Building, Room 400, 18th & Brazos, Austin, Texas.

If the response to the RFQ will be submitted by mail, it must be received by the System no later than the date and time set out above. Hand-carried responses to the RFQ may be delivered between 8:00 a.m. and 3:00 p.m. CST through the date and time set out above. All responses to the RFQ will be in a sealed envelope with the Auditor's name, address and RFQ subject matter shown on the outside.

Selection Process

Responses to the RFQ will be reviewed by the System staff. Based on this review, interviews may be scheduled with the Auditors considered to be the best qualified.

Evaluation Criteria

Responses to the RFQ will be evaluated using three (3) sets of criteria in order to determine the demonstrated competence and qualifications of the Auditor to perform the services for a fair and reasonable price. The Auditors meeting the mandatory criteria will have their responses to the RFQ evaluated and scored for both technical qualifications and fees. The following represent the selection criteria that will be considered during the evaluation process.

I. Mandatory Elements

A. Independent of the System;

B. The firm has no conflict of interest with regard to any other work performed by the Auditor for the System;

C. Licensed to practice in Texas;

D. The Auditor must submit a copy of its most recent external quality control review report;

E. The Auditor has a record of quality audit work;

F. EEO compliance;

G. Child Support compliance; and

H. The Auditor adheres to the instructions in the RFQ on preparing and submitting the response.

II. Technical Qualifications (Maximum Points -- 85)

A. Expertise and Experience

1. Similar Engagements (Maximum Points -- 35)

Extent, diversification, and quality of retirement system auditing experience based on information provided by the Auditor as well as references of former and present clients.

2. Ability to Perform (Maximum Points -- 20)

The Auditor's ability and willingness to meet the requirements and needs of the System with respect to the audit as outlined in the RFQ and as demonstrated in the response.

a.Firm's Qualifications and Experience

i. Broad experience of the firm;

ii. If joint venture or consortium, the qualifications of the principal Auditor;

iii. Percentage of Professional Billings; and

iv. Adequacy of CPE.

3. Personnel Quality (Maximum Points - 10)

The quality of the Auditor's professional personnel to be assigned to the engagement and the quality of the Auditor's management support personnel to be available for technical consultation.

a. Auditor Staff Qualifications and Experience

i. Principal supervisory and management staff and other specialists assigned to the engagement;

ii. Capability to audit computerized systems;

iii. Commitment to governments; and

iv. Public Employees Retirement System auditing experience.

B. Audit Approach (Maximum Points -- 20)

1. Adequacy of proposed audit approach and staffing plan for various segments of the engagement.

a. Interim Work

b. Engagement Letter

c. Fieldwork - Audit of financial records:

i. System's budget

ii. Organizational charts, manuals and programs

iii. Financial information systems

iv. Other management information systems

d. Management Letter

e. Conferences

f. Other segments the Auditor considers essential

III. Professional Fees (Maximum Points -- 15)

A. Total all-inclusive maximum price;

B. Rates by partner, specialist, supervisory and staff level and hours anticipated for each; and

C. Rates for additional professional services.

The selection of any Auditor will be made on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price which must be consistent with and not higher than the recommended practices and fees published by any applicable professional associations.

At the discretion of the System, the Auditors submitting responses may be requested to make oral presentations as part of the evaluation process.

In all interviews held with the Auditor, the proposed audit partner and manager for the System's engagement and the individual who will have on-site responsibility for the audit (if a person other than the partner or manager) must be present.

Final Selection

Final selection of any Auditor will be made by the System's Board of Trustees.

Contractual Agreement

The contract to be entered into between the Auditor and the System, for audit services included in the RFQ, will be for a period of three (3) years.

The Auditor will include certification that the person signing the response to the RFQ is entitled to represent the firm, empowered to submit the response and authorized to sign a contract with the System by including the following wording:

"I hereby certify that I have read all items of this RFQ and fully understand the requirements listed herein. I further certify that I am an authorized agent of the Auditor empowered to submit the response to the RFQ, and authorized to sign a contract with the System."

A copy of the RFQ as well as the successful response to the RFQ will be attached to the contract. The System expects the Auditor to fully execute the contract and return it to the System along with the Auditor's response to the RFQ.

Right To Reject

Submission of a response to the RFQ, along with the executed contract, indicates acceptance by the Auditor of the conditions contained in the RFQ and contract unless clearly and specifically noted in the response submitted and confirmed in the contract between the System and the Auditor selected.

The System reserves the right to reject any and all responses to the RFQ submitted without any obligation or payment for costs incurred by proposing Auditors. The System reserves the right, where it may serve the System's best interest, to request additional information or clarification from any respondent, to allow corrections of errors or omissions, or to discuss points in the response to the RFQ before and after submission, all of which may be used in forming a recommendation. The System reserves the right to waive any and all formalities contained within the RFQ except for the deadline for filing. Responses to the RFQ received late will not be considered.

The System reserves the right to retain each response submitted and to use any aspect of the response to the RFQ regardless of whether that Auditor is selected.

Open Records

Copyrighted proposals are unacceptable and will be disqualified as non-responsive.

Following the selection of an Auditor, responses to the RFQ are subject to release as public information unless the response or specific parts of the response can be clearly shown to be exempt from the Texas Public Information Act. The Auditor is advised to consult with its legal counsel regarding disclosure issues and take the appropriate precautions to safeguard proprietary information. The System assumes no obligation or responsibility for asserting legal arguments on behalf of any respondent to the RFQ.

If the Auditor believes that its response or parts thereof are confidential, then the Auditor must so specify. The Auditor must stamp in bold red letters the term **"CONFIDENTIAL"** on that part of the response that the Auditor considers confidential. The Auditor must submit in writing specific detailed reasons, including relevant legal authority, stating why the Auditor believes the material to be confidential. Vague and general claims will not be accepted. The Attorney General of Texas will be the sole judge as to whether a claim is general and/or vague in nature. All responses and parts of responses that are not marked confidential will be automatically considered public information after the Auditor is selected. Any response may be considered public information by the Attorney General of Texas even though parts are marked confidential.

TRD-200102068
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: April 11, 2001

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Texas Department of Health

Notice of Public Hearing for Proposed Rules Concerning Licensure of Tanning Facilities

A public hearing will be held by the Texas Department of Health (department) on May 11, 2001, at 9:00 a.m., at the Texas Animal Commission, Conference Room, 2105 Kramer Lane, Austin, Texas, 78758, in regards to the proposed amendments concerning the licensure of tanning facilities to accept comments. The proposed amendments for 25 Texas Administrative Code, §§229.342, 229.343, 229.345 - 229.349, 229.351 - 229.354, 229.356, 229.357 were published in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1090).

Additional comments will be accepted by the department at the public hearing held on May 11, 2001. Questions or additional information may be directed to Tom Brinck, Director of Programs, Medical Devices, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237, ext. 465.

TRD-200102089
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 11, 2001

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Texas Department of Housing and Community Affairs

Housing Trust Fund Housing & Youth Training Program

Request for Proposals for Construction of Affordable Housing & Youth Training

The Texas Department of Housing and Community Affairs, through its Housing Trust Fund, is pleased to announce that it will make available approximately **One million dollars ($1,000,000)** 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 need, integrated with job and educational training for at-risk youth.

The Housing Trust Fund provides funding for organizations to increase the supply of affordable, energy-efficient, sustainable housing and to educate and train at-risk youth and young adults of the State of Texas. 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.

Eligible applicants, which include private, non-profit, tax-exempt organizations listed in Section 501(c)(3), Internal Revenue Code of 1986 (26 USC Section 501(c)(3)), public agencies that operate community-based youth employment training programs, educational facilities approved by the Texas Youth Commission, corps-based community service organizations, open-enrollment charter schools approved by the Texas Education Agency and Certified Housing Development Organizations (CHDO's) may compete on a statewide basis.

General Information on RFP:

Proposals will be evaluated and scored primarily, but not exclusively, based on the following criteria: demonstrated performance in serving at-risk youth; demonstrated performance in construction and community housing development; cost effectiveness; qualifications of key personnel; organization's fiscal management and systems; the plan to recruit, select and retrain eligible youth participants; the plan to deliver services to eligible youth participants; the plan to utilize sustainable energy efficient construction materials and techniques. The Housing Trust Fund desires to select a diverse group of single family and multifamily developments that will serve varied populations throughout the state.

Organizations interested in submitting a proposal are requested to download the HTF Affordable Housing & Youth Training RFP 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 RFP package. RFP 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 reserves the right to award less than the requested amount.

Applications must be submitted on or before 5:00 p.m., May 22, 2001.

FAXED APPLICATIONS WILL NOT BE ACCEPTED.

All interested parties with a viable single family or multifamily development in conjunction with youth training and education are encouraged to participate in these programs. **Proposal packages will be available on April 20, 2001.** *A Proposal Workshop for this application will be on April 25, 2001, at 2:00 PM in the TDHCA Board Room located at 507 Sabine, 4th Floor, Austin, Texas.* For additional information, or to request an RFP 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 proposals 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-200102040
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 10, 2001

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Notice of Determination of Certain Counties

In accordance with Subchapter E, Chapter 5, Texas Property Code, as added by Chapter 994, Acts of the 74th Legislature, the Texas Department of Housing and Community Affairs has determined that the requirements governing residential contracts for deed in Subchapter E will apply to the following counties in Texas:

1. Andrews
2. Brooks
3. Cameron
4. Culberson
5. Dimmit
6. Duval
7. El Paso
8. Frio
9. Hidalgo
10. Jimm Hogg
11. Jim Wells
12. Kinney
13. Kleberg
14. La Salle
15. Maverick
16. Pecos
17. Presidio
18. Reeves
19. San Patricio
20. Starr
21. Uvalde
22. Val Verde
23. Ward
24. Webb
25. Willacy
26. Winkler

27. Zapata

28. Zavala

Each county listed above is within 200 miles of an international border and has a per capita income that averaged 25 percent below the state average for the years 1996, 1997, and 1998 and an unemployment rate that averaged 25 percent above the state average for the years 1998, 1999, and 2000.

The Texas Department of Housing and Community Affairs has also determined that the requirements contained in Subchapter E will apply to the counties listed above beginning June 1, 2001.

TRD-200102084
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 11, 2001

♦ ♦ ♦

Public Hearing Schedule for a Concentration Policy for Multifamily Housing Programs

The Texas Department of Housing and Community Affairs ("the Department") programs were created to provide decent, safe and sanitary housing opportunities for low and very low income Texans. The Department aids in building affordable multifamily housing through several of its programs, including, but not limited to, the Low Income Housing Tax Credit Program, the HOME Program and the Housing Trust Fund.

The Department recognizes the need to ensure that the location of any new multifamily project is selected in a manner designed to enhance the viability of all properties in the area by taking into account existing comparable low income units in the affected market. Securing the viability of all properties calls for placing controls on the number of units funded in a market. To achieve this goal, the Department has developed a concentration policy to govern the funding of all multifamily developments.

The Department will hold public hearings to receive comments on the proposed Concentration Policy for Multifamily Housing, at the following times and locations:

DALLAS, Monday, April 30

City Council Chambers

1500 Marilla Street

6:00 p.m.

AUSTIN, Tuesday, May 1

TDHCA Headquarters

Board Room, 4th Flr.

507 Sabine

1:00 p.m.

HOUSTON, Wednesday, May 9

Original City Council Chambers

City Hall, 2nd Flr.

901 Bagby

6:00 p.m.

McALLEN, Wednesday, May 2

McAllen Main Library, Third Floor

601 North Main Street

6:00 p.m.

Written comments are also encouraged. Such comments should be addressed to:

David Burrell, Director of Housing Programs

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941; or

via fax at 512.472.8526;or

via e-mail at info@genesis.tdhca.state.tx.us.

For additional information you may contact the Texas Department of Housing and Community Affairs at 512.475.3800 or visit the program's web site at www.tdhca.state.tx.us.

Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves, ADA Responsible Employee, at 512.475.3943 or Relay Texas at 1.800.735.2989 at least two days before the meeting so that appropriate arrangements can be made.

The proposed Concentration Policy for Multifamily Housing follows:

Texas Department of Housing and Community Affairs

Concentration Policy for Multifamily Housing

The Texas Department of Housing and Community Affairs (TDHCA), by and through its Board of Directors recognizes the need to set limits on the concentration of new housing units it funds in markets and submarkets throughout the state. For the purposes of this policy a market is generally defined by the boundaries of a metropolitan statistical area (MSA) or a county or city. In a market with a population of greater than 500,000, submarkets should be delineated that contain not more than 500,000 persons and not less than 50,000 persons. In cases where the market is over 500,000, the city boundaries that contain proposed projects should be used to delimit the submarket if the city contains at least 50,000 persons but not more than 500,000 persons. In cases where the city, as a submarket, is outside of this range, the submarket boundaries should be generally defined as a three (3)-mile radius defined by a market study analyst as prescribed in the Department's Market Analysis and Appraisal Policy. In cases where a three (3)-mile radius is too large or too small to contain 500,000 to 50,000 persons, the radius should be incrementally decreased or increased by one (1) mile until the submarket defined contains a population of 500,000 to 50,000 persons. For the purposes of this policy, the term comparable means units that are dedicated to same household type as the proposed subject property using the classifications of family, elderly or transitional as household types.

1. The Department may limit annually the issuance of Determination Notices, the allocation of tax credits, and the award of Department funding for new construction projects to not more than 560 comparable units within any market or submarket if the market area has been defined in accordance with the population range described above; or

2. The Department may limit annually the issuance of Determination Notices, the allocation of tax credits, and the award of Department funding for new construction projects to not more than 280 units within any market or submarket if the market area has been defined in accordance with the population range described above, and includes existing or approved but not completed comparable tax credit projects totaling 500 units or more that have maintained stabilized occupancies of at least 90% for less than 1 full year.

3. In making a decision about the issuance of a Determination Notice under items (1) or (2) above, the Department will act in accordance with the order in which the bond reservations were issued subject to a project's feasibility and a determination by the Department that the site is acceptable.

4. The Department will not issue a Determination Notice, allocate tax credits, or award Department funds to any project that it determines would have a significant negative impact on existing (or approved) multifamily housing projects. In making this determination, the Department will take into account all pertinent information including the data and conclusions of the market study. The findings of the market study should result in an appropriately calculated capture rate of not more than 25%. In general, the capture rate is calculated as the sum of all proposed new units divided by the total income eligible renter household demand in the market or submarket as appropriate. Additional definitions of capture rate and demand shall be promulgated in the Department's Market Analysis and Appraisal Policy and associated guidelines.

TRD-200102079
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 11, 2001

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Department of Information Resources

Notice of Contract Award

The Department of Information Resources (DIR) announces that it has entered into a major consulting services contract with PeopleSoft USA, Inc. (PeopleSoft) for services delivered to the Employees Retirement System of Texas (ERS). The purpose of these services is to study and advise ERS on security aspects of the State's benefits administration system as it migrates to the latest version of PeopleSoft. These services are being conducted pursuant to a professional services contract between PeopleSoft and the Texas Department of Information Resources. The not-to-exceed cost is estimated to be $27,830.00

TRD-200101997
Renee Mauzy
General Counsel
Department of Information Resources
Filed: April 6, 2001

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Texas Department of Insurance

Insurer Services

Application to change the name of NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA to NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA, a foreign life company. The home office is in Columbus, Ohio.

Application for admission to the State of Texas by CORNERSTONE MUTUAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Duluth, Georgia.

Application for admission to the State of Texas by SOUTHERN TITLE INSURANCE CORPORATION, a foreign title company. The home office is in Richmond, Virginia.

Application for admission to the State of Texas by NATIONAL TITLE INSURANCE COMPANY, a foreign title company. The home office is in Commack, New York.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200102087
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 11, 2001

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Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of SimplyHealth.Com, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200102078
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 11, 2001

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Texas Department of Licensing and Regulation

Request for Funding for Consumer and Auctioneer Education

The Texas Department of Licensing and Regulation and the Auctioneer Education Advisory Board hereby solicits requests for funding. Requests must include education for the advancement of the auctioneer profession. The subject matter should concern universal standards of auctioneering, including the subjects of ethics, deceptive trade practice act, laws and administrative rules concerning taxes to be collected and paid to the State of Texas by auctioneers, and all other state and federal statutes that apply to the auction business in the State of Texas, including the Texas Auctioneer Law. Requests for funding must encompass all four of the above subject areas, target delivery to all areas of the state, and seek to attract both full time and part time licensed auctioneers.

To receive copies of the Request for Funding contact Caroline Jackson at 512/463-7348; 1-800-803-9202; facsimile-512/475-2872 or electronically at caroline.jackson@license.state.tx.us. Requests for Funding must be received by May 23, 2001 at 5:00 p.m.

Requests for Funding will be evaluated for completeness, content, and usefulness. More than one request may be recommended for funding. Requests may be made for clarification, but no changes to requests will be accepted. A recommendation will be made by the Auctioneer Education Advisory Board to the Commissioner of Licensing and Regulation at a public meeting to be scheduled and announced at a later date.

The Department reserves the right to accept or reject any or all requests submitted. The Department is under no legal or other obligation to execute a contract on the basis of this Request for Funding. The Request for Funding does not commit the Department to pay for any costs incurred prior to the approval of a request.

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

TRD-200102041
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: April 10, 2001

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Texas Department of Mental Health and Mental Retardation

Notice of Joint Public Hearing on Reimbursement Rates for Services in Institutions for Mental Diseases (IMD)

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 extension of current reimbursement rates for Institutions for Mental Diseases (IMDs). The rates will be effective May 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 May 1, 2001, as follows:

$367.97 per day

Methodology and justification: The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter F (relating to Reimbursement Methodology for all medical assistance programs (IMDs)), §355.761(c)(3,4).

The public hearing will be held on Monday, May 7, 2001, at 1:00 p.m. in room 2-328, 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 Monday, May 7, 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-200102035
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: April 10, 2001

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted 30 TAC §101.383, concerning General Air Quality Rules. The rule appeared in the April 6, 2001, *Texas Register* (26 TexReg 2730).

Due to a typographical error in the agency's submission, the word "a" should not appear in paragraphs (1) and (2) of §101.383(a) on page 26 TexReg 2735.

The paragraphs should read:

"(1) maximum daily cap with one-day surplus emission allowables generated on the same day; and

"(2) rolling 30-day average daily system cap emission limitation with surplus emission allowables generated over the same period."

TRD-200102033

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 21, 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 May 21, 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: AES Deepwater, Inc.; DOCKET NUMBER: 2000-1434-AIR-E; IDENTIFIER: Air Account Number HG-1495-V; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: electrical power generation; RULE VIOLATED: 30 TAC §116.115(c), Special Condition 1 of Permit 9276, and the Code, §382.085(b), by having an upset emission of more than 2000 pounds of sulfur dioxide; and 30 TAC §101.6 and the Code, §382.085(b), by failing to report an upset; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Kevin Keyser, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Aker Gulf Marine; DOCKET NUMBER: 2000-1251-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03012-000; LOCATION: Aransas Pass, San Patricio County, Texas; TYPE OF FACILITY: structural metal fabrication; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 03012-000, and the Code, §26.121, by failing to comply with

the permitted effluent limits for total suspended solids (TSS), chlorine, and flow; PENALTY: $2,250; ENFORCEMENT COORDINATOR: John Mead, (512) 239- 6010; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: AquaSource Utility, Inc.; DOCKET NUMBER: 2000-1173-MWD-E; IDENTIFIER: TPDES Permit Number 11974-001; LOCATION: Rockwall, Rockwall County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11974-001, and the Code, §26.121, by failing to comply with the permit effluent limits for ammonia nitrogen; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(4) COMPANY: AquaSource, Inc. - Creekside Utilities Facility; DOCKET NUMBER: 2000- 1330-MWD-E; IDENTIFIER: TPDES Permit Number 11375-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11375-001, and the Code, §26.121, by failing to meet the permitted limit for ammonia nitrogen; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Bandera Ranch Resort L.C. dba Lost Valley Resort Ranch; DOCKET NUMBER: 2000-1079-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0100029; LOCATION: Bandera, Bandera County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(b)(2), (c)(3)(A)(ii), (f)(3), (g)(3) and (4), and §290.122(b) and (c) (formerly 30 TAC §§290.106(b)(1), (e)(1) and (2), 290.103(5), and 290.105(a)(2)), by exceeding the maximum contaminant level (MCL) for total coliform bacteria, collect and submit repeat bacteriological samples following a total coliform-positive sample result, provide public notice related to the routine monthly and repeat sampling violations, and provide public notice of the MCL violations; and 30 TAC §290.109(c), (formerly 30 TAC §290.106(a)), by failing to collect and submit a routine monthly water sample for bacteriological analysis; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Mr. Scott Wilson dba Bar-W Ranch; DOCKET NUMBER: 2000-1242-WR-E; IDENTIFIER: Enforcement Identification Number 15415; LOCATION: Rising Star, Eastland County, Texas; TYPE OF FACILITY: hay producing ranch; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain authorization prior to diverting state water for irrigation purposes; PENALTY: $400; ENFORCEMENT COORDINATOR: James Beauchamp, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(7) COMPANY: BNP Petroleum Corporation; DOCKET NUMBER: 2000-1198-AIR-E; IDENTIFIER: Air Account Number MC-0008-S; LOCATION: Tilden, McMullen County, Texas; TYPE OF FACILITY: oil and gas exploration and production; RULE VIOLATED: 30 TAC §101.10 and the Code, §382.085(b), by failing to submit an emissions inventory; and 30 TAC §101.27 and the Code, §382.085(b), by failing to pay the emissions fees; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2000-1174-AIR-E; IDENTIFIER: Air Account Number HX-0055-V; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: alcohols and olefins manufacturing; RULE VIOLATED: 30 TAC §115.542(a)(1) and the Code, §382.085(b), by failing to use a vapor control system; 30 TAC 117.211(e) and the Code, §382.085(b), by failing to conduct three one-hour emission test runs; 30 TAC §115.214(a)(1)(B) and the Code, §382.085(b), by failing to stop liquid loading after leaks occurred; and 30 TAC §101.20(1), 40 Code of Federal Regulations (CFR) §60.482-10 and §60.18, and the Code, §382.085(b), by failing to test the HB-2 and HA-8 flare; PENALTY: $17,680; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Buckhorn Ranch & Lake, Inc.; DOCKET NUMBER: 2000-1280-PWS-E; IDENTIFIER: PWS Number 1011345; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3), (f), and (g), and §290.103(5), (formerly 30 TAC §§290.103(5), 290.105(a)(2) and 290.106(b)(1) and (e)), by failing to collect and submit the required number of repeat samples for bacteriological analysis, exceeding the MCL for total coliform bacteria, and provide public notice; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: The City of Canton; DOCKET NUMBER: 2000-0875-PWS-E; IDENTIFIER: PWS Number 2340001; LOCATION: Canton, Van Zandt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(1)(C), (formerly 30 TAC §290.46(e)(1)), and the Code, §341.033(a), by failing to provide at least two grade "C" surface water operators; 30 TAC §290.46(e)(2) and the Code, §341.033(a), by failing to have at least a grade "C" surface water operator on duty when the plant is in operation or provide the plant with continuous turbidity and disinfectant residual monitors; 30 TAC §290.46(b)(2)(F) and the Code, §341.033(a), by failing to provide a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of two gallons per minute (gpm) per connection; and 30 TAC §290.42(k), (formerly 30 TAC §290.46(j)), by failing to provide a plant operations manual; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Terry Thompson, (512) 239-6095; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: The City of Centerville; DOCKET NUMBER: 2000-1001-MWD-E; IDENTIFIER: TPDES Permit Number 10147-001; LOCATION: Centerville, Leon County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 10147-001, and the Code, §26.121, by failing to comply with the permitted effluent limits for five-day biochemical oxygen demand (BOD) and pH; PENALTY: $4,500; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Chevron Mart, Inc.; DOCKET NUMBER: 2000-1228-PWS-E; IDENTIFIER: PWS Number 1012162; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c) and (g), and §290.122, (formerly 30 TAC §290.106(a) and (e)(2) and §290.103(5)), by failing to collect and submit routine monthly water samples for bacteriological analysis and provide public notice; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Circle Bar Truck Corral, Incorporated; DOCKET NUMBER: 2000-1155- IWD-E; IDENTIFIER: Expired Water

Quality Permit Number 11868-001; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.63(a), §305.125(2), and the Code, §26.121(a)(1), by failing to renew Water Quality Permit Number 11868-001 and prevent the unauthorized discharge of sewage; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(14) COMPANY: Cyndie Park II Water Supply Corporation; DOCKET NUMBER: 2000-1077- PWS-E; IDENTIFIER: PWS Number 1780050; LOCATION: Banquete, Nueces County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(d)(2), by failing to provide a pressure release device for the pressure tanks; 30 TAC §290.46(d)(2)(A), (m)(1), and (r), (formerly 30 TAC §290.46(f)(1)(A), (p), and (u)), by failing to maintain a 0.2 milligram per liter (mg/l) free chlorine residual, document inspection of the pressure tanks, and maintain a normal system operating pressure of 35 pounds per square inch; 30 TAC §290.43(e), by failing to provide intruder-resistant fences; 30 TAC §290.42(e)(7), (formerly 30 TAC §290.43(e)(8)), by failing to properly house the hypochlorinator equipment; 30 TAC §290.41(c)(3)(K), (M), and (O), by failing to provide a proper casing vent, a properly installed raw water sampling tap, and a locked well houses for the well units; and 30 TAC §290.118, (formerly 30 TAC §290.113), by failing to meet the quality standard for total dissolved solids of 1000 mg/l; PENALTY: $1,375; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825- 3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: Degussa Corporation; DOCKET NUMBER: 2000-1002-AIR-E; IDENTIFIER: Air Account Number AD-0001-F; LOCATION: Aransas Pass, Aransas County, Texas; TYPE OF FACILITY: carbon black manufacturing; RULE VIOLATED: 30 TAC §101.7(b) and the Act, §382.085(b), by failing to submit a start-up report; 30 TAC §101.6(b) and the Act, §382.085(b), by failing to create complete records of the reportable upsets; and 30 TAC §116.115(b)(2)(F) and (c), Air Permit Number 8585, and the Act, §382.085(b), by failing to maintain the records containing the information and data sufficient to demonstrate compliance and maintain the opacity; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412- 5503, (361) 825-3100.

(16) COMPANY: Dormaine Cordier U.S.A., Inc.; DOCKET NUMBER: 2000-1077-IWD-E; IDENTIFIER: Water Quality Permit Number 0003177; LOCATION: Fort Stockton, Pecos County, Texas; TYPE OF FACILITY: winery; RULE VIOLATED: 30 TAC §305.125(1), Water Quality Permit Number 0003177, and the Code, §26.121, by failing to meet the permitted limit for daily average flow; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705- 5404, (915) 570-1359.

(17) COMPANY: Doty Sand Pit Venture, Inc.; DOCKET NUMBER: 2000-1451-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Identification Number 1247; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.255, by failing to have approval from the executive director prior to constructing a golf course on an MSW landfill; PENALTY: $800; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Duke Energy Field Services, LP; DOCKET NUMBER: 2000-1309-AIR-E; IDENTIFIER: Air Account Number FC-0033-K; LOCATION: Winchester, Fayette County, Texas; TYPE OF FACILITY: natural gas extraction; RULE VIOLATED: 30 TAC §101.10(e) and the Code, §382.085(b), by failing to submit an annual emissions inventory for the year 1999; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(19) COMPANY: City of Florence; DOCKET NUMBER: 2000-0964-MWD-E; IDENTIFIER: TPDES No. 10944-001; LOCATION: Florence, Williamson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10944- 001, and the Code, §26.121, by failing to comply with total chlorine residual, TSS, and ammonia- nitrogen permit requirements; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(20) COMPANY: Florida Gas Transmission Company; DOCKET NUMBER: 2000-0428-AIR-E; IDENTIFIER: Air Account Number MH-0064-W; LOCATION: Pledger, Matagorda County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit compliance certification; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Mr. Mohammad Rahman dba Food Heaven; DOCKET NUMBER: 2000- 1271-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0072561; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and the Code, §382.085(b), by failing to perform pressure decay testing; and 30 TAC §115.246(3) and the Code, §382.085(b), by failing to have maintenance records on site; PENALTY: $625; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(22) COMPANY: Good Time Stores Inc. dba Good Time Store No. 60; DOCKET NUMBER: 2001-0142-AIR-E; IDENTIFIER: Air Account Number EE-0910-S; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and the Code, §382.085(b), by allegedly offering for sale gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygenate content of 2.7% by weight; PENALTY: $720; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(23) COMPANY: Mr. Cecil Greene dba Cecil Greene Plumbing; DOCKET NUMBER: 2000- 1119-SLG-E; IDENTIFIER: Enforcement Identification Number 15453; LOCATION: Atlanta, Cass County, Texas; TYPE OF FACILITY: sludge transporting; RULE VIOLATED: 30 TAC §312.142(a), by failing to register a sludge transporter operation; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(24) COMPANY: Delton Osborne dba Grubs Bait & Grill; DOCKET NUMBER: 2001-0018- OSS-E; IDENTIFIER: Enforcement Identification Number 15666; LOCATION: Justiceberg, Garza County, Texas; TYPE OF FACILITY: convenience store, grill, and recreational vehicle trailer park; RULE VIOLATED: 30 TAC §285.50(b) and the Code, §366.071, by failing to register as an on-site sewage facility (OSSF) installer; and the Code, §366.051(a), by failing to submit

plans for approval and obtain a permit before construction of OSSFs; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(25) COMPANY: Harris County Municipal Utility District No. 127; DOCKET NUMBER: 2001-0898-MWD-E; IDENTIFIER: Water Quality Permit Number 12209-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), Water Quality Permit Number 12209-001, and the Code, §26.121, by failing to comply with the permitted daily average limit for TSS, operate and maintain the plant properly, and prevent sludge in the receiving stream; PENALTY: $22,500; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Hilcorp Energy Company; DOCKET NUMBER: 2000-0934-AIR-E; IDENTIFIER: Air Account Number BL-0005-M; LOCATION: Sweeny, Brazoria County, Texas; TYPE OF FACILITY: natural gas production; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 39982, and the Code, §382.085(b), by failing to conduct initial sample testing and submit quarterly monitoring results; 30 TAC §117.25(a) and the Code, §382.085(b), by failing to submit the final control plan; 30 TAC §122.146(2) and the Code, §382.085(b), by failing to timely submit the annual Title V compliance certification; and 40 CFR §60.334(b)(2) and the Code, §382.085(b), by failing to daily monitor the sulfur content of the fuel; PENALTY: $28,125; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Hog Creek Water Supply Corporation; DOCKET NUMBER: 2000-1194- PWS-E; IDENTIFIER: PWS Number 1550132; LOCATION: Valley Mills, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(a) and (f)(3)(A)(ii) and (E)(iv), (formerly 30 TAC §290.46(d), (f)(1)(A), and (j)(3)), by failing to maintain free chlorine residual of 0.2 mg/l, include daily distribution system pumpages in the monthly operation report, and provide copies of properly completed customer service inspection certifications; and 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe; PENALTY: $1,488; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: J & B Habluetzel Trust; DOCKET NUMBER: 2000-1026-MSW-E; IDENTIFIER: Unauthorized Site No. 45514006; LOCATION: Ingleside, San Patricio County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste; RULE VIOLATED: 30 TAC §330.4 and the Code, §26.121, by failing to obtain authorization prior to accepting MSW for disposal; PENALTY: $880; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(29) COMPANY: Kalyn/Siebert L.P.; DOCKET NUMBER: 2000-1180-AIR-E; IDENTIFIER: Air Account Number CW-0032-O; LOCATION: Gatesville, Coryell County, Texas; TYPE OF FACILITY: cargo trailer manufacturing; RULE VIOLATED: 30 TAC §122.121, §122.130(b)(1), and the Code, §382.054 and §382.085(b), by failing to submit a federal operating permit application and continuing to operate the plant without the required permit authorization; PENALTY: $2,000; ENFORCEMENT COORDINATOR: James Jackson, (254) 751- 0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: Kruger Water Works, Inc.; DOCKET NUMBER: 2000-1034-PWS-E; IDENTIFIER: PWS Number 0610087; LOCATION: Krugerville, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A), (f)(2) and (3)(E)(iii), (j), (r), and (t), (formerly 30 TAC §290.46(d), (f)(2), (p)(1) and (2), (u), and (w)), by failing to maintain a minimum disinfectant residual of 0.2 mg/l, provide monthly reports of waterworks operations for review during inspection, provide documentation during the inspection that disinfectant residual tests were performed, make records of the annual inspections of the ground storage tanks, make records of the annual inspections of the pressure tanks available, provide a minimum pressure of 35 pounds per square inch throughout the distribution system, provide certifications of customer service inspections, and post a legible sign at each production, treatment, and storage site; 30 TAC §290.41(c)(1)(F) and (3)(B), by failing to secure a sanitary easement around the wells and maintain the concrete sealing block around the well casing; and 30 TAC §290.43(c)(3) and (e), by failing to provide the ground storage tanks with properly designed overflow pipe and provide intruder-resistant fencing; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(31) COMPANY: Lone Star Beef Processors, L.P.; DOCKET NUMBER: 2000-1156-IWD-E; IDENTIFIER: Water Quality Permit Number 0003574-000; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: meat packing; RULE VIOLATED: 30 TAC §305.125(1), Water Quality Permit Number 0003574-000, and the Code, §26.121(c), by failing to provide adequate treatment of wastewater effluent and report effluent violations which deviate from the permitted effluent limitation; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(32) COMPANY: Lone Star Steel Company; DOCKET NUMBER: 2000-0104-IWD-E; IDENTIFIER: National Pollutant Discharge Elimination System (NPDES) Permit Number TX0000027 (Water Quality 00348) ; LOCATION: Lone Star, Morris County, Texas; TYPE OF FACILITY: steel works, rolling mill, and pipe fabrication; RULE VIOLATED: NPDES Permit Number TX0000027, by failing to comply with permitted effluent limits for total zinc; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(33) COMPANY: Mr. Frank Flores dba Lull's Public Scales and Scales Drive In; DOCKET NUMBER: 2000-1371-AIR-E; IDENTIFIER: Air Account Number HN-0454-Q; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: weighing service; RULE VIOLATED: 30 TAC §101.4 and the Code, §382.085(a) and (b), by failing to adequately control dust emissions; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(34) COMPANY: Madanco Corporation dba Shoppers Mart; DOCKET NUMBER: 2000-1041- PST-E; IDENTIFIER: PST Facility Identification Number 0035088; LOCATION: Hitchcock, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(4) and (6), and the Act, §382.085(b), by failing to maintain and provide documentation for the Stage II vapor recovery training for at least one station representative and provide a record of the results of the daily Stage II vapor recovery system (VRS) inspections; PENALTY: $720; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL

OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Mountain Breeze, L.L.C. dba Mountain Breeze Campground; DOCKET NUMBER: 2000-1215-PWS-E; IDENTIFIER: PWS Number 0460190; LOCATION: Sattler, Comal County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c), (formerly 30 TAC §290.106(a)), and the Code, §341.033(d), by failing to collect routine monthly water samples for bacteriological analysis; and 30 TAC §290.109(g)(4) §290.122(c), (formerly 30 TAC §290.106(e)(2) and §290.103(5)), by failing to provide public notification of the failure to conduct bacteriological sampling; PENALTY: $625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(36) COMPANY: Northwest Harris County Municipal Utility District No. 12; DOCKET NUMBER: 2000-1206-MWD-E; IDENTIFIER: TPDES Permit Number 11991-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC § 305.125(1), TPDES Permit No. 11991-001, and the Code, §26.121, by failing to comply with permit limits for TSS, ammonia-nitrogen, and five-day carbonaceous BOD; PENALTY: $750; ENFORCEMENT COORDINATOR: Faye Liu, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: Northeast Texas Community College; DOCKET NUMBER: 2000-1269- MWD-E; IDENTIFIER: TPDES Permit Number 13948-001; LOCATION: Mount Pleasant, Titus County, Texas; TYPE OF FACILITY: college; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit No. 13948-001, and the Code, §26.121, by failing to comply with permit limits for TSS and BOD; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(38) COMPANY: Northwest Harris County Municipal Utility District No. 24; DOCKET NUMBER: 2000-1135-MWD-E; IDENTIFIER: TPDES Permit Number 12655-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12655-001, and the Code, §26.121, by failing to comply with the permitted effluent limits for daily average TSS; PENALTY: $600; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(39) COMPANY: Oasis Pipe Line Company Texas L.P.; DOCKET NUMBER: 2000-1386-AIR- E; IDENTIFIER: Air Account Number KC-0013-N and Operating Permit Number O-00462; LOCATION: Comfort, Kendall County, Texas; TYPE OF FACILITY: natural gas compressor; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit annual permit compliance certifications; and 30 TAC §122.145(2)(C) and the Code, §382.085(b), by failing to submit a permit deviation summary report; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(40) COMPANY: Mr. Randy Foster dba Palex; DOCKET NUMBER: 2000-1328-AIR-E; IDENTIFIER: Air Account Number DB-3981-B; LOCATION: Balch Springs, Dallas County, Texas; TYPE OF FACILITY: pallet refurbishing and manufacturing; RULE VIOLATED: 30 TAC §106.496(4), (7), (9) - (11), (13), (14), §116.110(a)(4), and the Code, §382.085, by failing to maintain written records of the hours of operation of the burner, store unburned material at least 75 feet away from the trench, observe air stagnation advisory, ensure no additional material is stacked above the air curtain, post operating instructions, remove ash generated from the trench, and ensure an operator was monitoring burning activities at all times; and 30 TAC §111.201, §116.110(a)(4), and the Code, §382.085, by failing to contain burn to within the burner; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5825; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(41) COMPANY: City of Palmer; DOCKET NUMBER: 2000-1392-MWD-E; IDENTIFIER: TPDES Permit Number 13620-001; LOCATION: Palmer, Ellis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC § 305.125(1), §319.7(d), and TPDES Permit No. 13620-001, by failing to submit the discharge monitoring reports; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(42) COMPANY: Phillips Petroleum Company; DOCKET NUMBER: 2000-1310-AIR-E; IDENTIFIER: Air Account Number BL-0042-G; LOCATION: Sweeny, Brazoria County, Texas; TYPE OF FACILITY: petroleum refining plant; RULE VIOLATED: 30 TAC §101.6(a) and (b), and the Code, §382.085(b), by failing to determine if an upset caused by two low pressure cold separator control valves at the atmospheric residuum desulfurization unit not sealing completely was a reportable upset, notify all appropriate air pollution control agencies within 24 hours of the upset, and create final records of the reportable and nonreportable upsets; 30 TAC §112.31 and the Code, §382.085(b), by exceeding the hydrogen sulfide (H2S) net ground level concentration standard of 0.08 parts per million (ppm); and 30 TAC §112.32 and the Code, §382.085(b), by exceeding the H2S net ground level concentration standard of 0.12 ppm; PENALTY: $20,000; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(43) COMPANY: Rene Hinojosa dba Rene's Water System; DOCKET NUMBER: 2000-1418- PWS-E; IDENTIFIER: PWS Number 1010578; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(E)(i), by failing to provide a minimum well capacity of one gpm per connection; and 30 TAC §290.41(c)(3)(O), by failing to provide a properly constructed intruder-resistant fence; PENALTY: $188; ENFORCEMENT COORDINATOR: Terry Thompson, (512) 239-6095; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: The Sherwin Williams Company; DOCKET NUMBER: 2001-0010-AIR-E; IDENTIFIER: Air Account Number DB-0728-N; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: paint plant; RULE VIOLATED: 30 TAC §101.10 and the Code, §382.085(b), by failing to submit an emissions inventory questionaire; PENALTY: $3,125; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(45) COMPANY: Young Kim dba S & K Food Mart; DOCKET NUMBER: 2000-0802-PST-E; IDENTIFIER: PST Facility Identification Number 0039348; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(1) and (2), and the Act, §382.085(b), by failing to successfully perform initial Stage II VRS testing and perform Stage II VRS annual pressure decay testing; 30 TAC §115.246(6) and the Act, §382.085(b), by failing to maintain a record of daily inspections of the Stage II VRS; and 30 TAC §334.7(d)(3), by failing to provide an amended registration to

represent the current ownership; PENALTY: $2,880; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(46) COMPANY: Tamina Water Supply Corporation; DOCKET NUMBER: 2000-1296-PWS-E; IDENTIFIER: PWS Number 1700110; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(e)(2), (formerly 30 TAC §290.120(e)(2)), by failing to conduct reduced monitoring tap sampling for lead and copper; PENALTY: $313; ENFORCEMENT COORDINATOR: Shawn Hess, (806) 353-9251; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(47) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2000-1334- MWD-E; IDENTIFIER: TPDES Permit Number 11181-001; LOCATION: near Trinity, Houston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), §319.7(d), TPDES Permit Number 11181-001, and the Code, §26.121, by failing to maintain the permitted effluent limits for ammonia nitrogen, dissolved oxygen, TSS and carbonaceous BOD and submit the discharge monitoring report for the month of March 2000; and 30 TAC §§220.21, 305.503, 312.9, and 335.323, by failing to pay the water quality assessment, wastewater inspection, beneficial land program, and hazardous waste generation fees; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(48) COMPANY: Mr. James Kim dba Times Market #9; DOCKET NUMBER: 2000-1131-PST- E; IDENTIFIER: PST Facility Identification Number 49467; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III), and the Code, §26.3475, by failing to monitor underground storage tanks for releases, provide proper release detection, and test a line leak detector for performance and operational reliability; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(49) COMPANY: Mr. Young J. Lee dba Times Market #18; DOCKET NUMBER: 2000-1132- PST-E; IDENTIFIER: PST Facility Identification Number 49910; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to provide a method or combination of methods of release detection; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control; and 30 TAC §334.49(a) and the Code, §26.3475, by failing to provide corrosion protection; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(50) COMPANY: Charles S. Timms; DOCKET NUMBER: 2000-1020-MSW-E; IDENTIFIER: MSW Unauthorized Site Number 455020020 and Tire Transporter Registration Number 27033; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: scrap tire transportation; RULE VIOLATED: 30 TAC §328.60(a), by failing to obtain the required registration prior to operating a tire storage facility; 30 TAC §328.63(c), by failing to obtain the required registration prior to operating a tire processing facility; 30 TAC §328.54(d), by failing to place required identification on both sides and rear of vehicle; 30 TAC §328.57(c)(3), by failing to deliver scrap tires to an authorized facility; and 30 TAC §328.58(b), by failing to properly complete manifests; PENALTY: $600; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(51) COMPANY: Tuboscope Vetco International L.P.; DOCKET NUMBER: 2000-1184-AIR-E; IDENTIFIER: Air Account Number GK-0075-J; LOCATION: Navasota, Grimes County, Texas; TYPE OF FACILITY: oil field pipe inspection and coating; RULE VIOLATED: 30 TAC §122.146 and the Code, §382.085(b), by failing to submit their annual Title V compliance certification; PENALTY: $1,500; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(52) COMPANY: Turkey Creek Landfill TX LP; DOCKET NUMBER: 2000-1257-MSW-E; IDENTIFIER: MSW Permit Number 1417-B; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §335.2(a) and §335.43(a), and MSW Permit Number 1417-B, by allegedly having permitted the disposal of an industrial hazardous waste without authorization; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(53) COMPANY: Vanceco, Inc. dba Creekwood Utilities Wastewater Treatment Plant; DOCKET NUMBER: 2000-1105-MWD-E; IDENTIFIER: Expired Water Quality Permit Number 13750-001; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121, by allegedly discharging wastewater into waters in the state without authorization; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(54) COMPANY: Viking Pools Central, Inc.; DOCKET NUMBER: 2000-1321-MLM-E; IDENTIFIER: Air Account Number ML-0342-B and TNRCC Identification Number F0641; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: fiberglass pool manufacturing; RULE VIOLATED: 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct a hazardous waste determination; 30 TAC §335.9, by failing to keep records of all hazardous wastes and industrial solid wastes generated, stored, processed, and disposed; 30 TAC §335.62 and §335.503(a), by failing to classify each waste stream; 30 TAC §335.6, by failing to file a notice of registration; 30 TAC §335.63(a) and 40 CFR §262.12, by failing to file with the United States Environmental Protection Agency for an identification number; 30 TAC §335.69(f)(2) and (4), and 40 CFR §262.34(d)(2) and (4), and §265.173(a), by failing to keep the hazardous waste in closed containers and label or mark clearly each hazardous waste container; 30 TAC §122.130(b)(1) and the Code, §382.054 and §382.085(b), by failing to submit a Title V federal operating permit application; and 30 TAC §122.121 and the Code, §382l.054 and §382.085(b), by operating an emission unit without a Title V federal operating permit; PENALTY: $14,400; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570- 1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705- 5404, (915) 570-1359.

(55) COMPANY: Williams Terminals Holdings, L.P. and Amerada Hess Corporation; DOCKET NUMBER: 2000-1116-AIR-E; IDENTIFIER: Air Account Number HG-0017-W; LOCATION: Galena Park, Harris County, Texas; TYPE OF FACILITY: bulk petroleum storage and warehousing; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Number 4850, and the Code,

§382.085(b), by exceeding the maximum allowable emission rates for volatile organic compound and failing to conduct stack sampling; PENALTY: $103,125; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(56) COMPANY: Xerxes Corporation; DOCKET NUMBER: 2001-0088-AIR-E; IDENTIFIER: Air Account Number GL-0049-W and Operating Permit Number O-00992; LOCATION: Seguin, Guadalupe County, Texas; TYPE OF FACILITY: fiberglass tank manufacturing; RULE VIOLATED: 30 TAC §122.145(2)(C) and the Code, §382.085(b), by failing to submit a deviation report; and 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit a permit compliance certification; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200102034
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 10, 2001

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Notice of Opportunity to Participate in Permitting Matters

A person may request to be added to a mailing list for public notices processed through the Office of the Chief Clerk for air, water, and waste permitting activities at the TNRCC. You may request to be added to: (1) a permanent mailing list for a specific applicant name and permit number; and/or (2) a permanent mailing list for a specific county or counties.

Note that a request to be added to a mailing list for a specific county will result in notification of all permitting matters affecting that particular county.

To be added to a mailing list, send us your name and address, clearly specifying which mailing list(s) to which you wish to be added. Your written request should be sent to the TNRCC, Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin, TX 78711-3087.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200102076
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 11, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of March 26, 2001 through March 30, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BAILEY has applied for a renewal of TPDES Permit No. 13584-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 26,000 gallons per day. The facility is located approximately 900 feet west of Farm-to-Market Road 816 and 3000 feet southwest of the intersection of Farm-to-Market Road 816 and State Highway 11 in Fannin County, Texas. The treated effluent is discharged via an eight-inch pipe to an unnamed tributary of Loring Creek; thence to Loring Creek; thence to Spring Creek; thence to the Upper South Sulphur River in Segment No. 0306 of the Sulphur River Basin.

CANUTILLO INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11561- 003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day via soil absorption trenches with a minimum area of 11,700 ft2. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located between Hemley Road and Chicken Farm Road, and Doniphan Drive and Kiely Road, approximately 0.5 mile southeast of the City of Vinton and 2.0 miles north of the City of Canutillo in El Paso County, Texas.

CHEVRON PHILLIPS CHEMICAL COMPANY which operates the Cedar Bayou Chemical Plant, which manufactures commodity petrochemicals and plastics, has applied for a major amendment to TNRCC Permit No. 01006 to authorize an increase in the daily average flow at Outfall 001 from 3.0 million gallons per day (MGD) to 4.0 MGD; to remove oil and grease limitations at Outfalls 001 and 003; to increase effluent limitations for chloroform at Outfall 001; to reduce the biomonitoring testing frequency at Outfall 001; to add Outfalls 004, 005, and 007 which discharge storm water; to increase pH holding times at storm water outfalls; and to reduce the monitoring frequency for several parameters at Outfall 001. The current permit authorizes the discharge of treated process wastewater commingled with treated domestic wastewater, cooling tower blowdown, sour water, and storm water at a daily average dry weather flow not to exceed 3,000,000 gallons per day via Outfall 001; storm water on an intermittent and flow variable basis via Outfall 002; and storm water and rinse water on a continuous and flow variable basis via Outfall 003. The facility is located at 9500 I-10 East, in the City of Baytown, Harris County, Texas.

DIOCESE OF GALVESTON-HOUSTON has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14218-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 7 miles southeast of the intersection of Farm-to-Market Road 1488 and State Highway 249 in Montgomery County, Texas.

THE DOW CHEMICAL COMPANY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit No. 00663 to authorize the use of synthetic dilution water for toxicity testing, the removal of total zinc monitoring requirements at Outfall 001, the removal of monitoring requirements and effluent limitations for inorganic nitrogen at Outfall 001, the use of an alternate test method for total oxygen demand at Outfall 001, the change of the self-reporting forms submittal date, the reduction in the monitoring frequency for various limited parameters at Outfall 001, and the additional discharge of process and utility wastewater from a new production plant via Outfall 001. The current permit authorizes the discharge of process wastewater, storm water, utility water, and domestic wastewater at a daily average flow not to exceed 1,650,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfalls 002 and 003, which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES)

permit will replace the existing NPDES Permit No. TX0002933 issued on July 24, 1998, and TNRCC Permit No. 00663, issued on July 3, 1998. The applicant operates the La Porte Plant which manufactures plastics and synthetic organic chemicals. The plant site is located at 550 Battleground Road (State Highway 134) on the east side of State Highway 134, approximately 0.5 mile north of State Highway 225 in the City of La Porte, Harris County, Texas.

DYNAMIC PRODUCTS, INC. has applied for a renewal of TNRCC Permit No. 11841-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located approximately 2.0 miles south of Interstate Highway 10 and approximately 0.75 mile east of the intersection of Sheldon Road and Peninsula on the south side of Jacintoport Slip and 0.25 mile north of the Houston Ship Channel in Harris County, Texas.

CITY OF GLADEWATER has applied for a renewal of TPDES Permit No. 10433-001, which authorizes the discharge of treated water treatment filter backwash water at a daily average flow not to exceed xxx,000 gallons per day. The facility is located at 1509 East Lake Drive, 3/4 mile north of the City of Gladewater in Upshur County, Texas. The treated effluent is discharged to an unnamed tributary; thence to Glade Creek; thence to Sabine River Below Lake Tawakoni in Segment No. 0506 of the Sabine River Basin.

CITY OF GRANGER has applied for a renewal of TNRCC Permit No. 10891-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1300 feet south of Farm-to-Market Road 971 and 1 mile east of State Highway 95 in Williamson County, Texas.

GRAPE CREEK INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. 14242-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 9,600 gallons per day via drip irrigation of 2.2 acres of school athletic field. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located 3,800 feet north of the intersection of Farm-to-Market Road 2288 and U.S. Highway 87 in Tom Green County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 84 has applied for a renewal of TNRCC Permit No. 10558-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 16224 Bear Bayou Drive, southwest of the intersection of Bear Bayou Drive and North Avenue in the Old River Subdivision in Harris County, Texas.

INTERNATIONAL TERMINALS COMPANY which operates a petroleum and chemical for-hire bulk terminal, has applied for a major amendment to TNRCC Permit No. 01984 to remove effluent limitations and monitoring requirements for ammonia-nitrogen and organic nitrogen at storm water Outfalls 001, 003, 004, 005, 006, 008, and 009; and to relocate unconstructed Outfall 009. The current permit authorizes the discharge of storm water from tank farm areas on an intermittent and flow variable basis via Outfalls 001, 003, 004, 005, 006, 008, and 009, which will remain the same; treated industrial wastewater at a daily average flow not to exceed 273,000 gallons per day via Outfall 002, which will remain the same; and treated ballast water at a daily average flow not to exceed 50,000 gallons per day via Outfall 007, which will remain the same. The facility is located at 1943 Battleground Road, just north of the intersection of Miller Cutoff Road and State Highway 134, in the City of Deer Park, Harris County, Texas.

KINGS MANOR MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit No. 13526-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located 0.6 mile northeast of the intersection of State Highway Loop 494 and Kingwood Drive in Harris County, Texas.

CITY OF KRUM has applied for a major amendment to TPDES Permit No. 10729-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 95,000 gallons per day to a daily average flow not to exceed 247,000 gallons per day. The facility is located on the east side of North Hickory Creek, approximatly 0.6 miles southwest of the intersection of Farm-to-Market Road 156 and Farm-to-Market Road 1173 in Denton County, Texas

CITY OF LA PORTE has applied for a renewal of TPDES Permit No. 10206-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,560,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 187 acres. The facility is located at 1301 South 4th Street, approximately 0.5 mile southeast of the intersection of State Highway 146 and Fairmont Parkway in Harris County, Texas. The irrigation site is located on 187 acres of golf course and park land directly south of the wastewater treatment facility. The sludge disposal site is at the Baytown landfill located at 4791 Tri City Beach Road.

LOVE'S COUNTRY STORES, INC. which operates Love Country Stores No. 214, a truck stop, convenience store, and fuel service station, has applied for a renewal of Permit No. 03482, which authorizes the disposal of truck wash water, fueling wastewater, and storm water runoff from the fueling area on an intermittent and flow variable basis via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located at 12800 Horizon Boulevard, on the southeast corner of the intersection of Interstate Highway 10 and Horizon Boulevard, El Paso County, Texas.

NALCO/EXXON ENERGY CHEMICALS, L.P. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0008761 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 01806. The draft permit authorizes the discharge of previously monitored effluent (process wastewater, sanitary wastewater, utility wastewater, stormwater runoff, and treated groundwater) on a flow variable basis via Outfall 001, and stormwater runoff on an intermittent, flow variable basis via Outfalls 002, 003, and 004. The applicant operates an oxyalkylation plant. The plant site is located on County Road 229, approximately 1.25 miles east of the intersection of County Road 229 and Farm-To Market-Road 523, northeast of the City of Freeport in Brazoria County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TNRCC Permit No. 10875-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 300 feet northwest of the intersection of Oak Lane and Ferndale Street in the City of Vidor in Orange County, Texas.

ROBROY INDUSTRIES-TEXAS, INC. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0059561 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 01052. The draft permit authorizes the discharge of non-contact cooling water, boiler blowdown and storm water runoff at a daily average flow not to exceed 225,000 gallons per day. The plant site is located at State Highway (S.H.) 271

and Dean Street, on the west side of S.H. 271 at a point approximately 1,000 feet south of its intersection with S.H. 300, in the City of Gilmer in Upshur County, Texas.

CITY OF SHALLOWATER has applied for a renewal of Permit No. 10609-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day via surface irrigation of 54 acres of non-public access agricultural land. The facility and disposal site are located southeast of the intersection of U.S. Highway 84 and Farm-to-Market Road 179, adjacent to the City of Shallowater in Lubbock County, Texas.

TEXAS MILITARY FACILITIES COMISSION has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0101214 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13249- 001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The plant site is located approximately 1/2 mile southeast of the intersection of U.S. Highway 271 and Farm-to-Market Road 2648 in Lamar County, Texas.

TEXAS-NEW MEXICO POWER COMPANY has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0101168 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 02877. The draft permit authorizes the discharge of coal pile runoff on an intermittent and flow variable basis via Outfall 001, cooling tower blowdown and stormwater runoff at a daily maximun dry weather flow rate of 1,500,000 gallons per day via Outfall 002, and stormwater runoff on an intermittent and flow variable basis via Outfall 003. The applicant operates a lignite fired steam electric station. The plant site is located approximately one mile east of the Town of Hammond and approximately eight miles north (via State Highway 6) of the City of Calvert in Robertson County, Texas.

WEST TEXAS UTILITIES COMPANY has applied for a renewal of TNRCC Permit No. 01152, which authorizes the discharge of once through cooling water and previously monitored effluents (PMEs) at a daily average flow not to exceed 131,400,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0001422 issued on May 27, 1994 and TNRCC Permit No. 01152 issued on August 30, 1993. The applicant operates the San Angelo Steam Electric Station. The plant site is located at 6465 Knickerbocker Road, approximately two miles southwest of the intersection of Knickerbocker Road and State Highway 306, in the City of San Angelo, Tom Green County, Texas.

WINDERMERE OAKS WATER SUPPLY CORPORATION has applied for a renewal of Permit No. 11694-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via surface irrigation of 24 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 13 miles east of the intersection of State Highway 71 and U.S. Highway 281 in Burnet County, Texas.

TRD-200102075
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 11, 2001

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Notices of Minor Amendment

For the Period of April 9, 2001

APPLICATION. Waste Management of Texas, Inc., P.O. Box 141968, Austin, TX 78714-1968, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a minor amendment to Permit No. MSW 249C which would authorize the use of an alternate soil final cover over Subtitle D cells at the Austin Community Landfill. This Type I municipal solid waste facility is located at 9708 Giles Road in Travis County. The Executive Director of the TNRCC has prepared a draft permit which, if approved, will authorize a minor amendment to this permit under the terms described above. PUBLIC COMMENT. Written comments concerning this minor amendment may be submitted to the TNRCC, Chief Clerk's Office, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 telephone (512) 239-3300. Comments must be received no later than 10 days from the date this notice is mailed. Written comments must include the following: (1) your name (or for a group or association, the name of an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; and (3) the location of your property relative to the applicant's operations. INFORMATION. Individual members of the public who wish to inquire about the information contained in this notice may contact the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

APPLICATION. Waste Management of Texas, Inc., 1600 S. Railroad Street, Lewisville, TX 77700, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a minor amendment to Permit No. MSW 1454A which would authorize the use of an alternate final cover including geosynthetic clay liner in Sector 1, elimination of Sector 7, and reconfiguration of the final contours in Sectors 1 and 6 at the B&B Landfill. This Type I municipal solid waste facility is located 1.6 miles north of the junction of FM Road 1499 and U.S. Highway 271 on the east side of Gate 2 Road and just south of the National Guard Firing Range in Lamar County. The Executive Director of the TNRCC has prepared a draft permit which, if approved, will authorize a minor amendment to this permit under the terms described above. PUBLIC COMMENT. Written comments concerning this minor amendment may be submitted to the TNRCC, Chief Clerk's Office, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 telephone (512) 239-3300. Comments must be received no later than 10 days from the date this notice is mailed. Written comments must include the following: (1) your name (or for a group or association, the name of an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; and (3) the location of your property relative to the applicant's operations. INFORMATION. Individual members of the public who wish to inquire about the information contained in this notice may contact the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200102077
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 11, 2001

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Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on April 4, 2001. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. BioTex Environmental Corporation and Teri Hada Mathis; Respondent; SOAH Docket No. 582-00-1287; TNRCC Docket No.1999-0061-MLM-E. In the matter to

be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200102074
Doug Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: April 11, 2001

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 2, 2001, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Entergy Solutions Select Ltd. for Retail Electric Provider (REP) certification, Docket Number 23893 before the Public Utility Commission of Texas.

Applicant's requested service area includes the service area of specific transmission and distribution utilities and/or municipal utilities or electric cooperatives in which competition is offered, specifically, Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Solutions Ltd.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than April 27, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101978
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 4, 2001

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 4, 2001, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of FPL Energy Power Marketing, Inc. for Retail Electric Provider (REP) certification, Docket Number 23917 before the Public Utility Commission of Texas.

Applicant's requested service area is by customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than April 27, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101986
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2001

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Notice of Application of Verizon Southwest to Revise its TXG and TXC General Exchange Tariffs

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application of Verizon Southwest (Verizon) to revise its TXG and TXC General Exchange Tariffs filed on March 29, 2001. A summary of the application follows:

Docket Style and Number: Application of Verizon Southwest to Revise its TXG and TXC General Exchange Tariffs Pursuant to P.U.C. Substantive Rule §26.207 and §26.208. Docket Number 23813.

The Application: Verizon stated the purpose of the filing was to allow Verizon to charge an unauthorized provider of local exchange service the applicable tariff charges from it's General Exchange Tariff to transfer a subscriber back to Verizon:

Section 64.1140(3) of the FCC Slamming Rules (FCC-00-135) reads as follows:

"If the subscriber has been absolved of liability as prescribed in this section, the unauthorized carrier shall also be liable to the subscriber for any change required to return the subscriber to his or her properly authorized carrier, if applicable."

Verizon stated that the filing also contained language based on the FCC's Slamming Liability Rules in Docket Number 94-129 which states if an alleged unauthorized local service provider is ultimately exonerated of liability, the alleged unauthorized local service provider is entitled to receive full payment from the end user for all services provided. In such situations, any nonrecurring charges assessed against the alleged unauthorized local service provider by Verizon are subject to rebilling to the end user by the alleged unauthorized local service provider.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200102062
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2001

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Notice of Application Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 3, 2001, pursuant to P.U.C. Substantive Rule §26.171 for approval to implement a minor rate change.

Tariff Title and Number: Application of Livingston Telephone Company, Inc. (Livingston) for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171. Tariff Number 23911.

The Application: Livingston seeks to implement minor rate changes to its tone access dialing and business, residence, tel-assistance, rotary key trunk and PBX monthly local exchange access service rates. In addition, Livingston seeks approval to remove the following obsolete services: business rural 4-party local exchange access service, residence access line local exchange access service and tel-assistance 2-party local exchange access service. This application will increase Livingston's regulated intrastate gross annual revenues by $103,713. The company proposes an effective date of August 1, 2001.

Subscribers of Livingston have a right to petition the commission for review of this proposed minor rate change by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 1,500 of the affected local service customers, and must be received by the commission no later than July 1, 2001.

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 or toll free 1-888-782-8477 on or before July 1, 2001. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at 512-936-7136. Please reference Tariff Number 23911.

TRD-200101993
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2001

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Public Notice of Amendment to Interconnection Agreement

On April 3, 2001, Southwestern Bell Telephone Company and Accutel of Texas, Inc. doing business as 1-800-4-A-Phone 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 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23903. 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 23903. 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 May 3, 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 or toll free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23903.

TRD-200101989
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2001

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Public Notice of Amendment to Interconnection Agreement

On April 3, 2001, Southwestern Bell Telephone Company and Accutel of Texas, Inc. doing business as 1-800-4-A-Phone 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 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23904. 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 23904. 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 May 3, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23904.

TRD-200101990
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2001

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Public Notice of Amendment to Interconnection Agreement

On April 3, 2001, Southwestern Bell Telephone Company and TXU Communications Telecom Services Company doing business as TXU Communications collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23905. 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 23905. 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 May 3, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23905.

TRD-200101991
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2001

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Public Notice of Amendment to Interconnection Agreement

On April 3, 2001, Southwestern Bell Telephone Company and Wes-Tex Telecommunications doing business as Westex Telecom 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 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23906. 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 23906. 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 May 3, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23906.

TRD-200101992
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2001

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Public Notice of Amendment to Interconnection Agreement

On April 6, 2001, Southwestern Bell Telephone Company and Paging Professionals of Oklahoma, Inc. doing business as Protel Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23939. 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 23939. 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 May 8, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23939.

TRD-200102066
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2001

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Public Notice of Amendment to Interconnection Agreement

On April 9, 2001, Southwestern Bell Telephone Company and 360 Communications Company, 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 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23944. 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 23944. 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 May 8, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23944.

TRD-200102067
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

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 §26.214

Docket Title and Number. United Telephone Company of Texas doing business as Sprint for Approval of LRIC Study for Call Waiting ID Service Pursuant to P.U.C. Substantive Rule §26.214 on or about April 19, 2001, Docket Number 23945.

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 23945. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient LRIC study 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-200102063
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2001

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Public Notice of Interconnection Agreement

On April 4, 2001, Southwestern Bell Telephone Company and Caprock Cellular Limited Partnership, collectively referred to as applicants, filed a joint application for approval of interconnection agreement and amendment to 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 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23916. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23916. 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 May 7, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23916.

TRD-200102018
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2001

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Public Notice of Interconnection Agreement

On April 5, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and Snappy Phone of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23934. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23934. 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 May 8, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23934.

TRD-200102065
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2001

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Public Notice of Interconnection Agreement

On April 6, 2001, Southwestern Bell Telephone Company and New Access Communications, LLC, collectively referred to as applicants, filed a joint application for approval of interconnection agreement and amendment to 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 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23940. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 23940. 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 May 8, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23940.

TRD-200102064
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2001

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Public Notice of Workshop Regarding Service and Transition Issues when Telecommunications Carriers File for Bankruptcy Protection

The Public Utility Commission of Texas (commission) will hold a workshop regarding service and transition issues when telecommunications carriers file for bankruptcy protections on Friday, April 27, 2001, at 9:30 a.m.. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 23948, *Proceeding Relating to Service and Transition Issues when Telecommunications Carriers File for Chapter 7 or 11 Bankruptcy Protection*, has been established for this proceeding. With the increase in bankruptcy filings by telecommunications carriers, the commission, with the help of the telecommunications industry, hopes to develop and implement a process to ensure that customers are not left without service(s) and, where applicable, are seamlessly transitioned.

This notice is not a formal notice of proposed rulemaking; however, the workshop will assist the commission in developing policy or determining the necessity for a related rulemaking.

The commission requests that persons planning on attending the workshop register by phone or e-mail with Patrick Tyler, Legal Division, (512) 936-7282 or patrick.tyler@puc.state.tx.us. Questions concerning the workshop or this notice should also be referred to Patrick Tyler. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200102083
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 11, 2001

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Request for Comments Regarding Customer Proprietary Network Information and Substantive Rule §26.122

The Public Utility Commission of Texas (commission) established Project Number 22490, *Review of P.U.C. Subst. R. 26.122 Regarding Customer Proprietary Network Information*, to amend commission Substantive Rule §26.122, Customer Proprietary Network Information (CPNI). The proposed amendments will incorporate the changes made by the Federal Communications Commission (FCC) under 47 CFR 64, Telecommunications Carrier's Use of CPNI. The FCC final rules were published in the Federal Register in January 2001.

The commission asks that interested parties file comments addressing the questions below. Some of these questions are being re-issued in light of 47 CFR 64. If the parties have previously responded to the re-issued questions, their responses will still be considered unless the parties desire to supplement their responses.

1. Please provide an analysis of 47 CFR 64, the FCC rules on Telecommunications Carriers' Use of Customer Propriety Network Information (CPNI). Specifically, identify sections of 47 CFR 64 that affect §26.122 and those sections that still contravene the decision in *U.S. West, Inc., v. Federal Communication Commission*, Number 98-9518, 199 (10th Circuit, August 18, 1999).

2. Please comment on and propose language to revise §26.122 to be consistent with 47 CFR 64, and any other effective federal rules regarding CPNI. Specifically, comment on the following sections of §26.122:

a. §26.122(c)(1), regarding optional extended area calling plans;

b. §26.122(d)(1)(B), regarding customer premises equipment (CPE) and information services, including call answering, voice mail or messaging, voice storage, and retrieval services, and fax storage and retrieval services;

c. §26.122(d)(1)(C), identity and tracking of customers;

d. §26.122(d)(1)(D), regarding winback;

e. §26.122(f), regarding notifications through oral and written methods;

f. §26.122(g), regarding software safeguards; and

g. any other provisions of §26.122.

Responses may be filed by submitting 16 copies within 30 days of the date of publication of this notice to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All responses should reference Project Number 22490. The parties' responses to the questions will assist the commission in developing a commission policy and determining the needed changes to the existing rule.

Questions concerning this notice should be referred to Steven Pamintuan, Policy Development Division, at (512) 936-7257. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200102019

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2001

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Sam Houston State University

Consultant Contract Award

Sam Houston State University (SHSU), in accordance with provisions of Government Code, §2254.030, announces the awarding of a consultant contract to a consulting firm based in Washington, D.C. The solicitation for proposals was published in the February 23, 2001 issue of the *Texas Register* (Volume 26, TexReg 1795).

The consultant will represent and assist the University in developing a project, the Criminal Research Information Management Evaluation System (CRIMES), deemed important to the University.

One proposal was received in response to this solicitation for proposals. The proposal was from G & H International Services LLC, 1747 Pennsylvania Avenue NW, Washington, D.C. 20006-4604.

The consultant awarded the contract was: G & H International Services LLC, 1747 Pennsylvania Avenue NW, Washington, D.C. 20006-4604.

The consultant contract begins April 1, 2001 and ends March 31, 2002 with the option to renew. The fee estimate is $18,000, excluding expenses.

Reports and documents will be submitted as required.

TRD-200102048
Dr. B.K. Marks
President
Sam Houston State University
Filed: April 10, 2001

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South East Texas Regional Planning Commission

Request for Proposal for Network Update

The South East Texas Regional Planning Commission-Metropolitan Planning Organization (SETRPC-MPO) is in the process of updating the JOHRTS MTP-2025 and requires the assistance of a Consultant to update the roadway attributes for the 2007, 2017, and 2025 networks for the JOHRTS travel demand model.

Updating the travel demand model for the JOHRTS area will involve the following major tasks:

• Collection of proposed roadway improvement projects in the JOHRTS area from 2000 to 2025.

• Development and implementation of a QC/QA process for all coded projects and network years.

• Coding of proposed roadway improvements into their appropriate network years according to TxDOT standards.

• Submission of all **completed** network years in TRANPLAN, TRANSCAD, and GIS shapefile format.

• Development of the network annotation files for the conformity analysis component of the MTP according to TxDOT standards.

• Formal presentations of each network year to MPO staff and the JOHRTS Technical Committee.

• Creation of a short report on the network update for informational purposes.

Specific descriptions of each task to be completed by the Consultant are listed below:

Review of all network years from the JOHRTS travel demand model and development of a QC/QA methodology.

This task will make the Consultant familiar with coding difficulties and previous revisions to the networks in the JOHRTS travel demand model. Specifically, the Consultant should consult with the MPO staff on their experiences with updating the 1997 base year and review the 2007, 2017, and 2025 network years from the current travel demand model. Potential coding problems should be identified and communicated to the MPO staff before starting any revisions to the networks.

Upon its review of the networks, the Consultant must develop a QC/QA methodology to ensure that all revisions are accurately coded. The QC/QA methodology must include a series of checks to test the integrity and accuracy of the coded network and to verify node and link specific attributes. Highway paths will be checked through the use of techniques such as shortest path evaluation and comparison of estimated travel times between node pairs. The MPO and TxDOT must approve the proposed QC/QA methodology before the Consultant starts to code the projects into the networks.

Collection and Evaluation of Roadway Improvements Proposed for Construction from 2000 to 2025 in the JOHRTS area.

The purpose of this task is to identify, collect, and analyze proposed transportation projects for the JOHRTS area. The Consultant is responsible for ensuring that all relevant projects are identified and correctly coded into the appropriate network years.

Specific subtasks include:

• Collection and analysis of roadway improvement projects in the current JOHRTS MTP-2025, 2000-2002 TIP, 2002-2004 TIP, TxDOT's Unified Transportation Plan, and other appropriate long-range transportation plans/comprehensive plans in the JOHRTS area. Capital Works Programs or City Budgets can be used as substitutes in the absence of more appropriate materials at the city level. ***Projects scored and ranked in the latest project selection process must be included as part of this task.*** **Information on construction time and funding availability for each project must be collected in order to accurately program projects into their appropriate network years.**

• The Consultant must ensure that the proposed roadway improvements construction schedule has received the approval of city and state officials and MPO staff. Interviews with these agencies to collect project information and review projects should be conducted with MPO staff present.

Coding of proposed roadway improvements into their appropriate network years.

Once all local agencies have agreed to their respective project construction schedules, and TxDOT and the MPO approve the QC/QA methodology, the Consultant may proceed to code the projects into their respective network years. The coding scheme used by Consultant staff must follow TxDOT network coding formats. Note that draft versions of the networks must be made available for review by MPO staff in TRANSCAD format. ***All projects and network years must be checked for accuracy using the QC/QA methodology developed in consultation with TxDOT and MPO staff.***

Formal presentations of each network to MPO staff and the JOHRTS Technical Committee.

The Consultant will be required to present each completed network year to the MPO staff and the JOHRTS Technical Committee and discuss all the projects shown on the network, other coding issues, and their QC/QA of the network.

Submission of all networks to the MPO.

Once TxDOT approves the revised networks, the Consultant must forward four (4)copies of the networks the MPO on compact disk. Each disk must contain one copy of each network year in TRANPLAN, TRANSCAD, and GIS shapefile format.

Report on the Network Update.

The Consultant is also required to develop a short report, no longer than twenty (20) pages (excluding the appendix). The report should be in the following format and include, at a minimum, the information described below. Note that the format and information listed in the report can be revised upon request.

Introduction: This section should describe the purpose of the contract, names of the persons involved, and a copy of the project timeline.

Network Development: Should briefly describe network development, including information sources, coding techniques, and each step in the update process. Problems encountered during the network update should be identified, with a brief explanation of how they were resolved.

QC/QA Methodology: This section should include a detailed explanation of the methodology used by the Consultant. Discrepancies highlighted during the QC/QA process should be identified and briefly discussed.

Recommendations: This section should mention any recommendations that the Consultant has regarding future updates. This may include staff training, new resources or software, and other information that the Consultant feels would assist the MPO in future network updates.

Appendix: The Consultant must provide a Project Annotation Listing in a format previously agreed to by MPO staff. ***An electronic copy of the project annotation listing must be provided to the MPO for its conformity documentation.***

Final Products

The following products must be submitted to the MPO by the end of the contract.

(1) Four (4) compact disks, each containing copies of the final 1997, 2007, 2017, and 2025 networks for the JOHRTS area in TRAN PLAN, TRANSCAD, and GIS shapefile format.

(2) Presentations of each network year to the MPO staff and the JOHRTS Technical Committee. *Note that the MPO may request a final presentation at the end of the update.*

(3) Three (3) copies of the report on the network update, including an additional copy of the report in electronic format.

(4) An electronic copy of the Project Annotation Listing in a format previously agreed to by MPO staff.

Contact: Bob Dickinson, Director, Transportation Programs and Environmental Resources, South East Texas Regional Planning Commission, at (409) 727-2384, 3501 Turtle Creek Drive, Port Arthur, Texas 77642.

Closing Dates: If your firm is interested and qualified to update the travel demand model for the JOHRTS area, please contact our office either via letter addressed to Bob Dickinson, South East Texas Regional Planning Commission, 3501 Turtle Creek Drive, Port Arthur, Texas, 77642 or via fax at (409) 729-6511 to express your interest. All responding firms will receive a complete Request for Proposal package. **Final proposals will be due by 12 noon CST on Friday, June 1, 2001.**

Proposals will be reviewed by a technical sub-committee based on Consultant Selection Criteria included in the Request for Proposal package mailed to interested parties.

TRD-200102042
Chester R. Jourdan
Executive Director
South East Texas Regional Planning Commission
Filed: April 10, 2001

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Texas Department of Transportation

Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation publishes this notice of a consultant contract award for providing rural transit planning services. The request for consultant services was published in the *Texas Register* on December 15, 2000 (25 TexReg 12541).

The consultant will provide a management review and develop a five year development plan for ten rural transit agencies. These plans are due by March 31, 2002.

Contract #51151F7099, Austin. The consultant for these services is: Peter Schauer Associates, 25220 Highland School Road, Boonville, Missouri 65233. The total value of the contract is $350,000 and the contract period started on March 30, 2001, and will continue until March 31, 2002.

TRD-200102030
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 9, 2001

♦ ♦ ♦

Public Notice-Record of Decision

FHWA-TX-EIS-97-01-F; U.S. 190 CORRIDOR FROM FM 2657 TO THE; EAST CITY LIMITS OF COPPERAS COVE; CORYELL AND LAMPASAS COUNTIES, TEXAS

DECISION

Based on the U.S. 190 Corridor Major Investment Study/Final Environmental Impact Statement (MIS/FEIS), the Green Alternative (Alternative G) has been selected as the appropriate course of action for the construction of the U.S. 190 Reliever Route.

As summarized in Section 8.1.2.3 of the FEIS, the Green Alternative would result in the fewest environmental impacts of any of the build alternatives such as the fewest number of relocations (six households) and reduced impacts to vegetative areas. In addition, the Green Alternative would improve aesthetics due to the alternative crossing the end of the valley between two hills referred to as the "Saddle" and Sevenmile Mountain. From an engineering perspective, the Green alignment presents the best means of conforming to the terrain by minimizing the depths of cuts and lengths and heights of bridged sections. The projected construction cost of $53 million is also the lowest as compared to the other two alternatives (Yellow and Blue).

As described in Sections 2.2.3.2 and 8.1.2.3 and on Figure 2.2-8 of the FEIS, the Green Alternative is a 10.5 kilometer (km) (6.5 mile) new location roadway that follows a generally east/west alignment departing from existing U.S. 190 just west of FM 2657 and north of the Rolling Hills residential area at its western terminus to the eastern terminus where the proposed roadway merges with existing U.S. 190 just east of the Copperas Cove City Limit in Coryell County, Texas. This alternative would consist of a combination of alternating four-lane parkway and freeway sections. The freeway sections will include one-way frontage roads, which will have two travel lanes in each direction. The parkway sections will not include frontage roads. In addition, there are eight elevated sections associated either with the Green Alternative or crossing roadways. One of the bridged sections on the Green Alternative is over Clear Creek and includes frontage roads; the remaining elevated sections do not include frontage roads.

The selection of the Green Alternative occurred as a result of a multi-phased MIS/NEPA process that involved input from the Technical Team, the Policy Work Group and members of the public. The Technical Team and Policy Work Group included representatives from the FHWA, TxDOT, the consulting team, local officials, and the public. Letters of support from the Central Texas Council of Governments, the Copperas Cove Economic Development Corporation, and the City of Copperas Cove are included in Appendix 1 of the MIS/FEIS. A public hearing on the proposed project was held on November 5, 1998 in Copperas Cove, Texas, with approximately 250 persons in attendance. The summary and analysis of views along with the public hearing transcript are included in Appendix 5 of the FEIS. Other public involvement information is included in Appendices 6 and 7. In addition, the project is included in the current approved federally required Metropolitan Transportation Plan (MTP) and in the State Transportation Improvement Program (STIP) and Transportation Improvement Program (TIP). The planning and project development process is described in Section 1.2.4 of the MIS/FEIS.

ALTERNATIVES CONSIDERED

No-build Alternative--U.S. 190 is the principal arterial roadway in the Copperas Cove area, serving both regional and local travel requirements. Existing regional travel (trips that begin and end outside the Copperas Cove area) accounts for about 6,600 vehicles per day (vpd). Local travel ranges from 5,300 vpd near the western city limits to 35,400 vpd east of Avenue D (FM 1113). These traffic volumes are projected to increase by approximately 35% by the design year of 2020. The segment of U.S. 190 through Copperas Cove experienced approximately 800 accidents per 100 million miles of vehicle travel in 1996. This was over three times higher than the 1996 statewide rate of 263 accidents per year per 100 million vehicle-miles of travel. The segment of U.S. 190 between Old Copperas Cove Rd. on the east and F.M. 116 south of U.S. 190 on the west currently operates at a Level of Service (LOS) E to F during peak hours. This represents an unacceptable level of congestion along most of U.S. 190's length through the Copperas Cove area as referred to in Section 1.1.3.1 of the FEIS. These conditions are expected to deteriorate without actions to address the problem.

This alternative would leave the current transportation network to handle future demand. The No-build Alternative could not alleviate the traffic increases on the already strained capacity of existing U.S. 190. Thus, the No-build Alternative is not considered a viable alternative.

The Blue Alternative (Alternative B)--This alternative is 11.2 km (6.9 miles) long and is the longest of the three primary build alternatives. Although the Blue Alternative has the same western and eastern termini as the other build alternatives, its alignment differs from the other build alternatives as it traverses the project area. The biggest difference in the alignment is that it travels much further south than either Alternative G or Y. As a result, the Blue Alternative crosses Clear Creek to the south of the South Meadow Addition residential area. From the bridge over Clear Creek, the alignment curves to the northeast, running south of and avoids the landmark hills known as the "Saddle." It then proceeds through the middle of the valley between Sevenmile Mountain and the "Saddle" on a long bridge structure. After the Blue Alternative ascends Sevenmile Mountain it continues northeast along the same alignment as the other build alternatives to the existing U.S. 190, just east of Old Copperas Cove Road.

The Green Alternative (Alternative G)--This is the preferred alternative and it is 10.5 km (6.5 miles) long, and is the shortest of the three primary build alternatives. This alignment proceeds east from the existing U.S. 190 toward FM 3046 and FM 116. From east of FM 116, the Green Alternative curves northeast through a cut in the northern face of the local landmark known as the "Saddle." It continues to the northeast on a bridged section located on the north rim of the valley between Sevenmile Mountain and the "Saddle." It then continues northeast to the existing U.S. 190, just east of Old Copperas Cove Road.

The Yellow Alternative (Alternative Y)--This alternative is 10.6 km (6.6 miles) long. Like the Green Alternative, the Yellow Alternative proceeds east from existing U.S. 190 toward FM 3046 and FM 116. However, the alignment differs from the Green Alternative by traveling in a slight northeasterly direction between FM 3046 and FM 116. After crossing FM 116 this alignment curves slightly to the southeast, passing between the two hills known locally as the "Saddle." It then follows a northeasterly course on an elevated section across the valley between Sevenmile Mountain and the "Saddle." From Sevenmile Mountain to its eastern terminus, this alignment follows the same route as the other primary build alternatives, continuing in a northeast direction to the existing U.S. 190, just east of Old Copperas Cove Road.

Construction of any of the build alternatives would divert a portion of existing and future increased level of traffic. Any of the build alternatives would improve mobility on existing U.S. 190 by reducing traffic congestion and providing a reliable, efficient alternative. Public safety would be positively affected regardless of which alternative was selected, by providing an enhanced high speed alternative to existing U.S. 190 for emergency vehicles, peace officers, and civilian and military personnel at Fort Hood.

The above information on all of the alternatives considered was provided to the public through a series of public meetings held in Copperas Cove on March 7, 1996 (100 attendees), July 18, 1996 (120 attendees), and April 17, 1997 (100 attendees). Media/Press packages were assembled for each public meeting. A Policy Work Group consisting of local stakeholders met six times throughout the course of the project from January 9, 1995 through November 16, 1998. In addition, a toll free telephone number was provided in media releases, project newsletters, and public meetings to allow the public direct access to express comments on the project. A total of five (5) newsletters were published and distributed to as many as 800 addresses. Area elected and public officials were routinely notified and encouraged to participate in the process. As previously stated, a public hearing was also held on November 5, 1998 in Copperas Cove.

Based on the Major Investment Study and the subsequent alternatives analysis for U.S. 190 in Copperas Cove, the Green Alternative was designated as the Preferred Alternative from an engineering perspective, a mobility perspective, and an environmental perspective. The Green Alternative would produce the fewest negative impacts and the most positive benefits for the people and environment of Lampasas and Coryell Counties. From an engineering perspective the Green Alternative is favored because it is the most financially constrained of the build alternatives. The Green Alternative's lower cost is directly related to its

shorter length and the number and length of bridges. In terms of mobility, the Green Alternative would have the greatest positive impacts to traffic on existing U.S. 190. It will also add the fewest vehicle miles traveled among the build alternatives. As a result, the Green Alternative would generate the greatest public safety benefits of any of the alternatives. The Green Alternative also generates the fewest environmental impacts. Due to its shorter length, the Green Alternative would result in the conversion of the smallest area of land to transportation uses of all of the build alternatives. In addition, the Green Alternative would result in the fewest residential relocations of the build alternatives. It also provides the lowest impact on local aesthetics due to its shorter bridged sections and shallower limestone cut sections. The Green Alternative would also generate the fewest impacts to vegetative areas. The preferred alignment's impacts to wildlife would be less than other alternatives because it is closer to densely populated urban subdivisions than either the Yellow or Blue Alternative. As a result of the above-mentioned benefits, the Green Alternative would accommodate anticipated traffic demand and provide for a safe and efficient transportation system.

U.S ARMY--FORT HOOD

Section 5.1.2 and Table 5.1-1 describe land use impacts for all three build alternatives. The Fort Hood land use impacts are equivalent for all proposed build alternatives. Approximately 88 hectares (217 acres) of military land will be taken in the form of an easement. This area is in a part of the base that is approved for conversion to enhance their existing transportation network. As noted in their April 20, 2000 letter of support (Appendix 1-116), the U. S. Army--Fort Hood has worked closely with Federal Highway Administration and Texas Department of Transportation on this Major Investment Study and Environmental Impact Statement for Transportation Improvements in the U.S. 190 Corridor in Copperas Cove, Texas.

SECTION 4(f)

A Section 4(f) evaluation is not required because the Green Alternative will not involve the taking of any parkland or other Section 4(f) properties.

MEASURES TO MINIMIZE HARM

All practicable measures to minimize harm have been incorporated into the FEIS. These measures are summarized below. A complete discussion of these measures is included in Section 8.4 of the FEIS.

The Green Alternative will result in the relocation of 6 households (2 residences and 1 fourplex), 3 businesses, and 1 church. This alternative would result in 3 to 14 fewer relocations than the Yellow and Blue Alternatives. TxDOT in accordance with the provisions of the Civil Rights Act of 1964, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the Housing and Urban Development Act of 1974 will provide relocation assistance. No disproportionately high or adverse effects on the human health or environment or minority or low-income population will result. No distinct neighborhoods or ethnic groups will be isolated.

Noise and visual impacts from the project will be minor. The mainlanes between FM 116 and FM 3046 interchanges will be depressed and will reduce noise and visual impacts to nearby neighborhoods. Landscaping would be provided along the selected alignment, especially along parkway areas.

The construction of the U.S. 190 reliever route will conform to TxDOT and FHWA specifications and guidelines regarding drainage design. "State of the art" containment and capture facilities to protect against any spill of hazardous waste or contaminated runoff from the highway in sensitive areas will be included in the project design.

Pursuant to a Memorandum of Understanding (MOU) with the Texas Parks and Wildlife Department, TxDOT will replace mixed deciduous woodlands (as described in Table 3.9-3 of the FEIS) impacted by the construction of the U.S. 190 relief route at an acreage ratio of 1:1, with actual replacement acreage to be determined based upon the final roadway schematic. Trees will be replaced within the right-of-way in areas where vehicular safety considerations allow. Exact locations will be decided during the final design phase.

Informal consultation under Section 7 of the Endangered Species Act took place between TxDOT and the U.S. Fish and Wildlife Service (USFWS). Based upon this coordination and findings documented (see in the FEIS section 5.9.4 and Appendix 1-114), the USFWS reached a "may affect, but not likely to adversely impact golden-cheeked warbler and black-capped vireo populations" ruling under Section 7 of the Endangered Species Act regarding the impacts of the Green Alternative.

The Green Alternative will disturb more than 2 hectares (5 acres) of land and will, therefore, require compliance with the EPA National Pollutant Discharge Elimination System General Permit for Industrial Activity. This includes preparation of a Stormwater Pollution Prevention Plan (SW3P) and the use of Best Management Practices (BMPs) to control erosion during construction.

Approximately six crossings of minor drainages would occur in association with the Green Alternative. Five of these jurisdictional crossings will impact less than 0.10 acre and would not require notification to the U. S. Army Corps of Engineers (USACE). No wetlands will be impacted. The proposed crossing at Turkey Run (Crossing #11 on Plate 2-2 in Appendix 3 of the FEIS) would impact approximately 0.23 acre and would require a pre-construction notification to the USACE. Final permitting for this project will be accomplished by TxDOT when more definite site plans are completed and prior to authorization for construction.

The hydraulic design practices for this project will be in accordance with current TxDOT and Federal Highway Administration design policy and standards. The roadway facility will be designed to accommodate a 100-year flood, inundation of the roadway being acceptable.

Background studies indicate that archeological sites may be present within each of the alignment alternatives, but the types of sites that would be present will be similar. No one alternative has a higher probability of site presence. Archeological surveys and subsequent coordination by TxDOT with the Texas Historical Commission (THC) will be completed for the preferred alternative prior to construction. FHWA and TxDOT shall complete that coordination with the THC and ACHP in accordance with FHWA's Programmatic Agreement (PA). Should discovery of other, potentially important, sites be inadvertently discovered during construction, FHWA and TxDOT shall also coordinate those sites with the THC in accordance with the PA.

There are no historic standing properties listed or eligible for listing in the National Register of Historic Places (NHRP). A copy of the State Historic Preservation Officer's concurrence letter is included in Appendix 1-115 of the FEIS.

A plan of action prepared during project development to address environmental concerns related to the City of Copperas Cove's closed landfill (located within the Green Alternative's right-of-way) was approved in a letter from the Texas Natural Resource Conservation Commission (TNRCC) dated April 25, 1997. The proposed plan of action is described below and is included in Sections 5.12.2 and 5.12.3 of the FEIS.

MONITORING OR ENFORCEMENT PROGRAM

TxDOT and other appropriate State, Federal and local agencies to ensure compliance, will monitor all commitments and conditions of approval stated in the FEIS. These commitments and conditions are discussed in "Section 8.4 Environmental Permitting and Mitigation Issues" of the FEIS.

Below is a description of the necessary steps, plans, and methodologies to be implemented prior to and during the construction of the proposed reliever route. The following paragraphs address the necessary steps to be taken assuming that the contents of the landfill consist only of municipal solid waste material.

1) A site plan of the landfill that shows the area that will be affected by excavation/construction related activities and the fill areas will be prepared. In general, the excavation of the waste material from the right-of-way will be accomplished using conventional excavation equipment, i.e., excavator with bucket and/or clamshell and dump trucks. Details of the complete methodology for the excavation will be prepared prior to commencement of work.

2) Detailed site plans and structural details of the location of the proposed footprint of the reliever route and any structures associated with the construction on the landfill site will be prepared. These plans and details will only address features within the proposed right-of-way. All plans developed for this project will be submitted to TNRCC for review.

3) A calculation sheet shall be prepared and submitted showing total volume of waste to be excavated and relocated from the right-of-way during construction activities. A cut and fill plan will be prepared using the data attained from the subsurface investigation performed. Excavated materials from the right-of-way will be redeposited on site and then properly capped with a clay liner. Any excess waste will be disposed at an approved landfill, and a copy of an agreement/contract showing that disposal of excavated materials at the facility has been approved at the landfill will be provided for documentation. All plans will be submitted to TNRCC for review.

4) Notification shall be given to the public, adjacent landowners, and local emergency officials regarding waste excavation and relocation activities. Also, TNRCC Region 9 office, located in Waco, shall be notified prior to the beginning of waste excavation and relocation activities. Methods for notification prior to the start of each waste relocation event shall be specified and coordinated with the appropriate parties involved. Methods for notification to the public and adjacent landowners, etc. prior to waste relocation will be prepared and approved by TNRCC prior to excavation activities.

5) A Contingency Plan will be prepared to address weather conditions, handling of nuisance odors and air monitoring during the course of construction.

6) A Daily Cover Plan will be prepared prior to excavation activities. The plan will be submitted to TNRCC for approval prior to start of construction.

7) A leachate and contaminated water plan will be prepared and approved by TNRCC to address containment and handling of rainfall surface run-off from the active working face in the event of inclement weather and leachate generated by excavation of the waste. All rainfall surface run-off from the active face will be disposed of at a permitted facility.

8) If waste is exposed in the sidewalls of the excavation, then appropriate liners will be constructed to cap the exposed surfaces. If this is the case, then a Soil and Liner Quality Control Plan (SLQCP) will be developed in accordance with 30 Texas Administrative Code (TAC) Section §330.205. Soils and Liner Evaluation Report (SLER) will be prepared and submitted in accordance with 30 TAC §330.206.

9) Nuisance odor control measures will be implemented at the site to minimize the effect of waste relocation on the operation of local businesses, adjacent property owners, and the general public using appropriate routes of transportation in the vicinity of the site. The measures may include, but not be limited to, spraying of exposed waste and/or application of soil cover to the exposed waste surfaces to minimize odors and the attraction of vectors. A plan will be developed to control air pollution related problems describing measures to be taken in the event of occurrence of objectionable odors. This plan will be submitted to TNRCC for review.

10) The site will be monitored with on-site combustible gas detection equipment. The conditions will be monitored to ensure that concentration of methane gas (CH_4) does not exceed Lower Explosive Limit (LEL), 5% methane by volume in air. A comprehensive Health and Safety Plan will be prepared.

11) Appropriate engineering controls will be implemented to reduce the likelihood of ponding water occurring in the operational areas. A detailed drainage control plan will be prepared and reviewed by TNRCC.

12) Windblown waste and litter will be controlled in accordance with 30 TAC §330.120.

13) A construction schedule showing dates and time of day that work in the landfill area will take place shall be prepared.

14) If believed to be necessary, a weather monitoring station will be established at the site. Measurements of meteorological parameters such as wind speed, wind direction, temperature, and wind chill, if necessary, shall be taken hourly and recorded during each waste relocation event.

15) Air monitoring shall be performed at the site on a daily basis during each waste relocation event. The ambient air shall be monitored for the presence of Hydrogen Sulfide (H_2S), Methane (CH_4), Carbon Dioxide (CO_2), and Oxygen (O_2). Air monitoring will be performed using direct reading instruments and readings shall be documented on a daily basis. The site engineer is to determine whether to continue waste relocation activities using direct readings of the instruments. Air monitoring will be performed downwind from the designated relocation area. Procedures for air monitoring and sampling, as necessary, will be outlined in the Health and Safety Plan.

16) During each waste relocation event, a status report of work activities, quantity of waste relocated, air monitoring results, and any anticipated problems that might arise as a result of changing weather conditions will be submitted to the TNRCC for review and documentation purposes. These status reports will be submitted on a weekly basis during each waste relocation event.

17) The excavated waste that is redeposited on site will be covered with a cap consisting of 24" of soil, 18" of SC or CL clay and 6" of topsoil.

18) Post-Closure Care Maintenance, as necessary, will be performed in accordance with §330.254.

Extensive coordination with the EPA and TNRCC relative to the remediation of the Green Alternative right-of-way where it passes through the closed municipal landfill will be necessary. Specific permitting and mitigation actions for the landfill or hazardous material sites are not anticipated for this project. No comments regarding hazardous materials site impacts were received from resource agencies.

COMMENTS ON FINAL EIS

No comments were received on the Final EIS.

CONCLUSION

Based on the MIS/FEIS, the selected alternative is the Green Alternative (Alternative G). The Green Alternative and its associated impacts are summarized in Section 8.0 of the MIS/FEIS.

TRD-200102069
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 11, 2001

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University of Houston

Consultant Contract Award Notice

In compliance with the provision of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston furnishes this notice of consultant contract award. The consultant will provide services in developing a quality management program using the Malcolm Baldridge National Quality Award (MBNQA) excellence criteria for performance in order to improve its custom responsiveness, employee performance and morale, and overall contribution to the University computing needs. Requests for proposals were filed in the February 5, 2001 issue of the *Texas Register*.

The contract was awarded to Charles R. Asbury, 1307 Copper Court, Richmond, Texas 77469, for a total amount of $40,000.

The beginning date of the contract is April 3, 2001 and the ending date is October 1, 2001.

For further information, please call (713) 743-1612.

TRD-200102031
Dennis P. Duffy
General Counsel
University of Houston
Filed: April 9, 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
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10. Community Development
13. Cultural Resources
16. Economic Regulation
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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

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