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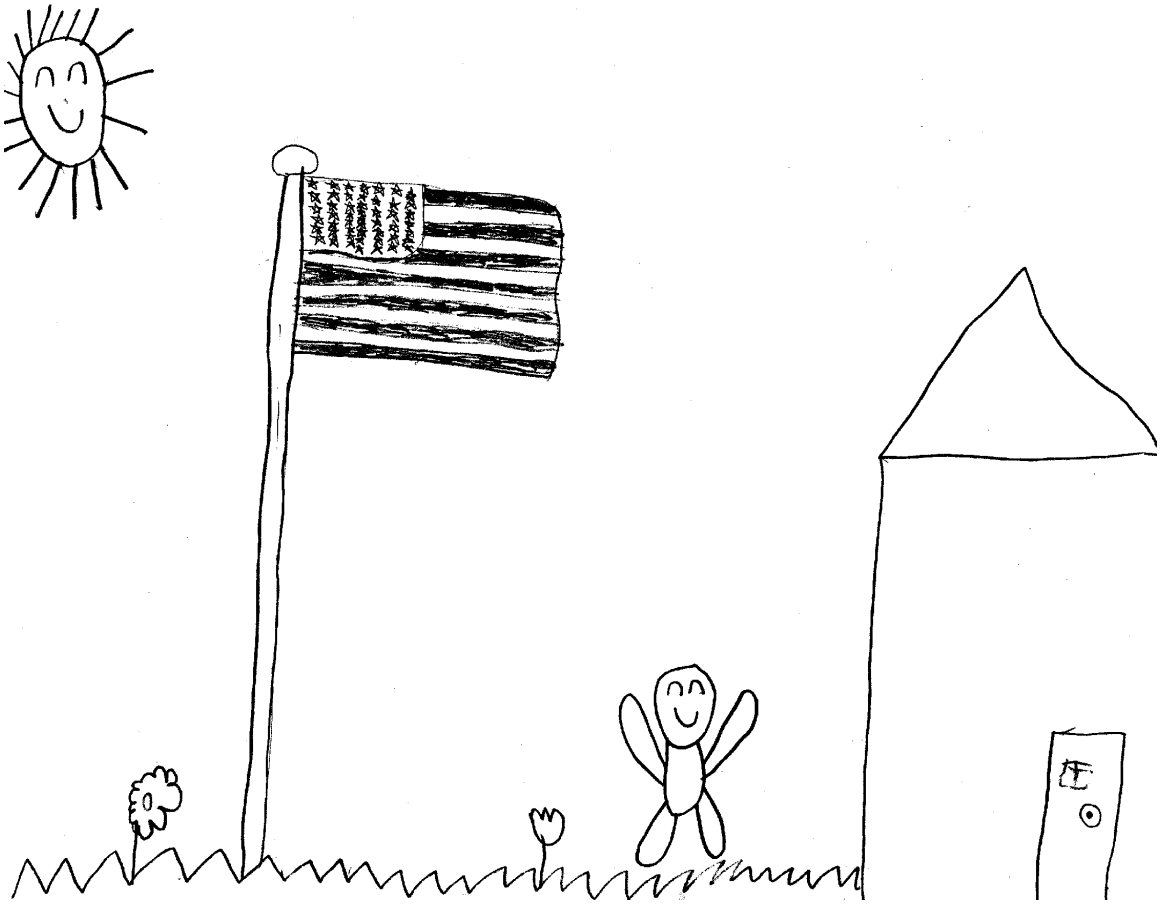

This month's front cover artwork:

Artist: *Jesus Resendiz*
1st grade
Cromack Elementary

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

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

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

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ATTORNEY GENERAL

PROPOSED RULES

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.state.tx.us/Government

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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. TTY: 7-1-1.

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.

Open Records Decision No. 674

(ORQ-59)(ID# 144356) June 8, 2001

Ms. Peggy D. Rudd, Director and Librarian, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927

RE: What procedures should the Texas State Library and Archives Commission follow in making available for public inspection archived records if the records contain information that may be confidential by law?

SUMMARY: The Director and Librarian of the Texas State Library and Archives Commission is the public information officer for archival state records transferred to the commission's custody under section 441.186(b) of the Government Code. Information in archival state records that was confidential in the custody of the originating governmental body remains confidential upon transfer to the commission. The commission must make appropriate inquiries with the originating governmental body in order for the commission to maintain the confidentiality of such information. If the commission reasonably believes in good faith that information in archival state records is confidential and such information is requested under the Public Information Act, the commission must seek a decision from this office in accordance with section 552.301 of the Government Code.

TRD-200103635
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 27, 2001

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Open Records Decision No. 675

(ORQ-34)(ID# 122182) June 26, 2001

Mr. Eric M. Bost, Commissioner, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030

RE: Whether cost reports the Texas Department of Human Services receives from nursing facilities that participate in the Medicaid program are available to the public.

SUMMARY: Cost reports submitted to the Texas Department of Human Services by nursing facilities with which the department contracts for Medicaid services must be released to the public pursuant to federal law and may not be withheld under the Texas Public Information Act.

TRD-200103636
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 27, 2001

♦ ♦ ♦

Opinions

Opinion No. JC-0388

The Honorable Bill Ratliff, Lieutenant Governor of Texas, P.O. Box 12068, Austin, Texas 78711-2068

Re: Whether the individual elected to serve as Lieutenant Governor under article III, section 9 of the Texas Constitution is required to serve on the Legislative Redistricting Board established by article III, section 28 (RQ-0388-JC)

S U M M A R Y

The person elected to perform the duties of Lieutenant Governor under the terms of article III, section 9 of the Texas Constitution is required, as one of those constitutional duties, to serve as a member of the Legislative Redistricting Board.

Opinion No. JC-0389

The Honorable Kaye Messer, Donley County Attorney Pro-Tem, 220 South 10th Street, Memphis, Texas 79245

Re: Whether a commissioners court is required to pay the same salary to each of the county's constables (RQ-0337-JC)

S U M M A R Y

The salaries of constables must reflect the duties imposed upon them by statute, even if the sheriff is expected to serve process in a particular constable's precinct. In some cases, the responsibilities of the constable in one precinct of the county are more extensive than those of a

constable in another precinct because the first constable has been assigned duties in addition to a constable's statutory duties, or because one precinct has a greater need for law enforcement activities than does another precinct. Under such circumstances, the salaries may vary to reflect those differences in workload, as long as each salary is reasonable. The specific amount that constitutes a reasonable salary for a constable is a fact question within the discretion of the commissioners court, subject to judicial review for abuse of discretion.

Opinion No. JC-0390

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

Re: Whether the licensing and registration requirements of the Texas Engineering Practice Act apply to the activities of a federal contractor on a federal enclave and related questions (RQ-0344-JC)

S U M M A R Y

To the extent engineers practice engineering under contracts procured by the federal government pursuant to federal procurement laws and regulations under which the federal government assesses engineers' qualifications, federal law preempts the Texas Engineering Practice Act's licensing and registration requirements. A corporation and its divisions are not required to register with the Texas Board of Professional Engineers and their employees and independent contractors are not required to be licensed by the Board based on engineering performed pursuant to such contracts.

Opinion No. JC-0391

The Honorable J. E. "Buster" Brown, Chair, Committee on Natural Resources, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Whether an individual employed by a company that receives all of its revenue from a contract with the State of Texas may be compensated as a director of a municipal utility district (RQ-0351-JC)

S U M M A R Y

An individual employed by a company that receives all of its revenue from a contract with the State of Texas may be compensated as a director of a municipal utility district.

Opinion No. JC-0392

The Honorable Cheryll Mabray, Llano County Attorney, P.O. Box 821, Llano, Texas 78643

Re: Whether, under section 776.019 of the Health and Safety Code, a commissioners court that orders an election to create an emergency services district that will overlap with a rural fire prevention district is limited to ordering an election to authorize the levy of a two percent ad valorem tax (RQ-0352-JC)

S U M M A R Y

In a county with a population of 125,000 or less, see Tex. Health & Safety Code Ann. § 776.003 (Vernon 1992), when a proposed emergency services district will overlap with a rural fire prevention district, the commissioners court is limited to ordering an election to authorize the levy of a tax not to exceed "two cents on each $100 of the taxable value of property taxable by the district," id. § 776.019(a)(2). This limitation does not violate article III, section 48-e of the Texas Constitution.

To the extent that Attorney General Opinion JM-1010 (1989) suggests that article III, section 48-e limits the authority of the legislature to provide for the levy of a tax of less than ten cents, it is overruled

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

TRD-200103656
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 27, 2001

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Request for Opinions

RQ-0389-JC

The Honorable Pat Phelan, Hockley County Attorney, 802 Houston, Suite 211, Levelland, Texas 79336

Re: Proper method of allocating mineral interests between two appraisal districts (Request No. 0389-JC)

Briefs requested by July 14, 2001

RQ-0390-JC

Mr. Terry Julian, Executive Director, Texas Commission on Jail Standards, 300 West 15th Street, Suite 503, Austin, Texas 78711-2985

Re: Whether the Texas Commission on Jail Standards may inspect construction documents relating to the installation of fire sprinklers at a jail facility (Request No. 0390-JC)

Briefs requested by July 21, 2001

RQ-0391-JC

The Honorable Bruce Isaacks, Denton County Criminal District Attorney, 127 North Woodrow Lane, Denton, Texas 76205

Re: Authority of a commissioners court over particular items in a sheriff's budget (Request No. 0391-JC)

Briefs requested by July 21, 2001

RQ-0392-JC

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

Re: Whether section 4B of the Development Corporation Act of 1979 authorizes the City of Arlington to use post note payment sales tax revenues for any lawful purposes (Request No. 0392-JC)

Briefs requested by July 22, 2001

RQ-0393-JC

Mr. David W. Myers, Executive Director, Texas Commission for the Deaf and Hard of Hearing, 4800 North Lamar, Suite 310, Austin, Texas 78756

Re: Duties of the Board of Evaluation of Interpreters, and related questions (Request No. 0393-JC)

Briefs requested by July 22, 2001

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

TRD-200103655
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 27, 2001

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.506

The Texas Health and Human Services Commission (HHSC) proposes new §355.506, concerning reimbursement methodology for the Consolidated Waiver program, in its Medicaid Reimbursement Rates chapter. The purpose of the proposal is to create the reimbursement methodology for the new Consolidated Waiver program. This methodology defines how payment rates will be determined for this new waiver program.

Don Green, chief financial officer, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Commissioner Don Gilbert has determined that for the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be a reimbursement methodology that defines how payment rates will be determined for providers who contract to provide services in the Consolidated Waiver program. The rule explains that payment rates will come from existing payment rates for similar Medicaid services in other programs. If a similar service does not exist, the payment rates can be modeled.

There will be no adverse economic effect on small or micro businesses, because the proposal creates a new reimbursement methodology for the new Consolidated Waiver program. No changes in practice are required of any business, large or small. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 438-4057 in the Department of Human Services' Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-152, 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 section is proposed under Texas Government Code §531.033, which authorizes the commissioner of HHSC to adopt the rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The new section implements the Government Code, §§531.033 and 531.021(b).

§355.506. Reimbursement Methodology for Consolidated Waiver Program.

(a) Payment rate determination. Payment rates are those rates determined for other Medicaid programs with similar services. When payment rates are not available from other Medicaid programs with similar services, payment rates are determined on a pro forma approach in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(b) Related information. The information in §355.101 of this title (relating to Introduction) and §355.105(g) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) also applies.

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 June 21, 2001.

TRD-200103529
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 438-3734

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 5. FUEL QUALITY

4 TAC §5.2

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

The Texas Department of Agriculture (the department) proposes the repeal of §5.2, concerning an expiration date for Chapter 5, concerning Fuel Quality. The repeal of §5.2 is proposed because the establishment of an expiration date for Chapter 5 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The repeal of §5.2 will eliminate the expiration date for Chapter 5.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of unnecessary rules. There be no effect on micro-businesses or small businesses, or to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to David Kostroun, 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 repeal is proposed under the Texas Agriculture code, §12.016 which provides the department with the authority to adopt rules to administer the Texas Agriculture Code.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapters 12 and 13.

§5.2. Expiration Provision.

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 June 25, 2001.

TRD-200103604
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 463-4075

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4 TAC §5.6

The Texas Department of Agriculture (the department) proposes new §5.6, concerning motor fuel testing fees. The new section is necessary to implement the collection of fees for the purposes of administering a motor fuel testing program in accordance with the passage of Senate Bill 938, 77th Texas Legislature, 2001, which amended Article 8614, Vernon's Texas Civil Statutes (Article 8614). Amendments to the Article 8614 transferred authority to collect fees for motor fuel testing from the Comptroller of Public Accounts to the department. In addition, Senate Bill 938 changed the persons and entities required to pay the fee. Fees will now be collected from dealers, as that term is defined in Article 8614, and will no longer be collected from distributors, suppliers, wholesalers or jobbers of motor fuel. Fees will also now be based on number of motor fuel devices dispensing gasoline, rather than the total amount of net taxable gallons of gasoline and/or diesel fuel sold and reported.

Proposed new §5.6 establishes an annual motor fuel testing fee. Each dealer who operates a liquid measuring device to deliver gasoline will be affected by the new rule. Motor fuel devices subject to the fee include: (1) a liquid measuring device (or pump), with a maximum flow rate of 20 gallons per minute or less, dispensing one gasoline product per nozzle; and (2) a liquid measuring device (or pump), with a maximum flow rate of 20 gallons per minute or less, dispensing multiple gasoline products per nozzle.

Stephen Pahl, Coordinator for Weights and Measures, has determined that for the first five-year period the new section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the new section, due to an increase in revenue resulting from the collection of the motor fuel testing fee. As noted, this fee has been collected by the Comptroller in prior years. There was no fee collected in fiscal year 2001. There will be an approximate increase in revenue of $403,763 per year beginning in fiscal year 2002. The amount collected will be used to recover costs of implementing the program. There is no anticipated cost to local government as a result of enforcing or administering the new section.

Mr. Pahl also has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the new section will be that a greater amount of motor fuel will be sold that is properly labeled. The anticipated economic cost to those individuals, micro-businesses and small and large businesses affected by the proposed new section will be $2.10 for each liquid measuring device designed to dispense one gasoline product per nozzle and $6.25 for each liquid measuring devices designed to dispense multiple gasoline products per nozzle. As noted, there will be persons and entities who have paid the motor fuel fee to the Comptroller in past years, for those, any increase will be based on the difference between the fee paid in past years and the proposed new fee. The new section affects all retail liquid measuring devices used to deliver gasoline that are registered with the department.

Comments on the proposal may be submitted to Stephen Pahl, Coordinator for Weights and Measures, 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 new section is proposed under Article 8614, Vernon's Texas Civil Statutes, §9, which provides the department with the authority to adopt rules for the regulation of the sale of motor fuels and to impose a fee for testing, inspection, or performance of other services necessary for administration of Article 8614.

The code affected by this proposal is Article 8614, Vernon's Texas Civil Statutes.

§5.6. Fees.

(a) Motor fuel testing fee. An annual fee, as provided in subsection (b) of this section, is imposed on every dealer, as defined in Vernon's Texas Civil Statutes, Article 8614 (Article 8614), Section 1, who:

(1) holds, or is required to hold, a weights and measures certificate of registration under Texas Agriculture Code, Chapter 13; and

(2) operates a liquid measuring device used to deliver gasoline.

(b) Motor fuel fee amount.

(1) The fee is $2.10 per liquid measuring device used to deliver one gasoline product per nozzle.

(2) The fee is $6.25 per liquid measuring device used to deliver multiple gasoline products per nozzle.

(c) Payment of motor fuel testing fee.

(1) Upon application to the department for a weights and measures certificate of registration, each dealer shall remit to the department the total motor fuel testing fee amount due.

(2) Upon renewal of the dealer's weights and measures certificate of registration, each dealer shall remit to the department the total motor fuel testing fee amount due.

(d) Penalties. Failure to comply with the requirements of this section may result in the imposition of an administrative penalty by the department in accordance with Article 8614, Section 7A and/or civil or criminal penalties in accordance with Article 8614, Sections 7 and 8.

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 June 25, 2001.

TRD-200103603
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 463-4075

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CHAPTER 19. QUARANTINES
SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §§19.160 - 19.163

The Texas Department of Agriculture (the department) proposes new §§19.160 - 19.163, concerning a quarantine for the Diaprepes root weevil, *Diaprepes abbreviatus* (L). The quarantine is proposed to prevent the spread of the Diaprepes root weevil into other citrus and nursery growing areas of Texas and to facilitate its eradication. The new sections require application of treatments to achieve eradication and prescribe specific restrictions on the handling and movement of quarantined articles. To date, several adult and larvae of the Diaprepes root weevil have been found in an orange grove located 0.2 miles West of the intersection of Hobbs Drive and North 2nd Street in McAllen, Texas. Adult emergence of this pest begins in the spring as new foliage appears during the bloom period. As a result of the detections, the department adopted a quarantine on an emergency basis for the Diaprepes root weevil on March 16, 2001, which was published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2457).

New §19.160 defines the quarantined pest. New §19.161 designates quarantine areas based on the location of the Diaprepes root weevil detection and the known range of the pest outside Texas. New §19.162 lists the quarantined articles. New §19.163 identifies articles exempt from regulations, provides for restrictions on the movement of quarantined articles, defines treatment requirements and provisions for notification of property owners concerning the quarantine. Details for pest surveys to define the extent of the infestation and monitoring of affected properties are defined.

Ed Gage, Coordinator for Pest Management Programs, has determined that for the first five-year period the proposed new sections are in effect, there is no anticipated fiscal impact on state or local government as a result of administration and enforcement of the sections.

Mr. Gage has also determined that for each year of the first five years the proposed new sections are in effect, the public benefit of adopting these rules is the eradication of the pest and prevention from it becoming widespread. Measures will be taken to prevent the spread of the Diaprepes root weevil to non-infested areas and will include the treatment of host trees or shrubs located within non-structural residential properties and commercial citrus groves in the quarantined area of Texas. It is anticipated that there may be a cost to individuals, micro-businesses or small businesses required to comply with the new sections. There may be a cost to eradicate the pest from the quarantined area, by property owners required to comply with the new quarantine. Treatments to eradicate the quarantined pest will be required in those areas identified by the quarantine. In order to provide some assistance to property owners, the department, through a cooperative effort from Texas Citrus Mutual (TCM) and the Texas Nursery and Landscape Association (TNLA), is investigating the availability of resources to support the cost of eradication. Costs to treat homeowner areas with a product approved by the department will range from $150-175 per application. Two applications will be required per year on each of the properties affected by the quarantine. The cost to treat commercial citrus grove owners to comply with the quarantine for eradication of the pest will be approximately $400 per acre for treatment products per year plus an additional $150 per acre for application costs per year.

Comments on the proposal may be submitted to Ed Gage, Coordinator for Pest Management, 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 new sections are proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish quarantines against out-of-state diseases and pests; §71.002, which authorizes the department to establish quarantines against in-state diseases and pests; §71.003, which authorizes the department to establish quarantines around pest-free areas; §71.005, which authorizes the department to prevent the movement of quarantined articles or to establish safeguards that allow the movement of such articles; §71.007, which authorizes the department to provide for the destruction of trees or fruits, to provide for the cleaning or treatment of orchards, etc.; §71.0081, which authorizes the department to conduct vehicle inspections for insect pests or plant diseases; §71.009, which authorizes the department to seize, treat, or destroy certain quarantined articles; §71.0091, which provides additional authorization specific to citrus plants to seize, treat, or destroy certain quarantined articles; §73.002, which authorizes the department to use all constitutional means to protect the citrus industry; §73.004, which additionally authorizes the department to establish quarantines for pests or diseases of citrus plants; §73.010, which authorizes civil penalties and injunctive relief for violations of the state's laws governing the control of citrus diseases and pest; and §12.020 which authorizes the department to assess administrative penalties for violations of Chapter 71 or Chapter 73.

The code affected by the proposal is the Texas Agriculture Code, Chapters 71 and 73.

§19.160. Quarantined Pest.

The quarantined pest is the Diaprepes root weevil, *Diaprepes abbreviatus* (L) in any living stage of development.

§19.161. Quarantined Areas.

The quarantined areas are:

(1) Within Texas:

(A) the citrus grove located in Hidalgo County, McAllen, Texas, 0.20 miles West of the intersection of Hobbs Drive and North 2nd Street and the area within 300-yards surrounding the grove in all directions; and

(B) any other area where the quarantined pest is detected.

(2) Outside Texas:

(A) State of Florida: Counties of Broward, Dade, DeSoto, Collier, Glades, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Orange, Osceola, Palm Beach, Pasco, Polk, Seminole, St. Lucie, Sumter, Volusia;

(B) the Commonwealth of Puerto Rico;

(C) the islands of the West Indies; and

(D) any other area where the quarantined pest is detected.

§19.162. Quarantined Articles.

The quarantined articles are:

(1) the quarantined pest;

(2) soil, sand, or gravel separately or combined with other potting media;

(3) all propagation material including all plants and plant parts;

(4) citrus plants and all other plants capable of hosting the quarantined pest; and

(5) all nursery stock and field grown ornamentals that are potted or balled and burlaped.

§19.163. Quarantine Implementation.

(a) Movement of a quarantined article from a quarantined area into or through a non-quarantined area is prohibited, except as provided in paragraphs (1) and (2) of this subsection.

(1) Exemptions. The following articles are exempt from the provisions of this subchapter:

(A) seed;

(B) bare rooted cacti;

(C) fruits and vegetables grown above ground;

(D) fleshy roots, corms, tubers, and rhizomes that are free of soil;

(E) defoliated bare-rooted nursery stock;

(F) privately-owned indoor decorative houseplants;

(G) aquatic plants without soil, and those in containers with growing media if removed from water and shipped immediately;

(H) shipments moving under special permit established by the department to ensure such shipments do not present a pest risk; and

(I) dead plant material without roots or soil that has dried or is moved directly to a city or county sanitary landfill.

(2) Exceptions. The following quarantined articles are excepted from the provisions of this section:

(A) a quarantined article from outside Texas accompanied by a phytosanitary certificate issued by an authorized inspector of the state of origin, provided the article is actually free of the quarantined pest upon entry into Texas.

(B) a quarantined article from a quarantined area in Texas:

(i) produced or treated in accordance with a compliance agreement and actually free of the quarantined pest; or

(ii) accompanied by a phytosanitary certificate issued by an authorized representative of the department and actually free of the quarantined pest.

(b) Movement of a quarantined article from a non-quarantined area into or through a non-quarantined area in Texas is prohibited if the article is infested with the quarantined pest.

(c) A quarantined article from a quarantined area in Texas is eligible to receive a phytosanitary certificate if upon inspection by the department the article is apparently free of the quarantined pest and the article has been treated as prescribed by the department prior to shipment or was grown in an enclosed structure approved by the department.

(d) In order to control the spread and achieve the eradication of the quarantined pest, each parcel of real property within a quarantined area in Texas (affected property) shall be treated and monitored for the quarantined pest in accordance with the following provisions:

(1) The department will deliver written notice of treatment and monitoring requirements to the owner of the affected property, publish said notice in a paper of general circulation, or post the notice in the immediate vicinity of the affected property in accordance with this paragraph.

(A) Delivery of the written notice may be by hand, certified United States mail, commercial delivery service, or any other method calculated to provide actual or constructive notice to the person to be notified, including delivery to an agent or employee of the owner of the affected property or to an adult person, other than the owner, who resides on the affected property.

(B) If the owner, an agent or employee of the owner, or an adult person, other than the owner, who resides on the affected property, cannot be found or refuses delivery of the notice, the department will:

(i) publish the notice for three consecutive days in a paper of general circulation in the county in which the affected property is located; or

(ii) post the notice in the immediate vicinity of the affected property.

(C) Notice shall be deemed to be complete under subparagraph (C) on the fifth day after the first day on which notice is published or posted, otherwise upon delivery.

(2) The person notified under this subsection, if not the owner of the affected property, shall immediately provide a copy of the department's written notice to the owner of the affected property.

(3) The affected property shall be treated and monitored in accordance with the department's written notice and this subchapter.

(A) Treatment may require that the owner of the affected property ensure that quarantined articles are stored, handled, or moved by prescribed methods and may additionally require the application of approved insecticides to the affected property or to quarantined articles.

(B) Monitoring will require that the owner of the affected property, or any other person in control of the affected property, permit and provide physical access during normal business hours to all portions of the affected property, excluding the interior of residential structures, to authorized department personnel, employees of Texas A&M University, or employees of the United States Department of Agriculture.

(4) Unless otherwise arranged by the department under paragraph (5) of this subsection, the owner of the affected property shall be responsible for ensuring that any required treatments are made and for the costs of such treatments. If the department must arrange for treatments under paragraph (5) of this subsection because the owner of the affected property has refused or otherwise failed to comply with the provisions of this subchapter, the department's written notice, or any provision of the Texas Agriculture Code, Chapter 71 or Chapter 73, then the costs the department incurs in treating the affected property or quarantined articles may be assessed against the owner of the affected property, as provided in the Texas Agriculture Code, §71.009 and §71.0091.

(5) The department may contract with a bonded or insured commercial pesticide applicator to make required treatments to the affected property or to quarantined articles. The owner of the affected property shall permit and provide the applicator with physical access to the affected property and to quarantined articles during normal business hours. The applicator shall make a reasonable effort to schedule an appointment for treatment with the owner of the affected property. If an appointment cannot be arranged after a reasonable effort, the applicator shall perform the required treatment at any convenient time during normal business hours and shall be accompanied by a department inspector.

(6) The department and any cooperating governmental entities will bear the costs of monitoring.

(7) Treatments required under this subsection shall be made in accordance with directions in the department's written notice and the labeling, including any Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Section 18 labeling, of those pesticide products approved for treatment. In the event of a conflict between the directions in the written notice and those on the labeling of an approved pesticide product, the directions on the labeling of the approved pesticide product shall control.

(8) Monitoring conducted under this subsection may require on site surveys, placement of trapping devices on the affected property, and periodic inspection of the trapping devices by authorized department personnel, employees of Texas A&M University, or employees of the United States Department of Agriculture. Monitoring activities for a specific affected property are to be performed only during normal business hours and only in the manner described in the written notice, unless other arrangements are necessary to accomplish monitoring activities and the property owner is notified in writing in advance. All deviations from the described monitoring activities should be immediately reported to the office identified in the written notice.

(9) Failure to comply with the requirements of this subsection may require the destruction of quarantined articles in accordance with the provisions of the Texas Agriculture Code, Chapters 71 and Chapter 73. The owner of the affected property shall be liable for all costs for destruction of quarantined articles.

(10) A person who fails to comply with the requirements of this subchapter or with the provisions of the Texas Agriculture Code, Chapter 71 or Chapter 73 is subject to an administrative penalty of up to $5000 for each failure to comply. Each day noncompliance continues may be considered a separate failure to comply.

(11) The owner of the affected property shall perform the obligations established by this subchapter and the department's written notice until such time as the owner is informed by the department in writing that the quarantined pest has been eradicated or that treatment and monitoring are no longer required on the affected property.

(12) The quarantined pest shall be considered eradicated when the pest, in any development stage, has not been detected in the quarantined area by surveys and trapping during 24 consecutive months. All monitoring of the affected property will cease upon confirmation that the quarantined pest has been eradicated from the quarantined area.

(e) A person who is aggrieved by the provisions of this subchapter or who will be injured by the quarantine established by this subchapter or whose property is to be destroyed as a result of implementing the quarantine established by this subchapter is entitled to appeal the department's actions in accordance with Texas Agriculture Code, §71.010.

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 June 25, 2001.

TRD-200103611

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 463-4075

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PART 13. PRESCRIBED BURNING BOARD

CHAPTER 225. GENERAL PROVISIONS

4 TAC §225.1

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, proposes new Chapter 225, §225.1, concerning definitions to be used in the Board's rules found in Title 4, Texas Administrative Code, Part 13, Chapter 226 (relating to Standards for Certified Prescribed Burn Managers), Chapter 227 (relating to Certification, Recertification, Renewal), Chapter 228 (relating to Training for Certified Prescribed Burn Managers) and Chapter 229 (relating to Educational and Professional Requirements for Lead Instructors). The Texas Natural Resources Code, Chapter 153, establishes the Board and provides the Board with the authority to establish a certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements.

Donnie Dippel, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implication for local government as a result of enforcing or administering the section.

Mr. Dippel also has determined that for each of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be clear definitions to be used in implementation of the prescribed burn manager certification program. There will be no anticipated costs to microbusinesses, small, or large businesses or to persons required to comply with the new section.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Deputy General Counsel, 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*.

New §225.1 is proposed under the Natural Resources Code §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

The code affected by this proposal is the Natural Resources Code, Chapter 153.

§225.1. Definitions.

The following words and terms, when used in this chapter, Chapter 226 (relating to Standards for Certified Prescribed Burn Managers), Chapter 227 (relating to Certification, Recertification, and Renewal), Chapter 228 (relating to Continuing Education for Recertification/Renewal of Certification) and Chapter 229 (relating to Educational and Professional Requirements for Lead Instructors) of this title, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act -- Title 6, Natural Resources Code, Chapter 153

(2) Board -- Prescribed Burning Board

(3) Burn Boss -- Individual responsible for the direct application of prescribed fire to a burn unit as detailed in a written prescribed burn plan.

(4) Commissioner -- The Commissioner of Agriculture of the state of Texas, or the Commissioner's designee.

(5) Certified Prescribed Burn Manager -- A person with ultimate authority and responsibility in conducting a prescribed burn, who has obtained certification under Chapter 227 of this title (relating to Certification, Recertification, and Renewal).

(6) CEU -- Continuing Education Unit

(7) Lead Instructor -- An individual who provides leadership and coordination in the conduct of the board-approved certified prescribed burn manager course and has authority to select all instructors.

(8) NRCS -- Natural Resources Conservation Service of the United States Department of Agriculture

(9) NWCG -- National Wildfire Coordinating Group

(10) Prescribed Burning -- The controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescribed burn plan.

(11) Structures containing sensitive receptors -- A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation which has potential to be damaged by smoke and heat, examples of which include, but are not limited to: nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

(12) TAES -- Texas Agricultural Experiment Station

(13) TAEX -- Texas Agricultural Extension Service

(14) TAMU -- Texas A & M University

(15) TDA -- Texas Department of Agriculture

(16) TFS -- Texas Forest Service

(17) TNRCC -- Texas Natural Resource Conservation Commission

(18) TPWD -- Texas Parks and Wildlife Department

(19) TSSWCB -- Texas State Soil and Water Conservation Board

(20) TTU -- Texas Tech University

(21) USDA -- United States Department of Agriculture

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

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CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §§226.1 - 226.5

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, proposes new Chapter 226, §§226.1-226.5, concerning standards for certified prescribed burn managers. The Texas Natural Resources Code, Chapter 153, establishes the Board and provides the Board with the authority to establish a voluntary certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new sections are proposed to implement Chapter 153 and amendments to Chapter 153 made by the enactment of House Bill 1080, 77th Legislature, 2001. New §226.1 provides minimum requirement for conducting prescribed burning as a certified burn manager. New §226.2 provides personnel requirements for conducting a prescribed burn. New §226.3 provides notification requirements. New §226.4 provides minimum insurance requirements. New §226.5 provides for the development of a written prescribed burn plan.

Donnie Dippel, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implication for local government as a result of enforcing or administering the section.

Mr. Dippel also has determined that for each of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be clear definitions to be used in implementation of the prescribed burn manager certification program. There will be minimal costs, related to notification and preparation of a burn plan, to persons wishing to be certified as a prescribed burn manager and microbusinesses or small businesses that wish to pay for an employee to be certified as a prescribed burn manager. Many of the requirements for preparation of a plan and notification are already required under state or local laws and will not be new costs. These costs are not determinable at this time because they will depend on factors related to the specific burn such as the location of the burn in relation to structures, or the location in a city or county which already require notification. There will also be costs to persons wishing to be certified as a prescribed burn manager for meeting the insurance requirements. These costs are not determinable at this time and will depend on the particular business operation, its specific needs and current insurance status. Insurance requirements provided in the rule are identical to those provided in the law.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Deputy General Counsel, 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*.

New §§226.1 - 226.5 are proposed under the Natural Resources Code §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

The code affected by this proposal is the Natural Resources Code, Chapter 153.

§226.1. Minimum Requirements.

(a) The prescribed burning standards of the Prescribed Burning Board represent the minimum requirements for conducting prescribed burning in the State of Texas as a certified prescribed burn manager. These standards are established to ensure that every reasonable precaution is taken to prevent prescribed burns from escaping the perimeter of the burn area and to minimize the effects of smoke emissions as outlined in the written prescribed burn plan. The standards do not, and are not intended to, preempt or supercede requirements established by state, federal, or private natural resource management organizations, but rather, are intended to serve as a baseline for effectively planning and conducting prescribed burns as a certified prescribed burn manager.

(b) The written prescribed burn plan must be completed before the prescribed burn, meet the minimum standards established in this chapter, and provide reasonable assurance that the prescribed burn will be confined to the predetermined area and conducted in a manner that will accomplish the land management objectives.

(c) The TNRCC regulates outdoor burning in Texas. TNRCC requirements may be found at Texas Administrative Code, Title 30, Chapter 111, Subchapter B (relating to Outdoor Burning).

§226.2. Personnel Requirements.

(a) In all cases covered by these rules, the presence of a certified prescribed burn manager is required and enough people must be present to meet the personnel requirements of the written prescribed burn plan and provide adequate protection for the safety of persons and adjacent property.

(b) Personnel requirements for conducting prescribed burns depend on the size of the burn area, fuel volatility, and management of adjacent areas.

§226.3. Notification Requirements.

(a) A certified prescribed burn manager shall provide proof of current insurance and current certification to the landowner or landowner's agent prior to conducting prescribed burn activities and have documentation on site during a prescribed burn.

(b) The TNRCC regulates outdoor burning in Texas. TNRCC notification requirements are found at Title 30, Chapter 111, Subchapter B, of this Code (relating to Outdoor Burning). There may be additional notification requirements for prescribed burns which may vary by county, and may include local ordinances.

(c) The County Sheriff's Office should be contacted prior to burning to alert local officials of the prescribed burn. It is also recommended that local fire departments be notified.

(d) If any structures containing sensitive receptors (residences, greenhouses, stables, etc.) are within 300 feet of and in the general direction downwind from the burn, written permission must be obtained from the occupants or operators of the structure before beginning the burn.

§226.4. Insurance Requirements.

The certified prescribed burn manager conducting a prescribed burn shall carry:

(1) at least $1 million of liability insurance coverage for each single occurrence of bodily injury to or destruction of property; and

(2) with a policy period minimum aggregate limit of at least $2 million.

§226.5. Development of Written Prescribed Burn Plan.

(a) To ensure effective planning necessary to achieve desired effects from prescribed burning, a written prescribed burn plan shall be developed in advance of the planned prescribed burn. A written prescribed burn plan shall be prepared by the certified prescribed burn manager and shall include at a minimum the following information:

(1) purpose of burn;

(2) location and description of the area to be burned;

(3) personnel required for managing the fire;

(4) type and amount of vegetation to be burned;

(5) area (acres) to be burned;

(6) fire prescription and firing techniques, including smoke management components;

(7) safety and contingency plans addressing smoke intrusions; and

(8) criteria the certified prescribed burn manager will use for making burn/no burn decisions.

(b) A recommended Written Prescribed Burn Plan Form and Checklist will be included with materials provided in the required training courses described at §227.1 of this title (relating to Training).

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

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CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, proposes new Chapter 227, §§227.1-227.8 and §§227.10-227.16, concerning certification, recertification and renewal of a prescribed burn manager's certification. The Texas Natural Resources Code, Chapter 153, establishes the Board and provides the Board with the authority to establish a certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new sections are proposed to implement Chapter 153. New §227.1 establishes training requirements. New §227.2 sets forth minimum level of experience required for certification. New §227.3 provides that there shall be no grandfathering for purposes of certification of prescribed burn managers. New §227.4 provides an application process and sets a fee for certification. New §227.5 provides for proof of insurance by applicants. New §227.6 provides categories of certification. New §227.7 provides the term of certification. New §227.8 provides for reciprocity of certification by another state or federal agency. New §227.10 provides that certified burn managers must meet recertification requirements. New §227.11 provides for approved continuing education activities. New §227.12 provides procedures and requirements for approval of continuing education activities and assignment of credits. New §227.13 provides eligibility requirements for continuing education units. New §227.14 provides for suspension or denial of approval of continuing education activities. New §227.15 sets forth responsibilities of continuing education sponsors. New §227.16 sets forth responsibilities of certified prescribed burn managers in regards to recertification.

Donnie Dippel, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the new sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the section. There will be an increase in revenue due to the collection of a $50 fee for certification of prescribed burn managers. The certification is valid for a five- year period. It is estimated that the total number of certifications issued in the first five-year period will be 200 for a total increase of $10,000 for the five-year period. There will be no fiscal implication for local government as a result of enforcing or administering the section.

Mr. Dippel also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new section will be clear procedures to be used in implementation of the prescribed burn manager certification program. In addition, the new sections establish clear standards and requirements for certified burn managers which will result in the assurance that prescribed burns will be conducted in an efficient and safe manner. The anticipated costs to persons wishing to be certified as a prescribed burn manager, or to microbusinesses or small or large businesses that wish to pay for an employee to be certified as a prescribed burn manager, will be the payment of a $50 certification fee and payment of fees to obtain 15 credits of continuing education units over the five-year period in which the certification is valid. The estimated cost of one continuing education unit will vary from no cost to up to $115, not including cost of travel to attend a course. The cost of the unit will depend on who is teaching the course, whether it be a public or private for-profit company, and the subject matter.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Deputy General Counsel, 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*.

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §§227.1 - 227.8

New §§227.1- 227.8 are proposed under the Natural Resources Code (the Code) §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; the Code §153.048, which authorizes the Board to set a fee for certification; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

The code affected by this proposal is the Natural Resources Code, Chapter 153.

§227.1. Training.

In order to be certified, a prescribed burn manager must meet the training requirements established at Section 228.1 of this title (relating to Nature/Content of Training).

§227.2. Experience.

(a) In addition to the training required by Section 227.1 of this title (relating to Training), a certified prescribed burn manager must have the following minimum level of experience:

(1) three years of prescribed burning in a particular region; and

(2) 30 days of prescribed burning with 5 days as the individual responsible for all aspects of a prescribed burn.

(b) The Board may determine that other experience will qualify to meet the requirements of this section.

§227.3. Exceptions/Grandfathering of Prescribed Burn Managers.

There shall be no grandfathering for certification of Prescribed Burn Managers.

§227.4. Application, Fees.

(a) An application for certification as a prescribed burn manager will be deemed complete when the applicant has met the applicable certification requirements, including a statement signed by the applicant documenting experience and training, proof of insurance, and payment of applicable fees.

(b) Application for certification shall be made on a form approved by the Board and provided by TDA.

(c) The fee for a new certification will be prorated as outlined on the application form to coincide with the 5-year expiration date. Renewals made after the expiration date may be subject to late fees.

(d) Certification and renewal fees are $50.00 for a 5 year license contingent upon annual proof of insurance.

(e) A certificate issued under this chapter is not transferable.

(f) The certified prescribed burn manager shall notify TDA within 30 days of any change in the information provided as part of the application for certification. Failure to provide such information may be grounds for denial, suspension or revocation of the certificate.

§227.5. Proof of Insurance.

Documentation as required by Sec. 226.4 of this title (relating to Insurance Requirements) shall be provided to the Board annually to show proof of insurance on or before June 1st. Failure to provide timely proof of insurance shall render certification invalid. The following is considered valid documentation:

(1) Certificate of insurance from insurance company; or

(2) any other documentation approved by the Board.

§227.6. Categories of Certification.

Certification of the prescribed burn manager shall be based on the region of Texas in which the burn manager has been trained to conduct prescribed burns.

§227.7. Term of Certification.

Certification shall be good for five years contingent upon providing annual proof of insurance.

§227.8. Reciprocity of Certification.

The Board may enter into a memorandum of agreement with another state or a federal agency for reciprocity in certification of prescribed burn managers.

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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Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
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SUBCHAPTER B. CONTINUING EDUCATION FOR RECERTIFICATION/RENEWAL OF CERTIFICATION

4 TAC §§227.10 - 227.16

New §§227.10-227.16 are proposed under the Natural Resources Code (the Code) §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

The code affected by this proposal is the Natural Resources Code, Chapter 153.

§227.10. Recertification Requirements.

(a) All certified prescribed burn managers must meet recertification requirements through completion of approved continuing education activities.

(b) Each continuing education activity for recertification/renewal must be approved in writing by the Board, or in case of time constraints, by the Board Chair.

§227.11. Approved Continuing Education Activities.

Approved continuing education activities may include lectures, panel discussions, organized video or film with live instruction, field demonstrations, or other activities approved by the Board.

§227.12. Board Approval, Assignment of Credits.

(a) Each continuing education activity shall be approved for one calendar year only.

(b) In order for a recertification activity to be approved by the Board, the sponsor must:

(1) submit a completed Board approved application form;

(2) provide any additional material relevant to the activity which is requested by the Board and/or the Board Chair; and

(3) submit the application and information required by the Board at least 30 days in advance of the first date of the activity. The Board or the Board Chair may waive the 30-day provision, provided all other requirements are met.

(c) The Board or the Board Chair will respond to the sponsor within 10 days of receipt of the application and approve, reject, or request additional information.

(d) Prior approval shall not be required for prescribed burn manager recertification courses of up to three CEUs conducted by NRCS, TAES, TAEX, TAMU, TDA, TFS, TNRCC, TPWD, or TTU personnel, provided that all other requirements for course content and records are met. The Board may enter into a memorandum of agreement with NRCS, TAES, TAEX, TAMU, TDA, TFS, TNRCC, TPWD, TTU or others as approved by the Board, regarding the specific requirements for prescribed burn manager recertification.

(e) The Board shall assign no more than one continuing education unit (CEU) for each hour of net actual instruction time presented at an approved activity.

§227.13. Eligibility Requirements for Continuing Education Units.

(a) To be eligible for approval as a continuing education unit, the Board will require:

(1) that the unit have significant educational or practical content to maintain appropriate levels of competency;

(2) that each unit has a record keeping procedure for verifying attendance using a Board-approved form or approved formats;

(3) that units cover one or more of the following topics pertaining to prescribed burning:

(A) safety factors;

(B) environmental consequences;

(C) burning techniques;

(D) equipment characteristics;

(E) laws and regulations;

(F) advanced technology;

(H) smoke management; and

(4) that the activity complies with all applicable federal and state laws, including the Americans With Disabilities Act (ADA) requirements for access to activities.

(b) TDA personnel and/or Board members may monitor all approved activities, and all fees charged by the sponsor shall be waived for TDA personnel and/or Board members who monitor the activity.

§227.14. Suspension; Denial of Approval.

The Board may suspend or refuse approval for any or all courses of a sponsor if the sponsor fails to file a timely activity report, fails to provide the quality of activity approved by the Board, or fails to comply with any other requirements that are a basis for approval or that are a part of these rules.

§227.15. Responsibilities of CEU Sponsors.

(a) A sponsor may be a university, a governmental agency, an association, a private independent business, or other qualified entity approved by the Board or Board Chair.

(b) Sponsors of approved activities shall:

(1) prepare a roster which contains, at a minimum, the certified prescribed burn manager's name and current certificate number for certified prescribed burn managers who successfully complete the activity;

(2) distribute a completion certificate at the time of the activity to certified prescribed burn managers who successfully complete an activity which shall indicate the name of the sponsor, lead instructor and their phone number, the date, county and name of the activity, the amount and type of credit earned, and the assigned course number;

(3) send the activity rosters to the Board within 14 days after the end of an activity. The rosters must be on Board forms or approved formats; and

(4) ensure that CEUs awarded correspond proportionately to the net instruction time.

(c) Governmental agencies may enter into an agreement with the Board for annual submission of recertification records of agency employees attending a recertification program approved for the agency by the Board.

(d) No credit will be given for time used to promote the sponsor or other activities of the sponsor or for time used for organizational, political, or other unrelated activities.

§227.16. Responsibilities of Certified Prescribed Burn Managers.

(a) Certified prescribed burn managers will recertify through the required recertification program. Each certified prescribed burn manager will be required to maintain certificates of completion of the number of CEUs necessary to renew a certificate. Certificates of completion verifying attendance at approved activities during the previous certification period must be maintained for a period of 12 months after the most recent renewal of their certificate.

(b) Each certified prescribed burn manager must obtain a minimum of 15 CEUs during the 5 year period, or prorated according to the following schedule:

(1) for 5 years, 15 CEUs;

(2) for 4 years, 12 CEUs;

(3) for 3 years, 9 CEUs;

(4) for 2 years, 6 CEUs; and

(5) for 1 year, 3 CEUs.

(c) A certified prescribed burn manager who loses certification in any certification period may not be recertified for 12 months unless all CEUs required for the last year of certification are completed.

(d) Failure to comply with the continuing education requirement will:

(1) result in nonrenewal of a certified prescribed burn manager's certification until the necessary credits for education or continuing education are attained; and

(2) require retraining of the certified prescribed burn manager for categories or subcategories requiring special training, if the certified prescribed burn manager does not recertify and renew in one year following the expiration of the certification.

(e) A certified prescribed burn manager may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension may be granted by the Board if the applicant files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause means extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.

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

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CHAPTER 228. TRAINING FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §§228.1 - 228.4

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, proposes new Chapter 228, §§228.1-228.4, concerning training for certified prescribed burn managers. The Texas Natural Resources Code, Chapter 153, establishes the Board and provides the Board with the authority to establish a certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new sections are proposed to implement Chapter 153. New §228.1 establishes the nature and content of training required for certification as a prescribed burn manager. New §228.2 sets forth the training requirements for certification. New §228.3 provides that training fees must be paid directly to the trainer. New §228.4 provides that training must be approved by the board and that such approval is valid for only 12 months.

Donnie Dippel, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the sections. There will be no fiscal implication for local government as a result of enforcing or administering the sections.

Mr. Dippel also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be clear training requirements to be used in implementation of the prescribed burn manager certification program. The anticipated costs to persons wishing to be certified as a prescribed burn manager or to microbusinesses and small businesses wishing to certify an employee will be the costs of attending a training session or sessions approved by the Board. It is estimated that the cost of a training session will vary from $25-$50 per course for courses offered by governmental entities such as the Texas Parks and Wildlife Department or the Texas Agricultural Extension Service up to $150 per week-long course for those offered by universities or other entities. This cost would not include any costs of lodging or other travel expenses, which will also vary depending on location of course.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Deputy General Counsel, 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*.

New §§228.1-228.4 are proposed under the Natural Resources Code §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

The code affected by this proposal is the Natural Resources Code, Chapter 153.

§228.1. Nature/Content of Training.

(a) All training required by the Board shall be designed to cover the information necessary for an applicant to demonstrate competency to conduct and supervise a prescribed burn in a safe and effective manner.

(b) Minimum training curriculum shall include material approved by the Board which may be obtained through TDA or training sponsors approved by the Board.

§228.2. Training Requirements.

To become a certified prescribed burn manager an individual must successfully complete the certified prescribed burn training course approved by the Board and specialty course for the region(s) in which the prescribed burning will be conducted.

§228.3. Training Fees.

Any fees required for training must be paid directly to the sponsor or individual providing the training.

§ 228.4. Board Approval of Training.

(a) Training courses must be approved by the Board and provided by an approved individual instructor or entity.

(b) Approval of training courses is valid for only 12 months.

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

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CHAPTER 229. EDUCATIONAL AND PROFESSIONAL REQUIREMENTS FOR LEAD INSTRUCTORS

4 TAC §229.1

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, proposes new Chapter 229, §229.1, concerning minimum educational and professional requirements for lead instructors. The Texas Natural Resources Code, Chapter 153, establishes the Board and provides the Board with the authority to establish a certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new section is proposed to implement Chapter 153. New §229.1 establishes minimum requirements that must be met in order to be eligible to conduct a training course under the prescribed burn manager certification program as a lead instructor.

Donnie Dippel, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implication for local government as a result of enforcing or administering the section.

Mr. Dippel also has determined that for each of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be the use of experienced, qualified lead instructors in the prescribed burn manager certification program. There will be no anticipated costs to microbusinesses, small, or large businesses or to persons required to comply with the new section.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Deputy General Counsel, 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*.

New §229.1 is proposed under the Natural Resources Code §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

The code affected by this proposal is the Natural Resources Code, Chapter 153.

§229.1. Minimum Requirements for Lead Instructors.

(a) Training Courses will be conducted by a lead instructor, with assistance from a training cadre, as the lead instructor deems appropriate.

(b) In order to be eligible to conduct a training course, a lead instructor must have:

(1) a minimum of 25 prescribed burns as the individual on-site solely responsible for the prescribed burn;

(2) participated on a minimum of 50 burns, with at least 75% being prescribed burns. Participation includes any position on a burn;

(3) a minimum of 35 prescribed burns of management scale, as defined within an ecoregion;

(4) taken or taught a Board approved certified prescribed burn manger course or be qualified as a NWCG Type II Burn Boss or higher; and

(5) at least 10 experiences as presenter of technical information to groups in a formal setting.

(c) Lead instructors shall be approved by the Board.

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

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

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER E. INTEREST CHARGES IN LOANS

7 TAC §§1.501, 1.504, 1.505

The Finance Commission of Texas proposes amendments to 7 TAC §§1.501, 1.504, and 1.505, concerning interest charges on loans and refunds in precomputed loans.

The purpose of the amendments are to harmonize the provisions of Senate Bill 272 (SB 272), 77th Legislature, with the existing rule. SB 272 established a new alternative rate structure for Subchapter E loans and modified the appropriate refunding method for these loans. The amendments make technical changes to provide guidance on complying with Chapter 342, Subchapter E, as amended. Furthermore, the rule clarifies the appropriate methods for assessing default (late) charges in 7 TAC §1.504.

Leslie L. Pettijohn, Consumer Credit Commissioner, 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 administering the rules.

Commissioner Pettijohn 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 the amended rules will be enhanced compliance with the credit laws and consistency in credit contracts. No net economic cost will result to persons affected by the rules. There is no adverse impact to small business. No difference will exist between the cost of compliance for small businesses and

the cost of compliance for the largest businesses affected by the sections.

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

The amendments are proposed under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

§1.501. Maximum Interest Charge.

(a) Precomputed loans. An authorized lender may charge the add-on rates authorized by §342.201(a), Texas Finance Code or the alternative simple interest rate authorized by §342.201(d) or (e), Texas Finance Code as calculated by the scheduled installment earnings method, for precomputed loans that are either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute (e.g. an administrative loan fee).

(b) Interest-bearing loans. An authorized lender may charge any rate of interest that does not exceed the maximum rate authorized by §342.201(d) or (e), Texas Finance Code as calculated by the true daily earnings method or the scheduled installment earnings method for an interest-bearing loan that is either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute (e.g. an administrative loan fee).

(c) Method of calculation.

(1) An authorized lender making loans under §342.201(d) or (e), Texas Finance Code may calculate the rate and amount of interest by any method of calculation as long as the amount of interest charged does not exceed the maximum rate or amount of interest set forth in §342.201(d) or (e), Texas Finance Code calculated using the specified earnings methods of §342.201, Texas Finance Code.

(2) An authorized lender making a loan under the provisions of §342.201(e) may contract for, charge, and receive an amount of interest, calculated according to the scheduled installment earnings method or true daily earnings method, not exceeding the equivalent total of a:

(A) simple annual rate of 30% on that portion of the unpaid balance of the cash advance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of $500;

(B) simple annual rate of 24% on that portion of the unpaid balance of the cash advance that is more than the amount computed for subparagraph (A) of this paragraph but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of $1,050; and

(C) simple annual rate of 18% on that portion of the unpaid balance of the cash advance that is more than the amount computed for subparagraph (B) of this paragraph but less than or equal to an amount computed under Subchaper C, Chapter 341, using the reference base amount of $2,500.

§1.504. Default Charges.

(a) (No change.)

(b) Interest-bearing loans. Additional [~~No additional~~] interest for default may be charged on an interest-bearing Subchapter E loan as authorized under §342.203 or §342.206 [~~made pursuant to §342.201~~], Texas Finance Code [~~except for a loan contracted for on a scheduled installment earnings method~~].

(c) (No change.)

(d) Default period. A default charge may not be assessed until the 10th day after the installment due date. For example, if the installment due date is the 1st, a default charge may not be assessed until the 12th.

(e) [~~(d)~~] Missed payment covered by insurance. When any payment or partial payment in default is later paid by some form of insurance such as credit disability insurance, unemployment insurance, or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) [~~(e)~~] Pyramiding prohibited. An authorized lender seeking to assess additional interest for default in a precomputed loan under §342.203 or §342.206, Texas Finance Code must comply with the prohibition on the pyramiding of late charges set forth in the Federal Trade Commission Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve Board, as applicable.

§1.505. Deferment.

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

(e) Computation of deferment charge for a regular transaction. Each deferment charge on a regular loan transaction shall be computed in accordance with the method prescribed by the loan contract. If the loan contract does not provide for a deferment charge, then no deferment charge may be assessed or collected. A lender may employ any of the prescribed computational methods described herein so long as the computational method employed is consistently utilized throughout the term of the loan.

(1) If the first installment is to be deferred, the interest for the deferment may be no more than the difference between the refund that would be required for prepayment in full on the first installment due date, if it were one month from the date of the loan, and the total interest charged, exclusive of any charge for additional days in an irregular first installment or an administrative loan fee assessed.

(2) If any installment subsequent to the first installment is deferred, the deferred installment period will be determined by dividing the remaining precomputed balance owed on the account by the regular scheduled installment amount. The dollar amount associated with the deferred installment period must be rounded down to the nearest whole integer. Additionally, no deferred installment period may have a default charge assessed against the deferred installment period. After the determination of the deferred installment period, the additional interest for the deferment may not exceed the difference between the refund that would be required for prepayment in full for the determined deferred installment and the refund that would be required for the prepayment in full of the next succeeding installment. The resulting difference shall be multiplied by the number of months in the deferment period. For example, the terms of a precomputed §342.201(e) [~~(a)~~], Texas Finance Code loan are as follows (with no administrative loan fee): Date of loan: 09/01/1999 [~~1997~~]; First payment due date: 10/01/1999 [~~1997~~]; Cash Advance: $2,356.21 [~~$2,576.61~~]; Finance Charge: $1,243.79 [~~$1,023.39~~]; Total of Payments: $3,600.00; Term: 36 months; Monthly Installment: $100; Refunding method: Scheduled Installment Earnings Method [~~Sum of the periodic balances~~]; Annual Percentage Rate: 30.00% [~~23.1935%~~]. Assume a deferment is agreed to roughly six months into the contract, and at that time the remaining precomputed balance owed on the account was $3,095.00 and the regular scheduled installment amount was $100.00. The nearest whole integer for the dollar amount associated with the deferred time period

would be 30 ($3,095.00 divided by $100 = 30.95; rounded down to the nearest whole integer = 30). If a default charge had already been assessed on the 30th remaining installment, the nearest whole integer would be 29. Assuming no default charge had been assessed on the 30th remaining installment, the additional interest charge for the deferment would be the difference between the interest refund of the 30th and the 29th installments. This difference would be $53.28 [~~$46.10 (Interest refund as of the 30th installment = $714.53; interest refund as of the 29th installment = $668.43; $714.53 - $668.43 = $46.10). A scheduled installment earnings refund method would yield a slightly different result of $44.49~~].

(3) In lieu of computational methods one and two, a lender may take the difference between the amount of the refund of unearned interest as if a full prepayment of the loan occurred as of the date of the deferment and the amount of the refund of unearned interest for a full prepayment of the loan one full month prior to the date of the deferment. The results of the computed interest for deferment charge under this subsection should be multiplied by the number of months in the deferred installment period.

(f)-(i) (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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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7640

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7 TAC §1.503

The Finance Commission of Texas proposes a new rule 7 TAC §1.503, concerning administrative loan fee.

The purpose of this new rule is to provide the procedures for assessing the administrative loan fee and incorporate technical changes made by SB 272, 77th Legislature.

Leslie L. Pettijohn, Consumer Credit Commissioner 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 administering the rules.

Commissioner Pettijohn 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 the new rules will be enhanced consumer disclosure and consistency in credit contracts. No net economic cost will result to persons affected by the rules. There is no adverse impact to small business. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

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

The new section is proposed under the Texas Finance Code § 11.304 and §342.551, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

These rules affect new Chapter 342, Texas Finance Code.

§1.503. Administrative Loan Fee.

An authorized lender may collect an administrative loan fee pursuant to §342.201(f), Texas Finance Code on interest bearing and pre-computed loans.

(1) To determine the maximum amount of the administrative fee, an authorized lender should ascertain the amount of the cash advance of the loan. If the cash advance is more than one thousand dollars, then the authorized lender may contract for, charge, or receive $25. If the cash advance is one thousand dollars or less, then the authorized lender may contract for, charge, or receive $20.

(2) An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation that has an interest charge authorized by §342.201(e) more than once in any 365 day period. An administration fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation that has an interest charge authorized by §342.201(a) or (d) more than once in any 180 day period. The administrative fee may be contracted for, charged, or received in a renewal or modification if the authorized lender did not contract for, charge, or receive the administrative fee on any previous obligation within the appropriate period.

(3) Interest may not be assessed, charged, or received on an administrative fee if the assessment causes the total amount of interest to exceed the maximum amount authorized under Chapter 342.

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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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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SUBCHAPTER G. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

7 TAC §1.706

The Finance Commission of Texas proposes an amendment to 7 TAC §1.706, concerning interest charges on loans and refunds in precomputed loans.

The purpose of the amendment is to harmonize the provisions of Senate Bill 272 (SB 272), 77th Legislature, with the existing rule. SB 272 established a new alternative rate structure for Subchapter E loans and modified the appropriate refunding method for these loans. The amendment makes technical changes to provide guidance on complying with Chapter 342, Subchapter E, as amended. Furthermore, the rule clarifies the appropriate methods for assessing default (late) charges in 7 TAC §1.504.

Leslie L. Pettijohn, Consumer Credit Commissioner, 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 administering the rule.

Commissioner Pettijohn 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 the amended rule will be enhanced compliance with the credit laws and consistency in credit contracts. No net economic cost will result to persons affected by the rules. There is no adverse impact to small business. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

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

The amendment is proposed under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The rule affects Chapter 342, Texas Finance Code.

§1.706. Amounts Authorized To Be Collected on or before Closing.

(a) (No change.)

(b) Administrative loan fee. An authorized lender may collect an administrative loan fee pursuant to §342.308(a)(9), Texas Finance Code on interest bearing and pre-computed loans.

(1) To determine the maximum amount of the administrative fee, an authorized lender should ascertain the amount of the cash advance of the loan. If the cash advance is more than one thousand dollars, then the authorized lender may contract for, charge, or receive $25. If the cash advance is one thousand dollars or less, then the authorized lender may contract for, charge, or receive $20 [~~$10~~].

(2)-(3) (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.

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Leslie L. Pettijohn
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SUBCHAPTER H. REFUNDS IN PRECOMPUTED LOANS

7 TAC §§1.751, 1.754, 1.755

The Finance Commission of Texas proposes an amendment to 7 TAC §§1.751, 1.754, and 1.755, concerning interest charges on loans and refunds in precomputed loans.

The purpose of the amendments are to harmonize the provisions of Senate Bill 272 (SB 272), 77th Legislature, with the existing rule. SB 272 established a new alternative rate structure for Subchapter E loans and modified the appropriate refunding method for these loans. The amendments make technical changes to provide guidance on complying with Chapter 342, Subchapter E, as amended. Furthermore, the rule clarifies the appropriate methods for assessing default (late) charges in 7 TAC §1.504.

Leslie L. Pettijohn, Consumer Credit Commissioner, 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 administering the rules.

Commissioner Pettijohn 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 the amended rules will be enhanced compliance with the credit laws and consistency in credit contracts. No net economic cost will result to persons affected by the rules. There is no adverse impact to small business. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

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

The amendments are proposed under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

§1.751. Scope.

(a) Scope. This subchapter applies to all precomputed loan transactions made pursuant to subchapters E, F, and G of Chapter 342, Texas Finance Code. This subchapter is inapplicable to interest-bearing loans made under Chapter 342 [~~the same subchapters~~].

(b) Refund methods. The chosen method of determining refunds must be contracted for in the loan agreement. An authorized lender may utilize one of the following [~~two~~] methods of determining the amount of a refund:

(1) the sum of the periodic balances method; [~~or~~]

(2) the installment earnings method; or

(3) the true daily earnings method.

(c) Refund method for Subchapter E loans. An authorized lender may not use the sum of the period balances method for a Subchapter E loan.

§1.754. Refund of Precomputed Interest in Regular Subchapter E [~~and G Loans with the Term of the Loan Sixty Months or Less; Prepayment in Full after the First Installment Due Date and before the Final Installment Due Date~~].

(a) If prepayment in full is made by cash, renewal, or otherwise after the first installment due date, the authorized lender shall refund or credit to the borrower the unearned interest by the scheduled installment earnings [~~refund~~] method authorized by [~~7 TAC~~] §1.751[~~(b)~~] of this titleand identified in the loan agreement as the chosen refund method. If prepayment in full or demand for payment in full occurs during an installment period, the lender may retain an interest charge for previous elapsed periods and the number of days beginning after the installment due date and ending on the date of the prepayment or demand in full. [~~One day earned into a month will allow the lender to earn the interest applicable to the full month.~~]

(b) If prepayment is made in full before the first installment due date, an authorized lender may retain an interest charge for each elapsed day between the date of the loan and the date of prepayment.

The interest charge may not exceed the amount of interest allowed under the true daily earnings method for the same time period. The authorized lender shall refund or credit to the borrower the unearned interest.

§1.755. Refund of Precomputed Interest in Subchapter [~~Regular Subchapter E and~~] G Loans [~~with the Term of the Loan More Than Sixty Months; Prepayment in Full before the First Installment Due Date~~].

(a) Regular Transactions.

(1) If prepayment in full is made by cash, renewal, or otherwise, the authorized lender shall refund or credit to the borrower the unearned interest by the refund method authorized by §1.751of this title and identified in the loan agreement as the chosen refund method. One day earned into a month will allow the lender to earn the interest applicable to the full month.

(2) If prepayment in full is made by cash, renewal, or otherwise, before the first installment due date, the authorized lender shall compute the refund as provided by this section.

(A) If the first installment due date is 15 days or less from the date of the loan, the lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date 1/30 of the interest that could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. All interest in excess of such amount shall be refunded or credited to the borrower.

(B) If the first installment due date is 16 days or greater, but less than one month, from the date of the loan, the lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date 1/30 of the interest which could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date.

(C) If the first installment due date is more than one month from the contract date, the lender may retain for each elapsed day between the date of the loan and prepayment, 1/30 of the interest which could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. The daily charge is multiplied by the number of elapsed days up until the first installment due date.

(b) Irregular transactions or transactions with a term of greater than sixty months.

(1) If prepayment in full is made by cash, renewal, or otherwise, after the first installment due date, the authorized lender shall refund or credit to the borrower the unearned interest by the refund method authorized by §1.751of this title and identified in the loan agreement as the chosen refund method. The amount of interest which may be retained by the lender as earned shall be determined by use of the scheduled installment earnings method as authorized by §342.352, Texas Finance Code. If prepayment in full or demand for payment in full occurs during an installment period, the lender may retain an interest charge for previous elapsed periods and the number of days beginning after the installment due date and ending on the date of the prepayment or demand in full.

(2) If prepayment is made in full before the first installment due date, an [~~An~~] authorized lender may retain an interest charge for each elapsed day between the date of the loan and the date of prepayment. The interest charge may not exceed the amount of interest allowed under the true daily earnings method for the same time period.

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

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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7640

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7 TAC §§1.753, 1.756, 1.757

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

The Finance Commission of Texas proposes the repeal of §1.753 and §§1.756-1.757. This repeal is necessary because the sections have been rewritten and incorporated into proposed amendments to §1.754 and §1.755. The passage of SB 272, 77th Legislature required modification of all the provisions of §§1.753- 1.757.

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

Ms. Pettijohn also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the removal of unenforceable and obsolete regulations which will provide space for replacement rules. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

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

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

The statutory provisions (as currently in effect) affected by the proposed repeal are Subchapter E and G of Chapter 342, Texas Finance Code and the rest of Title 4.

§1.753. Refund of Precomputed Interest in Regular Subchapter E and G Loans; Prepayment in Full before the First Installment Due Date.

§1.756. Refund of Precomputed Interest in Regular Subchapter E and G Loans with the Term of the Loan More Than Sixty Months; Prepayment in Full after the First Installment Due Date and before the Final Installment Due Date.

§1.757. Refund of Precomputed Interest in Irregular Subchapter E and G Loans.

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 June 22, 2001.

TRD-200103589

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7640

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7 TAC §1.758

The Finance Commission of Texas proposes an amendment to 7 TAC §1.758, concerning specific application to Subchapter F loans.

The purpose of the amendment is to harmonize the rule with the new language as enacted in House Bill 198, 77th Legislature. This legislative enactment provides that the acquisition charge on loans of $100 or more is earned at the time the loan is made and is not subject to refund.

Leslie L. Pettijohn, Consumer Credit Commissioner, 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 administering the rule.

Commissioner Pettijohn 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 the amended rule will be enhanced compliance with the credit laws and consistency in credit contracts. No net economic cost will result to persons affected by the rule. There is no adverse impact to small business. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

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

The amendment is proposed under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The rule affects Chapter 342, Texas Finance Code.

§1.758. Specific Application to Subchapter F Loans.

(a) Items subject to refund. The installment account handling charge is [~~following charges in Subchapter F loans are~~] subject to refund[~~:~~]

[~~(1) Installment account handling charge; and~~]

[~~(2) Acquisition charge in which the cash advance is more than $100.~~]

(b) Items not subject to refund. An acquisition charge [~~in a loan in which the cash advance is $100 or less~~] is not subject to refund, as the charge is considered to be earned at the time the loan is made.

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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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7640

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SUBCHAPTER I. INSURANCE

7 TAC §1.807

The Finance Commission of Texas proposes an amendment to 7 TAC §1.807, concerning collateral protection insurance on loans authorized by Chapter 342.

The purpose of the amendment is to harmonize the rule with the new provisions of SB 707, 77th Legislature. SB 707 repealed the former provisions of the Credit Title relating to collateral protection insurance and replaced them with new provisions in Chapter 307. The amendment corrects the statutory reference.

Leslie L. Pettijohn, Consumer Credit Commissioner 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 administering the rules.

Commissioner Pettijohn 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 the new rules will be enhanced compliance with the credit laws and consistency in credit contracts. No net economic cost will result to persons affected by the rules. There is no adverse impact to small business. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

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

The amendment is proposed under the Texas Finance Code § 11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

§1.807. Single-interest Insurance.

If a lender arranges for single-interest insurance and assesses a charge for the insurance to the borrower, the lender must comply with the provisions of Texas Finance Code , Chapter 307[~~§§341.302~~].

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

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CHAPTER 4. CURRENCY EXCHANGE

7 TAC §4.3

The Finance Commission of Texas (the commission) proposes to amend §4.3 concerning reporting and recordkeeping requirements applicable to currency transmission licensees under Finance Code, Chapter 153.

Currently, §4.3(a) includes within "currency exchange" a transaction in which a currency transmitter accepts currency of one government for transmission from Texas to another location and pays at the destination in the currency of another government. As proposed, amended §4.3(a) will implement the agency's determination that currency transmission transactions involving the receipt of the currency of one government and payment in the currency of another government are not currency exchange transactions.

Section 4.3(e)(2) currently requires that certain information be maintained for currency transmission transactions that exceed $1,000. The proposed amendment will increase the threshold limit to $3,000, the same as the threshold amount imposed under the federal Bank Secrecy Act, 31 United States Code, §5313, and 31 Code of Federal Regulations, Part 103.

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

Ms. Newberg also has determined that, for each of the first five years the section as amended is in effect, the public benefit anticipated as a result of the adoption of this section will be a reduction in regulatory burden through better consistency between state and federal requirements applicable to the same transaction. No economic cost will be incurred by a person required to comply with this section, and there will be no deleterious effect on small businesses.

Comments on the proposed amendment may be submitted to Steven L. Martin, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to: steve.martin@banking.state.tx.us.

The amendment is proposed under the authority of Finance Code, §153.002, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 153, including rules relating to recordkeeping requirements.

Finance Code, Chapter 153, is affected by the proposed amendment.

§4.3. Reporting and Recordkeeping.

(a) For purposes of this section, a "currency business" refers to a person that engages in or has engaged in currency exchange or currency transmission transactions, whether the person is licensed under the Finance Code, Chapter 153, or is exempt from licensing under the Finance Code, §153.117(a)(2). [~~As used in this section, "currency exchange" includes transactions wherein currency transmitters accept for transmission in Texas the currency of one government and pay at another location in the currency of another government.~~]

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

(e) In addition to the records required to be maintained under subsections (b), (c), and (d) of this section, currency businesses shall keep the following records:

(1) (No change.)

(2) Currency Transmission.

(A) No currency business authorized to engage in currency transmission may enter into a currency transmission transaction of $3,000 or more in [~~an~~] amount [~~in excess of $1,000~~] unless the currency business issues sequentially numbered receipts or receipts bearing a unique identification or transaction number for each of those transactions. The receipt must bear the date and time of day of the transaction, the amount of the transmission in United States dollars, the rate of exchange (if applicable), and the applicable fee or commission for the transaction. The receipt also must indicate whether the transaction initiated or terminated the currency transmission. The currency business also must maintain a record of each such transaction that includes the identifying receipt number as well as the following information:

(i)-(x) (No change.)

(B) In addition, in connection with all transactions of $3,000 or more in [~~an~~] amount [~~in excess of $1,000~~], the currency business shall verify the customer's identity by examination of a document, preferably one that contains the name, address, and photograph of the customer and is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the receipt or in the log entry related to the transaction (e.g., state of issuance and number of driver's license).

(C) Contemporaneous currency transmission transactions initiated by or on behalf of the same person or received by or on behalf of the same person totaling $3,000 or more [~~in excess of $1,000~~] must be treated as one transaction. Multiple transactions initiated by or on behalf of the same person or received by or on behalf of the same person during one or more business days totaling $3,000 or more [~~in excess of $1,000~~] must be treated as one transaction if made by such person for the purpose of evading the reporting requirements under this section and an individual employee, director, officer, or partner of the currency business knew or should have known that the transactions occurred.

(3) (No change.)

(f)-(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.

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Everette D. Jobe
Certifying Official
Finance Commission of Texas
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For further information, please call: (512) 475-1300

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7 TAC §4.12

The Finance Commission of Texas (the commission) proposes to amend §4.12 concerning processing times for currency exchange license applications submitted to the Texas Department of Banking (department).

Section 4.12 implements the requirements of Government Code, §2005.003, pertaining to permit processing periods. During the past 12 months, the department's minimum, maximum, and median time for processing a currency exchange license application was 63 days, 228 days, and 114 days, respectively. Processing time is measured from the date the department received an initial

application to the date of the final license decision. Disclosure of the minimum, maximum, and median processing time for an application is required by Government Code, §2005.003.

The proposed amendment will provide a more efficient, equitable, and predictable application process by clarifying the time for review of applications and conforming the processing times to the actual times required to review and evaluate an application. The proposed amendment will also provide for a finding of abandonment for applications not timely pursued. Subsections (a) and (b) are proposed to be amended, and subsections (d) and (e) are proposed to be renumbered as (g) and (h) to permit insertion of proposed new subsections (d)-(f).

The amendment to §4.12(a) clarifies that the banking commissioner, in investigating and evaluating an application, may require additional information to the extent necessary to reach an informed decision.

The amendment to §4.12(b) will change the time from 10 days to 15 days for the department to notify the applicant that the application is complete or that additional information is required.

Proposed new §4.12(d) requires that all required information must be provided to the department on or before the 61st day after initial submission of an application. The purpose of this requirement is to enable the banking commissioner to determine that an application is either complete and accepted for filing or abandoned and not subject to further processing. An extension of this period may be granted upon written request.

Proposed new §4.12(e) will permit the banking commissioner to determine an application to be abandoned, without prejudice to re-filing, if all required information is not received within the time period specified by subsection (d). The banking commissioner may also determine an application to be abandoned if the required fees are not paid within 30 days after receipt of the application.

Proposed new §4.12(f) will require the banking commissioner to give an applicant written notice of a determination of abandonment. Notice of abandonment is effective upon 10 days after mailing. Fees paid related to an abandoned filing are non-refundable.

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

Ms. Newberg also has determined that, for each of the first five years the section as amended is in effect, the public benefit anticipated as a result of the adoption of this section will be an efficient, equitable, and predictable application process. No economic cost will be incurred by a person required to comply with this section, and there will be no deleterious effect on small businesses.

Comments on the proposed amendment may be submitted to Steven L. Martin, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to: steve.martin@banking.state.tx.us.

The amendment is proposed under the authority of Finance Code, §153.002, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 153, including rules relating to issuance of a license. Additional authority and applicable requirements are provided by Government Code, §2005.003.

Finance Code, Chapter 153, is affected by the proposed amendment.

§4.12. Currency Exchange License Applications; Notices to Applicants; Application Processing Times; Abandoned Filings; Appeals.

(a) Form of application. An initial application for a currency exchange license under the Finance Code, §153.103, must be filed on a form prepared and prescribed by the banking commissioner. The banking commissioner may investigate and evaluate facts related to a submitted or accepted application to the extent necessary to reach an informed decision. The banking commissioner may require any person connected with the matter to which the submitted or accepted application pertains to submit additional information, including an opinion of counsel with respect to a matter of law or an opinion, review, or compilation prepared by a certified public accountant.

(b) Notice to applicant. On or before the 15th day after initial submission of an application, the [~~The~~] department of banking shall issue a written notice [~~within 10 days of receipt~~] informing the [~~each~~] applicant either that all filing fees have been paid and the initial application is complete and accepted for filing, or that the initial application is deficient and specific fees or additional information is required.

(c) (No change.)

(d) Time limit for providing required information. Unless otherwise provided in applicable law, all required information necessary for the banking commissioner to declare that an application is accepted must be provided to the department on or before the 61st day after the date of the initial submission of the application. A person may request an automatic 30-day extension of time to submit required information if the request is in writing and is received by the department prior to the end of the initial 60-day period. An additional extension may be requested in writing if a request for extension is received prior to the expiration of the automatic extension. The additional extension will be granted only if the banking commissioner in the exercise of discretion finds good and sufficient cause for the extension. The banking commissioner shall mail notice of the decision to the person seeking the extension within ten days of receipt of the request by the department.

(e) Abandoned application. The banking commissioner may determine any submitted or accepted application to be abandoned, without prejudice to the right to re-file, if the information required by applicable law or additional requested information is not received within the time period specified by subsection (d) of this section or as otherwise requested by the banking commissioner in writing to the person making the submission. In addition, the banking commissioner may determine an application to be abandoned if applicable fees are not paid within 30 days after initial submission of the application.

(f) Notice. The banking commissioner shall give written notice of a determination that an application is considered to be abandoned. Notice of abandonment is effective upon mailing by the department. Fees paid related to an abandoned filing are non-refundable.

(g) [~~(d)~~] Violation of notice and processing times. An applicant may appeal directly to the banking commissioner for a timely resolution of a dispute arising from a violation of the periods set forth in this section. An applicant shall perfect an appeal by filing with the department a written request for appeal within 30 days of the date a decision is made on the application, requesting review by the banking commissioner to determine whether the established period for the granting or denying of the initial application has been exceeded. The decision on the appeal shall be based on the written appeal by the applicant and any

response by the department and, if the banking commissioner deems necessary, a hearing may be set to take evidence on the matter.

(h) [~~(e)~~] Decision on appeal. The banking commissioner shall decide the appeal in the applicant's favor if the banking commissioner determines that the time periods established in this section have been exceeded and the department has failed to establish good cause for the delay. The banking commissioner shall issue a written decision to the applicant within 60 days of the filing of an appeal. If an appeal is decided in an applicant's favor, the applicant will be reimbursed all of its application fees. A decision in favor of the applicant under this subsection does not affect any decision to grant or deny an application for a currency exchange license, which shall be based on applicable substantive law without regard to whether the application was timely processed.

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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Everette D. Jobe
Certifying Official
Finance Commission of Texas
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CHAPTER 5. HOME LOANS

7 TAC §5.1

The Finance Commission of Texas proposes a new rule 7 TAC §5.1, concerning required disclosures in connection with certain home loans.

The purpose of this section is to establish the required disclosures mandated in SB 1581, 77th Legislature, and to provide the means by which lenders may comply with the notice requirements of the Texas Finance Code, Section 343.102. SB 1581 primarily restricts certain mortgage lending practices or requires enhanced disclosure in connection with certain triggering events. There was a general agreement among the parties involved with SB 1581 that the interim period between the 77th and 78th Legislature would be used to study mortgage lending practices with an emphasis on identifying any types of pattern or practice that might require future legislative action. One benefit of the disclosure required by the rule is that it provides a source for consumers to contact state regulatory agencies to report complaints as well as providing an avenue for general information, housing counseling, and education. The state regulatory agencies may then collect and analyze data related to consumer contacts and complaints and report to the 78th Legislature regarding the effectiveness of the disclosure or identification of potential pattern or practices of concern. By statute the requirement to provide the notice on covered loans expires September 1, 2003. Compliance with this section is deemed compliance with these notice requirements.

The rule describes the applicability of the notice requirements, the actual content requirements of the notices, provisions relating to timing of delivery of the notice, and provisions relating to record retention.

Subsection (b)(1) prescribes the content of the notice. The agencies have received preliminary comment regarding the wording of the first or introductory paragraph. The agencies are concerned that the paragraph is accurate, yet drafted in plain language to aid in the comprehension of applicants who receive the notice. As an alternative the agencies may consider the following language in lieu of the first sentence:

"TEXAS LAW (Section 343.102, Finance Code) requires that a lender who makes a home loan with an interest rate of 12% or greater give a notice regarding high cost home loans and the value of housing counseling to an applicant for that loan."

The agencies specifically request comment on the language used in the first paragraph of the notice and on the alternative presented above.

The agencies also specifically request comment on the requirement for the applicant's signature on the notice. The agencies expect that many lenders may desire to distribute the notice in a way that does not involve in-person contact with the applicant, and thus, makes obtaining the applicant's signature more difficult. The agencies may consider as an alternative to the requirement for a signature a provision stating that a signature is not required if the lender establishes a routine procedure that demonstrates that notices are delivered to applicants whose home loans are covered by the section. The agencies specifically request comment on this alternative.

Leslie L. Pettijohn, Consumer Credit Commissioner 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 administering the rules.

Commissioner Pettijohn 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 the new rules will be enhanced consumer disclosure and consistency in credit contracts. The net economic cost to persons affected by the rules will be the distribution of an additional disclosure in connection with each covered mortgage loan. That economic cost is expected to be minimal and should not pose an adverse impact on affected businesses. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

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

The new section is proposed under the Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

These rules affect new Chapter 343, Texas Finance Code.

§5.1. *Required Disclosures in Connection with Certain Home Loans.*

(a) Purpose and Applicability.

(1) The purpose of this section is to provide the means by which lenders may comply with the notice requirements of the Finance Code, Section 343.102. Compliance with this section is deemed compliance with these notice requirements.

(2) This section applies to any mortgage application received on or after September 1, 2001.

(3) A lender shall provide an applicant with an official notice for each home loan with a rate of interest of 12 percent or greater. The notice must appear on a full, separate page with no text other than that provided in this section. The form of the notice shall be as provided by subsection (b) of this section.

(b) Notice Requirements.

(1) Prescribed content.
Figure: 7 TAC §5.1(b)

(2) Acknowledgment. A lender shall obtain the applicant's signature acknowledging receipt of the notice.

(3) List of housing counseling agencies. A lender must provide the applicant with a list of the housing counseling agencies approved by the United States Department of Housing and Urban Development that are located in Texas.

(4) Spanish translation. A Spanish translation of the notice is required if the transaction is conducted primarily in Spanish.

(c) Timing of delivery of notice.

(1) The notice shall be delivered on the earlier of:

(A) the date required for the delivery of the Good Faith Estimate under the Real Estate Settlement Procedures Act; or

(B) within three business days after application if the Real Estate Settlement Procedures Act does not apply to the covered mortgage loan.

(2) If upon initial evaluation and delivery of required disclosures a mortgage applicant does not receive the required notice because the lender indicates that the applicant's anticipated interest rate will not be covered by this section, then upon further evaluation it is determined that the mortgage loan will meet the threshold test of this section, the notice shall be delivered to the applicant within three business days from the time that it is determined that the rate on the loan will be covered by this section. The notice must be delivered to an applicant at least one business day prior to closing.

(3) For purposes of this section, application means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated. If the submission does not state or identify a specific property, the submission is not an application for the purposes of this section.

(4) Electronic delivery. A creditor may provide the required disclosure by electronic communication in compliance with state and federal law governing electronic signatures and electronic transactions (15 U.S.C. §7.001 *et seq.*; Tex Bus & Comm Code §43.001 *et seq.*). A consumer must affirmatively consent to receive the notice electronically. A creditor that uses electronic communication to provide the disclosure shall:

(A) send the disclosure to the consumer's electronic address; or

(B) make the disclosure available at another location such as an Internet website; and

(i) alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address. The notice shall identify the account involved and the address of the Internet website or other location where the disclosure is available; and

(ii) make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(d) Record retention. A lender shall retain a copy of the notice signed by the applicant for a period of 25 months after the date that the notice is delivered.

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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Leslie L. Pettijohn
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Finance Commission of Texas
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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 27. APPLICATIONS

7 TAC §27.1

The Finance Commission of Texas (the commission) proposes to amend §27.1 concerning application processing times and notices to applicants. The amendment removes sale of checks licenses from the application of this section. A new rule regarding sale of checks license applications is proposed in this issue of the *Texas Register*.

This change will place the sale of checks rule in the same chapter as other rules pertaining to sale of checks.

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

Ms. Newberg also has determined that, for each of the first five years the section as amended is in effect, the public benefit anticipated as a result of the adoption of this section will be convenient and consistent placement of rules. No economic cost will be incurred by a person required to comply with this section, and there will be no deleterious effect on small businesses.

Comments on the proposed amendment may be submitted to Steven L. Martin, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to: steve.martin@banking.state.tx.us.

The amendment is proposed pursuant to rule-making authority under Finance Code, §152.102(a), which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 152 "including rules relating to an application of a license." Additional authority and applicable requirements are provided by Government Code, §2005.003.

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

§27.1. Notices to Applicants; Application Processing Times; Appeals.

(a) An application for prepaid funeral sellers permit or[,] perpetual care cemetery certificate of authority[, ~~or sale of checks license~~] granted by the commissioner must be filed on a form or in a manner

approved by the banking commissioner. The department shall issue a written notice informing each applicant either that the application is complete and accepted for filing, or that the application is deficient and that specific additional information is required. The department shall issue the notice to the applicant within the period indicated for the following:

(1) prepaid funeral seller's permits: 10 days; and

(2) perpetual care cemetery certificates of authority: 10 days[~~; and~~]

[~~(3) sale of checks licenses: 10 days~~].

(b) The commissioner shall determine whether to deny or approve an application within the following periods and in the following manner after a complete application has been accepted for filing:

(1) prepaid funeral seller's permits: 45 days; and

(2) perpetual care cemetery certificates of authority: 45 days[~~; and~~]

[~~(3) sale of checks licenses: 45 days~~].

(c)-(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.

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Texas Department of Banking
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CHAPTER 29. SALE OF CHECKS ACT

7 TAC §29.4

The Finance Commission of Texas (the commission) proposes new §29.4 concerning processing times for sale of checks license applications submitted to the Texas Department of Banking (department).

Section 29.4 will implement the requirements of Government Code, §2005.003, pertaining to permit processing periods under the Sale of Checks Act, Finance Code, Chapter 152. An existing rule, §27.1, presently addresses these requirements but is proposed to be amended in this issue of the *Texas Register* to remove processing parameters for sale of checks licenses in order to permit placing the sale of checks provision in the same chapter as other rules pertaining to sale of checks. During the past 12 months, the department's minimum, maximum, and median time for processing a sale of checks license application was 28 days, 92 days, and 67 days, respectively. Processing time is measured from the date the department received an initial application to the date of the final license decision. Disclosure of the minimum, maximum, and median processing time for an application is required by Government Code, §2005.003.

Proposed §29.4 will provide sale of checks license applicants an efficient, equitable, and predictable application process by specifying the time for review of applications and conforming the processing times to the actual times required to review and evaluate an application. The proposed section will also provide for a finding of abandonment for applications not timely pursued.

Proposed §29.4(b), as compared to existing §27.1, will change the time from 10 days to 15 days for the department to notify the applicant that the application is complete or that additional information is required.

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

Ms. Newberg also has determined that, for each of the first five years the section as adopted is in effect, the public benefit anticipated as a result of the adoption of this section will be an efficient, equitable, and predictable application process. No economic cost will be incurred by a person required to comply with this section, and there will be no deleterious effect on small businesses.

Comments on proposed §29.4 may be submitted to Steven L. Martin, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to: steve.martin@banking.state.tx.us.

Section 29.4 is proposed under the authority of Finance Code, §152.102, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 152, including rules relating to issuance of a license. Additional authority and applicable requirements are provided by Government Code, §2005.003.

Finance Code, Chapter 152, is affected by proposed §29.4.

§29.4. Sale of Checks License Applications; Notices to Applicants; Application Processing Times; Abandoned Filings; Appeals.

(a) Form of application. An initial application for a sale of checks license under the Finance Code, §152.201, must be filed on a form prepared and prescribed by the banking commissioner. The banking commissioner may investigate and evaluate facts related to a submitted or accepted application to the extent necessary to reach an informed decision. The banking commissioner may require any person connected with the matter to which the submitted or accepted application pertains to submit additional information, including an opinion of counsel with respect to a matter of law or an opinion, review, or compilation prepared by a certified public accountant.

(b) Notice to applicant. On or before the 15th day after initial submission of an application, the department of banking shall issue a written notice informing the applicant either that all filing fees have been paid and the initial application is complete and accepted for filing, or that the initial application is deficient and specific fees or additional information is required.

(c) Action on license applications. Once a completed sale of checks license initial application has been accepted for filing, the banking commissioner shall determine whether to approve or deny the initial application within 45 days; provided that if, within that time period, the banking commissioner determines there should be a hearing on the initial application, a hearing will be set to take evidence on the matter.

(d) Time limit for providing required information. Unless otherwise provided in applicable law, all required information necessary for the banking commissioner to declare that an application is accepted must be provided to the department on or before the 61st day after the date of the initial submission of the application. A person may request an automatic 30-day extension of time to submit required information

if the request is in writing and is received by the department prior to the end of the initial 60-day period. An additional extension may be requested in writing if a request is received prior to the expiration of the automatic extension. The additional extension will be granted only if the banking commissioner in the exercise of discretion finds good and sufficient cause for the extension. The banking commissioner shall mail notice of the decision to the person seeking the extension within ten days of receipt of the request by the department.

(e) Abandoned application. The banking commissioner may determine any submitted or accepted application to be abandoned, without prejudice to the right to re-file, if the information required by applicable law or additional requested information is not received within the time period specified by subsection (d) of this section or as otherwise requested by the banking commissioner in writing to the person making the submission. In addition, the banking commissioner may determine an application to be abandoned if applicable fees are not paid within 30 days after initial submission of the application.

(f) Notice. The banking commissioner shall give written notice of a determination that an application is considered to be abandoned. Notice of abandonment is effective upon mailing by the department. Fees paid related to an abandoned filing are non-refundable.

(g) Violation of notice and processing times. An applicant may appeal directly to the banking commissioner for a timely resolution of a dispute arising from a violation of the periods set forth in this section. An applicant shall perfect an appeal by filing with the department a written request for appeal within 30 days of the date a decision is made on the application, requesting review by the banking commissioner to determine whether the established period for the granting or denying of the initial application has been exceeded. The decision on the appeal shall be based on the written appeal by the applicant and any response by the department and, if the banking commissioner deems necessary, a hearing may be set to take evidence on the matter.

(h) Decision on appeal. The banking commissioner shall decide the appeal in the applicant's favor if the banking commissioner determines that the time periods established in this section have been exceeded and the department has failed to establish good cause for the delay. The banking commissioner shall issue a written decision to the applicant within 60 days of the filing of an appeal. If an appeal is decided in an applicant's favor, the applicant will be reimbursed all of its application fees. A decision in favor of the applicant under this subsection does not affect any decision to grant or deny an application for a sale of checks license, which shall be based on applicable substantive law without regard to whether the application was timely processed.

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 June 22, 2001.

TRD-200103539
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: August 17, 2001
For further information, please call: (512) 475-1300

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES
SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §97.101

The Texas Credit Union Commission proposes amendments to §97.101 pertaining to meetings. The rule as it currently exists addresses the time, place and minutes of meetings of the Commission only. The first amendment would expand the rule to also address meetings of the Commission's committees. Another amendment states that the minutes of the meetings of the Commission and its committees are available to any person to examine during the Credit Union Department's regular office hours. The last amendment states that notice of any upcoming meetings of the Commission or its committees shall be posted in accordance with Government Code, Chapter 551.

Section 2001.039 of the Government Code requires each state agency to review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The review must include an assessment of whether the reasons for initially adopting the rule continue to exist. The previous review of this rule occurred in 1998, and notice of the rule's readoption by the Commission without change was published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11174).

Notice of the Commission's intent to review this rule was published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2547). No comments were received. However, after conducting a preliminary review, the Commission has determined that the above-described amendments are necessary and appropriate.

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

Ms. Pool has also determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated will be that the continued assurance that notices of Commission meetings and meetings of its committee will be properly posted and that the public will have another source of access to the minutes of those meetings. There will be no effect on small businesses as a result of adopting this section. There is no anticipated impact on local employment.

Written comments on the proposed amendments must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of Finance Code §15.209. The Commission interprets this section as authorizing it to adopt rules governing meetings, including the time and place and the form of the minutes.

The specific section affected by the proposed amendments to this rule is Finance Code §15.209 pertaining to meetings of the Commission.

§97.101. Meetings.

The time [~~Time~~] and place of regular and special meetings of the [~~Credit Union~~] Commission and its committees shall be determined [~~set~~] by the applicable chair and posted in accordance with the Open Meetings Act (Government Code, Chapter 551). The minutes of each meeting

shall be in writing and available to any person to examine during the Department's regular office hours.

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 June 19, 2001.

TRD-200103474
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 837-9236

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7 TAC §97.105

The Texas Credit Union Commission proposes an amendment to §97.105 pertaining to frequency of examination. The amendment, if adopted, would authorize the Commissioner to accept examinations conducted by other credit union supervisory agencies or insuring organizations in lieu of conducting an examination required by this rule.

Section 2001.039 of the Government Code requires each state agency to review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The review must include an assessment of whether the reasons for initially adopting the rule continue to exist. The previous review of this rule occurred in 1998, and notice of the rule's readoption by the Commission without change was published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11174).

Notice of the Commission's intent to review this rule was published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2547). No comments were received. However, after conducting a preliminary review, the Commission has determined that the above-described amendments are necessary and appropriate.

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

Ms. Pool has also determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated will be a reduced burden on credit unions that may otherwise receive multiple examinations or audits by regulatory and/or insuring entities within a specific time period. There will be no effect on small businesses as a result of adopting this section. There is no anticipated impact on local employment.

Written comments on the proposed amendment must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of Finance Code §15.402. The Commission interprets this section as authorizing it to adopt rules necessary for administering Subtitle D, Title 3, of the Finance Code, which includes §126.051 pertaining to the examination of credit unions.

The specific section affected by the proposed amendment to this rule is Finance Code §126.051 pertaining to examinations.

§97.105. Frequency of Examination.

The department shall perform an examination of each credit union authorized to do business under the Act at least once each year. Intervals between examinations shall not exceed 18 months, unless a longer interval is authorized in writing by the commission. In lieu of conducting an examination required by this rule, the commissioner in the exercise of discretion may accept examinations or reports from other credit union supervisory agencies or insuring organizations.

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

Filed with the Office of the Secretary of State, on June 19, 2001.

TRD-200103469
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 837-9236

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SUBCHAPTER B. FEES

7 TAC §97.113

The Texas Credit Union Commission proposes amendments to §97.113 pertaining to operating fees. One substantive change allows the Commission to bill the annual operating fee in semi-annual installments and to modify the amount paid in the second installment so that the amount of revenues collected will more closely match the Department's actual expenses incurred. The operating fee for credit unions with total assets under $200,000 have been increased from $0 to $200. While small, these credit unions do generate supervision and regulation expenses for the Department and should reimburse the Department, at least in part, for those expenses. Another amendment increases the supplemental examination fee from $36 to $40 to reflect cost increases experienced by the Department.

Three proposed amendments affect the Texas operations of foreign credit union offices, specifically: (1) the increase of the annual operating fee for foreign credit union branches from $200 to $500; (2) a new subsection allowing the Department to charge a foreign credit union a $200 fee per field of membership expansion application filed; and (3) an new subsection authorizing the Department to charge foreign credit unions an hourly examination fee of $40 plus actual travel expenses incurred in connection with the examination of the foreign credit union's Texas office operations. The travel fee reimbursement may be waived by the Commissioner at his discretion. The revised operating fee and new examination and application fees allow the Department to better recover the costs of regulating these operations and mitigate, in part, the extent that state-chartered credit unions have subsidized the regulation of foreign credit unions in the past.

Two other new subsections have also been proposed. The first allows the Commission to approve a special assessment to cover any material expenditures, such as major facility repairs or other extraordinary expenses. The second authorizes the Commissioner to pass on to a credit union, as applicable, the actual cost incurred by the Department for examination services or operational reviews performed by third parties.

Section 2001.039 of the Government Code requires each state agency to review a rule not later than the fourth anniversary of

the date on which the rule takes effect and every four years after that date. The review must include an assessment of whether the reasons for initially adopting the rule continue to exist. Notice of the Commission's intent to review this rule was published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2547). No comments were received. However, after conducting a preliminary review, the Commission has determined that the above-described amendments are necessary and appropriate.

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

Ms. Pool has also determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated will be that the Credit Union Department will be sufficiently funded to cover expenses incurred in the regulation and supervision of state-chartered credit unions and foreign credit union offices operating within Texas. Foreign credit unions operating offices within Texas will be most affected by the proposed changes as their operating fee will increase $300 per year, plus an additional $200 for any field of membership applications filed. However, the Commission believes it is appropriate for foreign credit unions to pay their share of the cost to supervise and regulate their Texas operations. Credit unions under $200,000 would now be required to pay a $200 annual operating fee; however, there are currently only two credit unions in this category. There is no anticipated impact on local employment.

Written comments on the proposed amendments must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of Finance Code 15.402. The Commission interprets this section as authorizing it to set, by rule, reasonable fees, charges and revenues required to be paid by a credit union. Finance Code §122.013 also states that a foreign credit union doing business in this state is subject to rules adopted by the Commission and any additional requirement, which is construed by the Commission to include fees and charges necessary to cover regulatory and supervisory costs for foreign credit unions.

The specific sections affected by the proposed amendments to this rule are Finance Code §15.402 pertaining to adoption of rules and Finance Code § 122.013 pertaining to foreign credit unions.

§97.113. [~~Operating~~] Fees and Charges.

(a) Remittance of fees. [~~Effective September 1, 1991, each~~] Each credit union authorized to do business under the Act shall remit to the Credit Union Department an [~~its~~] annual operating fee. The fee shall be paid in semi-annual installments as billed effective September 1 and March 1 of each year. The final installment may be adjusted as provided by subsection (d) of this section [~~prior to October 1 of each year~~]. Such installments [~~fees~~] received after September 30 or March 30 of each year will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(b) Calculation of operating fees. The schedule provided in this section shall serve as the basis for calculating operating fees. The base date shall be June 30 of the year in which operating fees are calculated. The asset base may be reduced by the amount of reverse-repurchase balances extant on the June 30 base date. The commissioner is authorized to increase or decrease the fee schedule once each year as needed to match revenue with appropriations. An increase greater than 5% shall require prior approval of the commission. The commissioner shall notify the commission of any such adjustment at the first meeting of the commission following the determination of the fee schedule. Figure: 7 TAC §97.113(b)

(c) Waiver of operating fees. The commissioner is authorized to waive the operating fee for an individual credit union when good cause exists. The commissioner shall document the reason(s) for each waiver of operating fees and report such waiver to the commission at its next meeting.

(d) Adjustment of an installment. The commissioner in the exercise of discretion may, after review and consideration of actual revenues to date and projected revenues for the remainder of the fiscal year, lower the amount of the final installment due from credit unions.

(e) [~~(d)~~] Supplemental examination fees [~~examinations~~].

(1) If the commissioner or deputy commissioner schedules a special examination in addition to the regular examination, the credit union is subject to a supplemental charge to cover the cost of time and expenses incurred in the examination [~~shall pay a supplemental fee of $36 for each hour of time expended on the examination~~].

(2) The credit union shall pay a supplemental fee of $40 for each hour of time expended on the examination. The commissioner may waive the supplemental fee or reduce the fee , individually or collectively, as he deems appropriate. Such waiver or reduction shall be in writing and signed by the commissioner. The department [~~examiner in charge~~] shall fully explain the time and charges for each special examination to the president or designated official in charge of operations of a credit union.

[~~(e) Liquidations. Credit unions in liquidation shall pay an annual operating fee of $100.~~]

(f) Foreign credit union [~~Out of state~~] branches. Credit unions operating branch offices in Texas as authorized by §91.210 of this title (relating to Certificate of Authority to Do Business in the State of Texas) shall pay an annual operating fee of $500 [~~$200~~] per branch office.

(g) Credit union conversion fee. A credit union organized under the laws of the United States or of another State that converts to a credit union organized under the laws of this State shall remit to the department [~~Credit Union Department~~] an annual operating fee within 30 days after the issuance of a charter by the commissioner. The schedule provided in subsection (b) shall serve as the basis for calculating the operating fee. All provisions set forth in subsection (b) shall apply to converting credit unions with the following exceptions:

(1) Should the effective date of the conversion fall on or after October 31, the base date shall be the calendar quarter end immediately preceding the issuance date of a charter by the commissioner.

(2) The amount of the operating fee calculated under this section will be prorated based upon the number of full months remaining until September 1. For example, should the effective date of the conversion be January 31, the converting credit union will remit seven-twelfths of the amount of the operating fee calculated using December 31 base date.

(3) Any fee received more than 30 days after the issuance of a charter will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(h) In the event a credit union in existence as of June 30 merges or consolidates with another credit union and the merger/consolidation is completed on or before September 1, the surviving credit union

shall remit to the department the amount that the merging/consolidating credit union would have paid if it had still been in existence on September 1.

(i) Special assessment. The commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.

(j) Foreign credit union fee for field of membership expansion. A foreign credit union applying to expand its field of membership in Texas shall pay a fee of $200. This fee shall be paid at the time of filing to cover the cost of processing the application. In addition, the applicant shall pay any cost incurred by the department in connection with a hearing conducted at the request of the applicant.

(k) Foreign credit union examination fees.

(1) If the commissioner schedules an examination of a foreign credit union, the credit union is subject to supplement charges to cover the cost of time and expenses incurred in the examination.

(2) The foreign credit union shall pay a fee of $40 for each hour of time expended by each examiner on the examination. The commissioner may waive the examination fee or reduce the fee as he deems appropriate.

(3) The foreign credit union shall also reimburse the department for actual travel expenses incurred in connection with the examination, including mileage, public transportation, food, and lodging in addition to the fee set forth in paragraph (2) of this subsection. The commissioner may waive this charge at his discretion.

(l) Contract Services. In addition, the commissioner may charge, or otherwise cause to be paid by, a credit union, a foreign credit union or related parties the actual cost incurred by the Department for an examination or a review of all or part of the operations or activities of a credit union, a foreign credit union or related parties that is performed under a personal services contract entered into between the Department and third parties.

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 June 19, 2001.

TRD-200103470
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 837-9236

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7 TAC §97.114

The Texas Credit Union Commission proposes amendments to §97.114 pertaining to charges for public records. The amendments, if adopted, would do the following: (1) tie the rates to those allowed under the rules of the General Services Commission; (2) reduce the per-page charge for local facsimile transmissions and establish per-page charges for long distance transmissions; (3) allow the Department to charge a service fee for personnel time spent locating, copying, preparing, and/or certifying documents of more than 50 pages; and (4) allow the Department to collect for delivery charges. A new subsection is also proposed to establish guidelines for complying with records requested under the Open Records Act.

Section 2001.039 of the Government Code requires each state agency to review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The review must include an assessment of whether the reasons for initially adopting the rule continue to exist. The previous review of this rule occurred in 1998, and notice of the rule's readoption by the Commission without change was published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11174).

Notice of the Commission's intent to review this rule was published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2547). No comments were received. However, after conducting a preliminary review, the Commission has determined that the above-described amendments are necessary and appropriate.

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

Ms. Pool has also determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated will be that persons requesting Department records will know with certainty what they will be charged for obtaining those records. There will be no effect on small businesses as a result of adopting this section. There is no anticipated impact on local employment.

Written comments on the proposed amendments must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of Finance Code 15.402. The Commission interprets this section as authorizing it to adopt rules necessary for administering Chapter 15, Title 2, including §15.409 which requires the Commissioner to make certain information available to the public.

The specific section affected by the proposed amendments to this rule is Finance Code §15.409 pertaining to consumer information and complaints.

§97.114. Charges for Public Records.

(a) Reproduction [~~Copying~~] Charges. [~~The charge for providing copies~~] Copies of documents not excepted from disclosure by the Texas Public Information Act (Government Code, Chapter 552) may be obtained upon written request to the department at rates [~~shall be in accordance with rules~~] established by the General Services Commission in 1 TAC §§111.61-111.70 (relating to Copies of Public Information) or other applicable law.

(b) Charge for Fax Transmittal. On request, the agency may transmit a form or other document by facsimile (FAX) machine to the person making the request. The charge for this service is $0.10 [~~$2.00~~] per page for local telephone delivery, $.50 per page for telephone delivery within the same area code, and $1.00 per page for telephone delivery to a different area code, excluding any cover or transmittal page.

(c) Service Charges.

(1) For copies of more than 50 pages of readily available information, a charge of $15 per hour of personnel time spent locating, copying, and preparing the information for delivery or inspection shall be added to charges specified by subsections (a) and (b) of this section.

(2) For copies of information that is not readily available, a charge of $15 per hour of personnel time spent locating, copying,

redacting confidential information, and preparing the information for delivery or inspection including computer time, if applicable, plus $3.00 per hour for overhead, plus $.50 per minute of computer time (if applicable) shall be added to the charges specified by subsections (a) and (b) of this section.

(3) If certification of copies is requested, an additional charge of $5.00 per document will be added to the computed fee.

(4) If the anticipated charges under this section exceed $100, the department may require a bond for payment of costs or cash prepayment equal to the total anticipated charges prior to release of the requested information.

(d) Delivery charges.

(1) U.S. mail. When copies are required to be mailed, the cost of postage will be added to the computed fee.

(2) Expedited delivery. When copies are required to be sent by overnight courier or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor furnishes a recipient billing number for use by the department in delivering the copies to the carrier.

(e) Request for Information. The following guidelines apply to requests for records under the Open Records Act (Government Code, Chapter 552).

(1) Request must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the department.

(4) Generally, unless confidential information is involved, review may be by physical access or by duplication, at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will only be provided the option of receiving copies by duplication.

(5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication unless required by a court order or Attorney General directive.

(f) [~~(c)~~] Waiver of Fees or Charges [~~for Copies or Publications~~]. The commissioner may waive or reduce an established charge when, in his or her discretion, a waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public. The fee may also be waived if the cost of processing the collection of a charge will exceed the amount of the charge.

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 June 19, 2001.

TRD-200103471
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 837-9236

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.83

The Railroad Commission of Texas proposes an amendment to §3.83, regarding tax exemption for two-year inactive wells and three-year inactive wells. The proposed amendment reflects changes in the Texas Tax Code, §202.056, extending the time to designate wells that qualify for a tax exemption as two-year inactive wells. Wells can qualify for a ten-year severance tax exemption on subsequent oil and gas production if they have had no more than one month of production in the two-year period prior to application to the Comptroller for tax exemption.

The proposed amendment implements the statutory change allowing certifications to continue until February 28, 2010. An operator seeking two-year inactive well designation must apply or have applied for certification during the period between September 1, 1997, through August 31, 2009.

The Commission simultaneously proposes the review and readoption of this rule, with the proposed changes, in accordance with Tex. Gov't Code §2001.039. The agency's reasons for adopting this rule continue to exist. The notice of proposed review was filed with the *Texas Register* concurrently with this proposal.

Scott Petry, hearings examiner, Office of General Counsel, has determined that, for the time period for which the proposed section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule. These effects, however, are anticipated to be negligible because the amendment is for a continuation of the incentive program, which already has an administrative structure in place, and the existing staff have already encountered, and adapted to, program adjustments. There will be no effect on local government.

Mr. Petry has also determined that this incentive program has already benefitted and will continue to benefit the public through increased oil and gas production. This production may not have been economically feasible but for the tax incentive program. Furthermore, the tax benefit, and the accompanying production from previously inactive wells, has contributed to a greater supply of energy, created increased business and employment opportunities in oil and gas related industries, and has contributed to the more efficient allocation of existing natural resources. Extending the severance tax incentive program will continue these benefits and will provide for a more efficient oil and gas production system.

Participation in this program will be voluntary, but the cost of compliance for individuals, small businesses, and micro- businesses may include the following: servicing will be required for most wells to be brought back into production; any operator wishing to participate in the incentive will be required to file a request for certification; and, if the request is denied administratively, the operator may request and participate in a hearing. These costs cannot be estimated because they vary according to each operator's situation. The exemption will benefit producers and the general public by delaying the untimely plugging of wells capable of production.

Because the Legislature has extended the time period for this program by amending the Tax Code, the Commission proposes a shorter comment period. Comments may be submitted to Scott Petry, Hearings Examiner, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, or via electronic mail to scott.petry@rrc.state.tx.us. Comments will be accepted for 15 days after publication in the *Texas Register*. Comments should refer to the docket number of this rulemaking proceeding: 20-0227487. For further information, call Mr. Petry at (512) 463-6768.

The Commission proposes the amendment under the Texas Tax Code, §202.056, which directs the Commission to adopt all rules necessary to administer the section.

Texas Tax Code, §202.056, is affected by the proposed amendment.

Issued in Austin, Texas on June 21, 2001.

§3.83. Tax Exemption for Two-Year Inactive Wells and Three-Year Inactive Wells.

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

(e) Certified Wells.

(1) (No change.)

(2) Two-year inactive wells. The commission may not designate a two-year inactive well under this section after February 28, 2010 [~~February 29, 2000~~]. An application for two-year inactive well certification shall be made during the period of September 1, 1997, through August 31, 2009 [~~August 31, 1999~~], to qualify for the tax exemption. Certification will be issued upon the filing of a test report showing the well's capability and an approval of application for certification. Production is presumed to begin on the well test date as reported on the appropriate report. The certification shall remain with the well in the event of a change of operator or ownership.

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 June 21, 2001.

TRD-200103520
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 475-1295

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CHAPTER 9. LIQUEFIED PETROLEUM GAS DIVISION

The Railroad Commission of Texas proposes amendments to §§9.2, 9.7, 9.17, 9.26, 9.36, 9.136, 9.140, 9.142, 9.403, and 9.506, relating to Definitions; Application for License and License Renewal Requirements; Designation and Responsibilities of Company Representatives and Operations Supervisors; Insurance Requirements; Report of LP-Gas Incident/Accident; Filling of DOT Containers; Uniform Protection Standards; LP-Gas Container Storage and Installation Requirements; Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections; and Sections in NFPA 51 Adopted with Additional or Alternative Language. The main purpose of the rulemaking is to update the rules based on legislative changes to the Commission's authorizing statutes made during the 77th legislative session (2001). The proposed amendments in §§9.36, 9.136, 9.140, 9.142, 9.506 and some of the amendments to the table in §9.403 result from discussions at the Commission's meetings of the LP-Gas Advisory Committee and the Cylinder Exchange Task Force, held in December 2000 and January 2001, as well as recommendations from a member of the Commission's LP-Gas Welding Advisory Committee. These amendments are made for clarification and the Commission does not anticipate any increased burden or costs associated with these amendments.

The Commission proposes two amendments in §9.2. The first amendment adds a definition for "categories of LPG activities," which is necessary because of statutory changes in Senate Bill (SB) 310 which removed the license categories and letter designations from the statute. This change allows the license categories described in §9.6 to remain as they are. The second amendment is in the definition of "company representative" and is necessary due to SB 1015 relating to Category P license operations which removed the requirement for a company representative of a Category P license to actively supervise the conduct of the licensee's LP-gas activities. This change will by definition exempt a company representative of a Category P license to actively supervise the conduct of the licensee's LP- gas activities.

The Commission's proposed amendments in §9.7 are necessary because of statutory changes in SB 310 and SB 1015 relating to license and license renewal requirements, as well as some grammatical changes and wording changes to bring the rule in line with the statutes. The first amendment adds a cross-reference to §9.17 to clarify management-level examination requirements. The second amendment, in subsection (f), reflects the statute and requires the notification in writing to the address on file with the Commission of the impending license expiration at least 30 days before the date a person's license is scheduled to expire, instead of 15 days currently in the rule. The remaining amendments reflect changes in SB 310. The amendment to §9.7(f)(1) requires a renewal fee of 1 1/2 times the renewal fee required by §9.6 if a person's license has expired for 90 calendar days or fewer and changes the time limit for license expiration, suspension, or revocation from two years to one year. The amendment in §9.7(f)(2) requires a renewal fee of two times the renewal fee required by §9.6 if a person's license has expired for more than 90 calendar days and also changes the time limit for license expiration, suspension, or revocation from two years to one year. The amendment in §9.7(f)(3) requires a person whose license has expired for more than one year, changed from two years, to comply with all requirements for issuance of a new license. The amendment in §9.7(f)(4) exempts a person previously licensed in this state but who currently lives in another state and is currently licensed and has been in practice in the other state for the two years preceding the date of application from reexamination for licensing, and requires the person to pay a fee to the Commission that is equal to two times the renewal fee required by §9.6.

The Commission's proposed amendments to §9.17 are necessary because of statutory changes in SB 1015 which change current requirements for company representatives and operation supervisors for a Category P license. Subsection (a) as proposed exempts a Category P licensee from having one operations supervisor for each outlet as is currently required. Subsection (b)(2) exempts a company representative of a Category P licensee from being responsible for actively supervising all LP-gas activities conducted by the licensee. Subsection (c) exempts the

Category P operations supervisor from being an owner of or employee of the Category P licensee, from examination, and from actively supervising the LP-gas activities at a designated outlet. New subsection (d) requires, in lieu of an operations supervisor for a Category P licensee, the Category E, J, or other licensee that provides the cylinders to the Category P licensee to prepare and file a manual covering proper procedures for handling LP-gas in the portable cylinder exchange process with the Commission for its approval, to provide a copy of the approved manual to each outlet of the Category P licensee, and to provide Commission-approved training regarding the contents of the manual and to maintain records regarding the individuals of the Category P licensee trained. This subsection also allows for a 45-day period with which to comply with all requirements of §9.17(d) that is allowed by the statute. New subsection (e) makes the Category P licensee responsible for compliance. Subsection (f) authorizes the company representative to assign or remove any employee of the Category P licensee who does not comply with the LP-gas safety rules or who performs any unsafe LP-gas activity from LP-gas related activities performed under the license.

The Commission's proposed amendment to §9.26 affects only the table and is necessary because of statutory changes in SB 1015. The change to the table, in the first row, exempts Category P licensees from the workers compensation insurance or alternative requirement as is currently required.

The Commission's proposed amendment to §9.36 adds new subsection (e) due to a request from the LP-Gas Advisory Committee at a meeting held January 11, 2001. New 9.36 (e) requires the Category P licensee to immediately notify the Category E, J, or other licensee who supplies cylinders to the Category P licensee of any reportable accident or incident, and requires the Category E, J, or other licensee to report the accident or incident to the Commission.

The Commission's proposed amendment to §9.136(a) will increase the safety of filling DOT cylinders by weight. The amendment adds the accepted formula used for determining the setting of a scale when weighing a DOT cylinder of less than 101 pounds LP-gas capacity as required by current rule to be placed in the LP-gas safety rules. This formula was in a previous Commission rule and will provide the LP-gas industry and other interested parties with written instructions for setting a scale when filling a DOT cylinder of less than 101 pounds LP-gas capacity. This amendment will strengthen the current rule by providing the correct method for setting scales to be used during the filling of certain DOT cylinders which should result in greater safety by allowing greater access to the formula for setting the scales.

The Commission's proposed amendments to §9.140 will provide uniformity when exempting the guardrailing and fencing requirements for certain LP-gas installations as currently required in the LP-gas rules for fencing only, and to address recommendations from the Commission's Cylinder Exchange Task Force at its meeting held December 18, 2000, concerning certain protection requirements for retail portable cylinder exchange racks. The amendments pertaining to the exemption of certain LP- gas installations from the fencing requirements move the current exemptions from §9.140(d)(7) to §9.140(b) and results in the exemptions applying to both the fencing and guardrailing requirements. The amendments pertaining to the retail portable cylinder exchange racks are as follows. The wording in §9.140(h)(3)(A) currently exempts retail portable cylinder exchange racks from guardrail or guardpost requirements if the cylinder rack is located against a building. The amendment adds the wording "or attached structure" after the word building. This additional wording allows a cylinder rack to be exempt from the guardrail and guardpost requirements when located against a structure (such as a fenced-in garden center at a home improvement or other retail store) as well as a building which will allow for greater flexibility in the installation of the cylinder racks without compromising safety. The new wording in §9.140(h)(4) is added to allow for the exemption of a wheelstop if a curb is at least six inches tall and the cylinder exchange rack is at least 48 inches away from the curb. The current rule requires a six-inch wheelstop to be installed 48 inches from a cylinder exchange rack when the rack is located on a walkway that is four inches in height above the grade of the parking space or driveway, installed against a building, and is not protected with guardrailing or guardposts. The proposed amendment will allow the exclusion of the wheelstop if the cylinder exchange rack is 48 inches away from the edge of a curb. This will allow greater flexibility for industry to install cylinder exchange racks without compromising safety.

The Commission's proposed amendment to §9.142 clarifies the current rule, which requires that containers shall be stored or installed in accordance with the distance requirements in NFPA 58, 3-2.2. This change was recommended by a member of the Commission's LP-Gas Welding Advisory Committee to clarify requirements for welding and cutting activities. Along with the amendment to §9.142, a section of NFPA 58 (3-4.5.1) is added to the table in §9.403; this clarifying change is discussed in the following explanation of changes to §9.403. Language is also added to §9.506 to refer to NFPA 58 3-4.5.1.

The Commission's proposed changes to the table in §9.403 will reduce the number of Texas exceptions to NFPA 58 and bring the Texas rules more in line with the 1998 edition of NFPA 58 which is a goal of the LP-Gas Section. In particular, the changes to the table are as follows:

1. A new entry for 3-2.2.7 is proposed to be added to the table with one change to the version in NFPA 58. The change will add a cross-reference to NFPA 58 5-4.1, also to be added to the table, to clarify some requirements for cylinder exchange racks recommended by the Commission's Cylinder Exchange Task Force.

2. A new entry for 3-4.5.1 is proposed to be added to the table and adopted with two changes. These changes are made in conjunction with changes to §§9.142 and 9.506 and clarify an exception for the use of LP-gas in welding or cutting applications. The language allows the use of LP-gas inside buildings for these specific applications and states that each LP-gas cylinder used for this purpose shall not exceed nominal 239 pound water capacity and that all other LP-gas safety rules, including those adopted in NFPA 58, shall apply.

3. A new entry for 5-4.1 is proposed to be added to the table and adopted with one change. The change adds a new subsection (f) to 5-4.1 to require combustible materials and sources of ignition to be at least five feet away from any cylinder exchange rack. This amendment was recommended by the Commission's LP-Gas Advisory Committee and addresses two situations not covered elsewhere in NFPA 58.

Byron Caffey, Assistant Director, LP-Gas Section, Gas Services Division, has determined that, for each year of the first five years that the amendments are proposed to be in effect, there will be

fiscal implications for state or local governments. For the Commission, these will involve publishing and distributing new rulebooks, revising rules examinations, changing material for training and continuing education courses, reprogramming various computer-generated reports and data bases, and retraining staff, including field inspectors. These costs cannot be calculated, but will be handled through the regular budget and duties of the LP-Gas Section with nominal charges to licensees and the general public for purchase of new Commission rulebooks. Currently the Commission's LP-gas rulebooks cost $11.00. There may be similar fiscal implications for local governments which rely on Commission safety standards; these costs are not calculable, but at a minimum will include purchase of new rulebooks and possibly retraining inspection staff.

Mr. Caffey has also determined that, for each year of the first five years the amendments are proposed to be in effect, the public benefit anticipated as a result of enforcing the amendments will be improvement in safety and clarification of requirements.

There is an anticipated economic cost to individuals, small businesses, or micro-businesses required to comply with some of the proposed amendments. There may also be some savings for those required to comply. All amendments not specifically discussed in the following paragraphs have a negligible economic impact.

There may be some costs associated with some of the amendments. Proposed §9.17 requires Category E licensees that provide the portable cylinders to the Category P licensees to provide a standard-operating-procedure (SOP) manual and training for each Category P outlet they supply as well as to maintain records on the individuals trained. There are currently an estimated 450 Category P branch outlets. The costs relating to these requirements are primarily labor and other related costs and cannot be determined.

There may be some savings associated with some of the amendments. Proposed §9.17 exempts a Category P licensee from the operations supervisor requirements. There are approximately 450 Category P branch outlets in the state. The cost of a Category P management examination is $50.00. The Commission cannot estimate the future savings of this amendment because the Commission cannot determine the expected turnover rate of supervisors at branch outlets, nor can it accurately predict how many branch outlets will be added in future years. Category P licensees will have some savings through eliminating the travel and examination costs for operations supervisors.

Proposed §9.26 exempts the Category P licensees from worker compensation or alternative insurance requirements. The cost for this type of coverage fluctuates greatly and is subject to various factors which the Commission cannot predict.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket No. 1663. For more information, call Mr. Caffey at (512) 463-6931.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2, 9.7, 9.17, 9.26, 9.36

The amendments are proposed, pursuant to the Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; §113.052, which authorizes the commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association; and Senate Bills 310 and 1015, 77th Legislature (2001).

The Texas Natural Resources Code, §§113.051 and 113.052, and Senate Bills 310 and 1015 are affected by the proposed amendments.

Issued in Austin, Texas on June 21, 2001.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Categories of LPG activities--The LP-gas license categories as specified in §9.6 of this title (relating to Licenses and Fees).

(7) [~~(6)~~] Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(8) [~~(7)~~] CETP--The National Propane Gas Association's Certified Employee Training Program.

(9) [~~(8)~~] Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(10) [~~(9)~~] Commission--The Railroad Commission of Texas.

(11) [~~(10)~~] Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(12) [~~(11)~~] Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(13) [~~(12)~~] Continuing education--Courses required to be successfully completed at least every four years by certain certificate holders.

(14) [~~(13)~~] DOT--The United States Department of Transportation.

(15) [~~(14)~~] Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, or, for purposes of this chapter, an owner-employee.

(16) [~~(15)~~] Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(17) [~~(16)~~] Licensed--Authorized to perform LP-gas activities through the issuance of a valid license.

(18) [~~(17)~~] Licensee--A person which has applied for and been granted an LP-gas license by the Commission.

(19) [~~(18)~~] LP-Gas Safety Rules --The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at www.sos.state.tx.us or through the Commission's web site at www.rrc.state.tx.us.

(20) [~~(19)~~] LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(21) [~~(20)~~] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(22) [~~(21)~~] Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(23) [~~(22)~~] Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(24) [~~(23)~~] Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(25) [~~(24)~~] Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(26) [~~(25)~~] Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations.

(27) [~~(26)~~] Outlet--A site operated by an LP-gas licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license.

(28) [~~(27)~~] Outside instructor--An individual other than a Commission employee approved by the Commission to teach an LP-gas continuing education course.

(29) [~~(28)~~] Person--An individual, partnership, firm, corporation, joint ventureship, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(30) [~~(29)~~] Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(31) [~~(30)~~] Property line--The boundary which designates the point at which one real property interest ends and another begins.

(32) [~~(31)~~] Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(33) [~~(32)~~] Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(34) [~~(33)~~] Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(35) [~~(34)~~] Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current LP-Gas Safety Rules.

(36) [~~(35)~~] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(37) [~~(36)~~] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(38) [~~(37)~~] Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(39) [~~(38)~~] Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(40) [~~(39)~~] Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(41) [~~(40)~~] Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(42) [~~(41)~~] Training--Courses required to be successfully completed as part of an individual's requirements to obtain certain new certificates.

(43) [~~(42)~~] Transfer--The procedure to inform the Commission of a change in operator of an LP-gas transport or container delivery unit already registered with the Commission.

(44) [~~(43)~~] Transfer system--All piping, fittings, valves, and equipment utilized in dispensing LP-gas between containers.

(45) [~~(44)~~] Transport--Any bobtail or semitrailer equipped with one or more containers.

(46) [~~(45)~~] Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(47) [~~(46)~~] Ultimate consumer--The individual controlling LP-gas immediately prior to its ignition.

§9.7. Application for License and License Renewal Requirements.

(a) No person shall perform work or be employed in any capacity requiring contact with LP-gas until that individual has taken and passed any [~~the~~] applicable rules examination specified in §9.10 of this title (relating to Rules Examination) and in §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors, and, except for a trainee described in §9.12 of this title (relating to Trainees), has successfully completed the training requirements beginning in §9.51 of this title (relating to General Requirements for Training and Continuing Education). Licensees, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and examination identification cards

for employees at that location available for inspection during regular business hours.

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

(f) For license renewals, the Commission shall notify the licensee in writing at the address on file with the Commission of the impending license expiration at least 30 calendar days before the date a person's license is scheduled to expire [~~at least 15 business days prior to the expiration date~~]. The renewal notice shall include copies of LPG Forms 1, 1A, 7, and 26, whichever are applicable, showing the information currently on file. Renewals shall be submitted to the Commission with any necessary changes clearly marked on the forms, along with the license renewal fee specified in §9.6 of this title (relating to Licenses and Fees) and any applicable transport registration fee specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) on or before the last day of the month in which the license expires in order for the licensee to continue LP-gas activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas activities authorized by the license. After verification, if the licensee has met all other requirements for licensing, the Commission shall renew the license, and the person may resume LP-gas activities.

(1) If a person's license has been expired for [~~fewer than~~] 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required by §9.6 of this title (relating to Licenses and Fees) [~~late-filing penalty of one-half the amount of the annual renewal fee in addition to the required annual renewal fee~~]. Upon receipt of the [~~annual~~] renewal fee [~~and late-filing penalty~~], the Commission shall verify that the person's license has not been suspended, revoked, or expired for more than one year [~~two years~~]. After verification, if the licensee has met all other requirements for licensing, the Commission shall renew the license, and the person may resume LP-gas activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year [~~two years~~], the person shall submit a renewal fee that is equal to two times the renewal fee required by §9.6 of this title [~~late-filing penalty equal to the amount of the annual renewal fee in addition to the required annual renewal fee~~]. Upon receipt of the [~~annual~~] renewal fee [~~and late-filing penalty~~], the Commission shall verify that the person's license has not been suspended, revoked, or expired for more than one year [~~two years~~]. After verification, if the licensee has met all other requirements for licensing, the Commission shall renew the license, and the person may resume LP-gas related activities.

(3) If a person's license has been expired for one year or more [~~than two years~~], that person shall not renew, but shall comply with the requirements for issuance of an original [~~a new~~] license.

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to the Commission a fee that is equal to two times the renewal fee required by §9.6 of this title.

(A) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(B) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title (relating to Insurance Requirements) and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(g) (No change.)

§9.17. Designation and Responsibilities of Company Representatives and Operations Supervisors.

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

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

(5) A licensee shall immediately notify the Commission in writing upon termination, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement by submitting a new LPG Form 1 for a new company representative or a new LPG Form 1A for a new operations supervisor.

(A) A licensee shall cease all LP-gas activities if, at the termination of its company representative, there is no other qualified company representative of the licensee who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities until such time as it has a properly qualified company representative or it has been granted an extension of time in which to comply as specified in subsection (f) [~~(e)~~] of this section.

(B) A licensee shall cease LP-gas activities at an outlet if, at the termination of its operations supervisor for that outlet, there is no other qualified operations supervisor at that outlet who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities at that outlet until such time as it has a properly qualified operations supervisor or it has been granted an extension of time in which to comply as specified in subsection (f) [~~(e)~~] of this section.

(b) Company representative. A company representative shall comply with the following requirements:

(1) be an owner or employee of the licensed entity;

(2) be the licensee's principal individual in authority and, in the case of a licensee other than a Category P licensee, responsible for actively supervising all LP-gas activities conducted by the licensee, including all appliance, container, portable cylinder, product, and system activities;

(3) - (7) (No change.)

(c) Operations supervisors. An operations supervisor, in the case of a licensee other than a Category P licensee, shall comply with the following requirements:

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

(d) In lieu of an operations supervisor requirement for a Category P license, the Category E, J, or other licensee providing the Category P licensee with portable cylinders for exchange shall be required to:

(1) prepare a manual containing, at a minimum, the following:

(A) a description of the basic characteristics and properties of LP-gas;

(B) an explanation of the various parts of an LP-gas cylinder, including what the purpose of each part is and how to operate the cylinder valve;

(C) complete instructions on how to properly transport cylinders in vehicles;

(D) a prohibition against moving or installing cylinder cages at any store location;

(E) a prohibition against taking or storing inside a building any cylinders that have or have had LP-gas in them;

(F) a requirement that all cylinders containing LP-gas be stored in a manner so that the relief valve is in the vapor space of the cylinder;

(G) a requirement that the employees who handle the cylinders know the location within the store of the manual and know the contents of the manual;

(H) instructions related to any potential hazards that may be specific to a location, including but not limited to the proper distancing of cylinders from combustible materials and sources of ignition;

(I) detailed emergency procedures regarding a leaking cylinder, including all applicable emergency contact numbers;

(J) a requirement that any accidents be reported to the Category E, J, or other licensee who prepares the manual, and detailed procedures for reporting any accidents;

(K) all Railroad Commission rules applicable to the Category P license, including the requirement that the Category P licensee is responsible for complying with all such rules;

(L) all provisions of Subchapter H ("Enforcement") of Chapter 113 of the Texas Natural Resources Code;

(M) a detailed description of the training provided to each employee of the Category P licensee who may be engaged in any activities covered by the Category P license; and

(N) a page for the signatures, printed names and dates of training for each individual trained at each outlet on this manual.

(2) provide a copy of the manual for display at each outlet or location of the Category P licensee;

(3) provide training as to the contents of the manual to each employee who may be engaged in any activities covered by the Category P license at all outlets or locations of the Category P licensee and maintain records regarding the employees of the Category P licensee who have been trained; and

(4) complete all three requirements of this subsection, for existing Category P licensees, prior to October 25, 2001, and within 45 days of any Category P license obtained on or after September 1, 2001.

(e) The Category P licensee is responsible for the following:

(1) insuring that each employee who is involved with the activities covered by the Category P license is knowledgeable about the contents of the manual and has signed and dated the signature page of the manual; and

(2) insuring that each such employee is aware of the location of the manual and can show the manual to employees of the Commission upon their request.

(f) [~~(d)~~] Category P licensees. The company representative requirement for a Category P licensee may be satisfied by employing a Category E, J, or other [~~or J~~] licensee company representative if the Category E, J, or other [~~or J~~] company representative is authorized by the Category P licensee to assign and remove any employee who does not comply with the LP-Gas Safety Rules or who performs any unsafe LP-gas activities.[~~:~~]

[~~(1) is an employee of the Category P licensee; and~~]

[~~(2) is authorized by the Category P licensee to assign and supervise the LP-gas activities of any employee, including removing any employee who does not comply with the LP-Gas Safety Rules or who performs any unsafe LP-gas activities.~~]

(g) [~~(e)~~] Work experience substitution for Category E and I. The assistant director may, upon written request, allow a conditional qualification for a Category E or I company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E or I training course, or one agreed on by the assistant director and the applicant. The written request shall include a description of the individual's LP-gas experience and other related information in order that the assistant director may properly evaluate the request. If the individual fails to complete the training requirements within the time granted by the assistant director, the conditional qualification shall immediately be voided and the conditionally qualified company representative or operations supervisor shall immediately cease all LP-gas activities. Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title (relating to Training and Continuing Education Courses) prior to the Commission issuing a certificate.

§9.26. Insurance Requirements.

(a) LP-gas licensees or applicants for license shall comply with the minimum amounts of insurance specified in Table 1 of this section. Applicants shall submit a valid certificate of insurance with the Commission before it grants or renews a license, and a valid certificate of insurance shall remain in effect during the entire period that the license is in effect.
Figure: 16 TAC §9.26(a)

(b) - (i) (No change.)

§9.36. Report of LP-Gas Incident/Accident.

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

(e) In the case of an accident or incident at a Category P licensee's location, the Category P licensee shall immediately notify the Category E, J, or other licensee who supplies cylinders to the Category P licensee and the Category E, J, or other licensee shall be responsible for making the accident or incident report to the Commission as specified in this section.

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 June 21, 2001.

TRD-200103516
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 475-1295

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SUBCHAPTER B. STATIONARY INSTALLATIONS AND CONTAINER REQUIREMENTS

16 TAC §§9.136, 9.140, 9.142

The amendments are proposed, pursuant to the Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; §113.052, which authorizes the commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association; and Senate Bills 310 and 1015, 77th Legislature (2001).

The Texas Natural Resources Code, §§113.051 and 113.052, and Senate Bills 310 and 1015 are affected by the proposed amendments.

Issued in Austin, Texas on June 21, 2001.

§9.136. Filling of DOT Containers.

(a) DOT containers of less than 101 pounds LP-gas capacity, other than containers designed to be used on forklift or industrial trucks, shall be filled by weight only. The weight of such containers shall be determined by scales that meet the specifications of the National Institute of Standards and Technology's Handbook 44. Scales at licensees' facilities shall be currently registered with the Texas Department of Agriculture. The scales shall have a rated weighing capacity which exceeds the total weight of the cylinders being filled. The scales shall be accurate during the filling of the cylinder. The formula for filling LP-gas containers by weight under this section is as follows:

(1) The propane capacity in pounds is determined by multiplying the total water capacity in pounds by .42.

(2) Add the tare weight of a cylinder to the liquid weight of the product plus the weight of the hose and nozzle. The total weight of these three is the proper scale setting.

(b) (No change.)

§9.140. Uniform Protection Standards.

(a) LP-gas transfer systems and storage containers shall be protected from tampering and/or vehicular traffic as specified in this section. New LP-gas containers which have never been installed or had LP-gas introduced into them, or other installations listed in paragraphs (1) - (4) of this subsection, are not required to comply with the fencing and guardrailing requirements in subsections (b) and (c) of this section. The fencing and guardrailing requirements also do not apply to the following:

(1) LP-gas systems and containers located at private residences;

(2) LP-gas systems and containers which service vapor systems where the aggregate storage capacity of the installation is less than 4,001 gallons, unless the LP-gas system, transfer system, or container is subject to tampering or vehicular traffic;

(3) LP-gas piping which contains no valves and which complies with all other applicable LP-Gas Safety Rules; and

(4) LP-gas storage containers located on a rural consumer's property from which motor or mobile fuel containers are filled.

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

(d) In addition to NFPA 58, §3-2.4.1(c), §3-2.4.8(a), (b), and (d), §3-2.4.9(d), §3-3.6, §3-9.3.8, and §5-4.2.1, guardrails at LP-gas installations, except as noted in subsection (a) of this section [~~paragraph (7) of this subsection~~], shall comply with the following:

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

[~~(7) The requirements of this subsection do not apply to the following:~~]

[~~(A) LP-gas systems and containers located at private residences;~~]

[~~(B) LP-gas systems and containers which service vapor systems where the aggregate storage capacity of the installation is less than 4,001 gallons, unless the LP-gas system, transfer system, or container is subject to tampering or vehicular traffic;~~]

[~~(C) LP-gas piping which contains no valves and which complies with all other applicable LP-Gas Safety Rules; and~~]

[~~(D) LP-gas storage containers located on a rural consumer's property from which motor or mobile fuel containers are filled.~~]

(e) - (g) (No change.)

(h) In addition to NFPA 58, §5-4.2.2, storage racks used to store nominal 20-pound DOT portable or any size forklift containers shall be protected against vehicular damage by:

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

(3) Guardrail or guardposts are not required to be installed if:

(A) any portable cylinder exchange rack is located against a building or attached structure;

(B) - (E) (No change.)

(4) A wheelstop is not required to be installed if a curb is at least six inches tall and the cylinder exchange rack is at least 48 inches away from the curb.

(5) [~~(4)~~] If exceptional circumstances exist or will exist at the location of a storage rack which would require additional protection such as larger-diameter guardrailing or guardposts, then the licensee or operator of the installation shall install such additional protection. In addition, the Commission at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Commission shall notify the person in writing of the specific additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Commission's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Commission or removed from service with all product withdrawn from it until the Commission's final decision.

§9.142. LP-Gas Container Storage and Installation Requirements.

Except as noted in this section, LP-gas containers shall be stored or installed in accordance with the distance requirements in NFPA 58, §3-2.2 and the entries for §3-2.2.7 and §5-4.1 as indicated in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections) and any other applicable requirements in NFPA 58 or the *LP-Gas Safety Rules*.

(1) - (2) (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 June 21, 2001.

TRD-200103517
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 475-1295

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §9.403

The amendments are proposed, pursuant to the Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; §113.052, which authorizes the commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association; and Senate Bills 310 and 1015, 77th Legislature (2001).

The Texas Natural Resources Code, §§113.051 and 113.052, and Senate Bills 310 and 1015 are affected by the proposed amendments.

Issued in Austin, Texas on June 21, 2001.

§9.403. Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules, or with corrections listed in the Errata dated June 1, 1998, issued by NFPA to correct typographical or other errors in the published NFPA 58 pamphlet. According to NFPA, these errors may be corrected in future printings. Figure: 16 TAC §9.403(a)

(b) (No change.)

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

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TRD-200103518
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 475-1295

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SUBCHAPTER F. ADOPTION BY REFERENCE OF NFPA 51 (STANDARD FOR THE DESIGN AND INSTALLATION OF OXYGEN-FUEL GAS SYSTEMS FOR WELDING, CUTTING, AND ALLIED PROCESSES)

16 TAC §9.506

The amendments are proposed, pursuant to the Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; §113.052, which authorizes the commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association; and Senate Bills 310 and 1015, 77th Legislature (2001).

The Texas Natural Resources Code, §§113.051 and 113.052, and Senate Bills 310 and 1015 are affected by the proposed amendments.

Issued in Austin, Texas on June 21, 2001.

§9.506. Sections in NFPA 51 Adopted with Additional or Alternative Language.

(a) The following sections of NFPA 51 are adopted with the specified additional or alternative language:

(1) (No change.)

(2) In addition to the requirements of §1-1.5(a) and in the entry for 3-4.5.1 in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections), the use of a single cylinder of oxygen and a single cylinder of fuel gas shall comply with the manufacturer's instructions and any applicable LP-Gas Safety Rules. This equipment shall be maintained in a safe operating condition.

(3) - (21) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State, on June 21, 2001.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.7

The Texas State Board of Examiners of Psychologists proposes amendments to §461.7, concerning License Statuses. The amendments are being proposed in order to allow persons with a pending CE complaint who have a documented medical hardship to claim retired status.

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

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

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

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

§461.7. License Statuses.

(a) Active Status. Any person with a license on active status may practice psychology pursuant to that license. Any license that is not on inactive, delinquent, retired, resigned, void or revoked status is considered to be on active status. Active status is the only status under which a licensee may engage in the practice of psychology.

(b) Inactive Status.

(1) Persons who seek inactive status must return their license to the Board. A person may not engage in the practice of psychology under an inactive license.

(2) A person may place his/her active license on inactive status for a period of two years. Reactivation of this license may occur at any time during this two-year period without the person having to take an exam provided that the person has notified the Board and has paid the required fees. At the end of the two-year period, if the person has not been reactivated, the license automatically becomes void. The inactive status may be extended for additional increments of two years if, prior to the end of each two-year period, the person notifies the Board in writing that an extension is requested and submits proof to the Board of continuous licensure by a psychology licensing board in this or another jurisdiction for the past two-year period and payment of all required fees. A person may indefinitely remain on inactive status if he/she is licensed in this or another jurisdiction and complies with the extension requirements set forth in this paragraph. Any person wishing to reactivate his/her license that has been on inactive status for four years or more must take and pass the Jurisprudence Exam with the minimum acceptable score as set forth in Section 463.14 of this title (relating to Cutoff Scores) unless the person holds another license on active status with this Board.

(3) Any person who returns to active status after having been on inactive status must provide proof of compliance with Board Rule 461.11 of this title (relating to Continuing Education) before reactivation will occur.

(4) A person with a pending complaint may place a license on inactive status only with express permission from the Board. If disciplinary action is taken against a person's inactive license, the person must reactivate the license until the action has been terminated.

(c) Delinquent Status. A person who fails to renew his/her license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall be void (non-payment). A person may not engage in the practice of psychology under a delinquent license. The Board may sanction a delinquent licensee for violations of Board rules.

(d) Restricted status. Any license that is currently subject to disciplinary action and/or sanction is considered to be on restricted status. A person practicing under a restricted license must comply with any restrictions placed thereon by the Board.

(e) Retirement Status. A person who is on active or inactive status with the Board may retire by notifying the Board in writing prior to the renewal date for the license. A person seeking to retire after his or her renewal date must submit proof of compliance with the Board's continuing education requirement. A person with a pending complaint, a restricted license, or who is otherwise not in compliance with all applicable Board rules may not retire his or her license. Permission to retire will not be granted for the purpose of allowing a licensee to avoid compliance with Section 461.11 of this title (relating to Continuing Education) unless the licensee presents to the Board evidence of extreme medical hardship and the Board grants the request. A person who retires shall be reported to have retired in good standing.

(f) Resignation Status. A person may resign only upon express agreement by the Board. A person who resigns shall be reported as:

(1) Resigned in lieu of adjudication if permitted to resign while a complaint is pending;

(2) Resigned in lieu of further disciplinary action if permitted to resign while the license is subject to restriction; and

(3) Resigned in lieu of delinquency status if permitted to resign prior to voiding of the license due to failure to renew.

(g) Void (Non-Payment) Status. The Board may void any license that has been delinquent for 12 months or more or any inactive license that has expired. An individual may not engage in the practice of psychology under a void license. A license that has been voided may not be reinstated for any reason. A licensee whose license has been voided must submit a new application if he or she wishes to obtain a new license with the Board.

(h) Revoked Status. A license is revoked pursuant to Board Order requiring revocation as a disciplinary action.

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 June 18, 2001.

TRD-200103459
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 305-7700

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CHAPTER 465 RULES OF PRACTICE

22 TAC §465.2, §465.3

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.2 concerning Supervision and §465.3 concerning Providers of Psychological Services. The amendments are being proposed in order to organize the rules so that they are easier for licensees and the public to understand.

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 rule.

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

Comments on the proposals 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.

§465.2. Supervision.

(a) A licensee is responsible for the professional supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(b) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee and the type of psychological services.

(c) Licensees must be competent to perform any psychological services being provided under their supervision.

(d) Licensees shall document their supervision activities in writing.

(e) Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(f) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance.

(g) For purposes of this rule, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(h) Licensed psychological associates and provisionally licensed psychologists must be under the supervision of a licensed psychologist and may not engage in independent practice.

§465.3. Providers of Psychological Services.

(a) Psychologists shall employ or utilize an individual to provide psychological services, in any setting not specifically exempt under §501.004(a)(1) of the Psychologists' Licensing Act (the Act), only if:

(1) The individual is licensed by this Board; or

(2) The individual is specifically exempted from licensure requirements by §501.004(a)(2) of the Act, relating to provision of services as part of a supervised course of study by students, residents or interns pursuing a course of study in a recognized training institution or facility; or,

(3) The individual is engaged in post-doctoral supervision for purposes of satisfying §501.252(b)(2) of the Act; or

(4) The individual is completing supervised experience for purposes of satisfying §501.260(b)(3) of the Act, relating to Licensed Specialist in School Psychology.

(b) Unlicensed individuals providing psychological services pursuant to §501.004(a)(2), §501.252(b)(2), or §501.260(b)(3) of the Act must be under the direct supervision of an authorized supervising licensee at all times. All patients or clients who receive psychological services from an unlicensed individual under such supervision must be clearly informed of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

~~[(c) An individual may not provide psychological services under a license from this Board and services or activities under another professional license simultaneously. Patients and clients who receive services and activities provided by an individual who holds more than one professional license must be informed of the license under which the services and activities are being provided.]~~

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

Filed with the Office of the Secretary of State, on June 18, 2001.

TRD-200103456
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 305-7700

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22 TAC §§465.5, 465.25-465.31

(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 State Board of Examiners of Psychologists or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Examiners of Psychologists proposes the repeal of §§465.5, 465.25, 465.26, 465.27, 465.28, 465.29, 465.30, and 465.31 concerning Rules of Practice. The repeals are being proposed because the rules have been condensed into other existing rules.

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

Comments on the repeals 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 repeals 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 repeals do not affect other statutes, articles, or codes.

§465.5. Status of Licensed Psychological Associates and Provisionally Licensed Psychologists.

§465.25. Testing.

§465.26. Biofeedback.

§465.27. Projective Techniques.

§465.28. Career and Vocational Counseling.

§465.29. Hypnosis for Health Care Purposes and Hypnotherapy.

§465.30. Marriage and Family Counseling and Therapy.

§465.31. Alcohol and Substance Abuse Treatment.

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 June 18, 2001.

TRD-200103458
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §465.5

The Texas State Board of Examiners of Psychologists proposes new rule §465.5, concerning Practice of Psychology. The new rule is being proposed in order to organize and clarify the rules regarding multiple licensure and the practice of psychology.

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

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

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

The new rule 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 new rule does not affect other statutes, articles, or codes.

§465.5. Practice of Psychology.

(a) Multiple Licensure. Individuals may provide services allowed under the definition of practice of any active license(s) they hold. If a service such as, but not limited to, psychotherapy and family counseling, is allowed under more than one license, individuals may use those licenses simultaneously in treating a client. However, a licensee of the Board is liable for any service considered to be the practice of psychology, regardless of any other license the individual may be using. Similarly, if the licensee holds two licenses with this Board, any complaint or disciplinary action is directed to the licensee's psychology practice as a whole, as opposed to one or the other license. Additionally, individuals offering services outside the practice of psychology must avoid confusing or misleading clients by clearly identifying the license(s) or credentials under which services are being delivered.

(b) Practice of Psychology. The following activities are covered by the definition of the "provision of psychological services" in Board Rule 465.1(10). This list is not intended to be exhaustive, but includes examples of the activities that, when performed by a licensee, are subject to Board Rules:

(1) conducting or administering testing that requires the use of psychological education, training, knowledge, or skills;

(2) the provision of biofeedback when such provision involves the use of education, training, skills, or knowledge in psychology;

(3) projective techniques, including, but not limited to, Rorschach, Thematic Apperception Test, Roberts Apperception Test, Sentence Completion tests and Holtzman Ink Blot;

(4) career and vocational counseling;

(5) the practice of hypnosis and hypnotherapy for health care purposes;

(6) marriage and family counseling and therapy; and

(7) alcohol and substance abuse treatment.

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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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 305-7700

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TITLE 28. INSURANCE

PART 4. STATE OFFICE OF RISK MANAGEMENT

CHAPTER 251. STATE EMPLOYEES--WORKERS' COMPENSATION
SUBCHAPTER E. RISK ALLOCATION PROGRAM

28 TAC §§251.501, 251.503, 251.505, 251.507, 251.509, 251.511, 251.513, 251.515, 251.517, 251.519

The State Office of Risk Management, (the Office), proposes a new Subchapter E, §§251.501, 251.503, 251.505, 251.507, 251.509, 251.511, 251.513, 251.515, 251.517, and 251.519 governing the establishment of an allocation program for state agency workers' compensation and risk management costs (Allocation Program) and addressing the manner in which the cost of workers' compensation and risk management programs will be assessed to covered agencies.

The 77th Texas Legislature recently enacted House Bill 2976 which amended § 412.012 of the Labor Code and added new §§412.0121, 412.0122, 412.0123, and 412.0124 to the Texas Labor Code, Chapter 412. The Office proposes the new subchapter to implement new §412.0123, define terms used in new §412.0123, and establish the processes involved in allocating the costs of the program .

Section 251.501 specifies that the purpose of the rules is to implement the Allocation Program as required by Texas Labor Code, Chapter 412, §412.0123.

Section 251.503 defines terms used in the subchapter.

Section 251.505 sets forth the procedures the Office will use in determining the amount of expected losses and the amount that will be collected from all participating agencies.

Section 251.507 sets forth the factors and the formula that will be used to determine each participating agency's proportionate cost for paying for workers' compensation coverage. Staff is proposing a relative weighting and formula designed to fairly allocate the cost of risk which would establish the default value for the 2002 assessment.

Section 251.509 makes provision for participation in the workers' compensation program for agencies either omitted from the assessment process or newly created , establishes special circumstance calculations, and defines the scope of assessments and liability for such agencies.

Section 251.511 establishes the requirements for reports provided to, and by, the Office relating to the collection of workers' compensation assessments.

Section 251.513 establishes deadlines for payments to be received by the Office for agency assessments and permits an optional deadline for assessments paid from funds not held in the state treasury.

Section 251.515 sets forth the procedure by which program participants may request the Board of Directors of the Office consider new factors or modify the weighting of relevant factors in the assessment process.

Section 251.517 allows participating agencies to unitize elements of their organization for the purposes of internally allocating the cost of the agency's worker's compensation coverage.

Section 251.519 establishes the procedure for the re-appropriation of the existing claim fund to make the initial allocation revenue-neutral for program participants.

Jonathan D. Bow, General Counsel, has determined that for the first year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed rules. State agencies may see reduced or increased costs in subsequent years based on each agency's relative injuries and workers' compensation losses. Any additional costs for agencies to comply with the proposed subchapter result from the legislative enactment of §412.0123 and not from the proposed subchapter. The proposed subchapter is only applicable to state agencies and there will be no effect on large, small or micro-businesses. There is no impact on local employment or the local economy as a result of the proposal.

Mr. Bow has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit is that the Allocation Program will provide adequate funding for losses due to injuries to state employees and provide effective incentives to system participants to reduce injuries and losses to state workers to the benefit of taxpayers.

To be considered, written comments on the proposal must be received no later than 5 p.m. thirty days after date of publication. Comments should be delivered to Jonathan D. Bow, General Counsel, State Office of Risk Management, 300 W 15th St., 6th Floor, Austin, TX 78701, or P.O. Box 13777, Austin, TX 78711-3777.

Any requests for a public hearing should be submitted separately to the General Counsel.

The subchapter is proposed under the authority granted by Texas Labor Code, Chapter 412, 412.031. Section 412.031 provides the Board may adopt rules necessary to implement the state's Workers' Compensation and Risk Management programs.

The following statutes are affected by the proposed new subchapter: Texas Labor Code, Chapter 412, §§412.012, 412.0121, and 412.053.

§251.501. Purpose.

The purpose of this subchapter is to:

(1) equitably distribute the cost of funding workers' compensation losses, the cost of administering claims, and the cost of providing loss control services to participating state agencies;

(2) encourage the development and implementation of risk management programs and practices designed to minimize occupational injuries and illnesses; protect state property; and provide appropriate safety and health training for all state employees;

(3) pool large and small risks to enable catastrophic loss(es) to be spread throughout all participating state agencies; and

(4) encourage compliance with State Office of Risk Management regulations, and the policies and programs recommended in Risk Management For Texas State Agencies within the following areas of risk: property exposures; workers' compensation exposures; and liability exposures.

§251.503. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Payroll--The total dollars paid for gross salary for all covered Full-Time Equivalents (FTEs), as reported by covered agencies.

(2) Injury Frequency Rate (IFR)--The number of accepted claims, as reported by the State Office of Risk Management (the Office), per 100 covered FTEs.

(3) Claims Cost--The net amount of payments made on claims, minus subrogation and restitution costs, as reported by the Office.

(4) Covered Agency--A department, board, commission, or institution of this state with workers' compensation coverage under Chapter 501 of the Texas Labor Code (Labor Code).

(5) Covered FTE--An FTE covered under workers' compensation coverage under Chapter 501 of the Labor Code.

(6) Plan Year--The state fiscal year beginning on September 1 and ending on August 31 the following year.

(7) *Risk Management For Texas State Agencies*--Risk management guidelines published by the Office for implementation and use by covered state agencies.

§251.505. Total assessment.

(a) Each plan year the Office will calculate the total amount to be collected from covered agencies to pay the aggregate costs of:

(1) workers' compensation losses; and

(2) the Office's risk management program.

(b) The office will commission an actuarial study each plan year for the purpose of projecting the total amount of workers' compensation losses which will be paid in the following plan year. The board of the State Office of Risk Management (the Board) will set the amount to be collected based on the actuarial study, with the goal of collecting an amount sufficient to pay the expected losses.

(c) The total assessment will be the total of:

(1) the projected workers' compensation costs for the following plan year;

(2) any amount which the Office has borrowed in the previous plan year for paying workers' compensation costs or any carryover of funds from the previous plan year (expressed as a negative amount); and

(3) the cost of the Office's risk management program.

§251.507. Calculating the allocation of the total assessment.

(a) The total assessment will be divided among participating agencies based on each agency's:

(1) payroll as a percentage of all participating agencies' payroll;

(2) injury frequency rate as a percentage of the total of all participating agencies' injury frequency rates;

(3) claim costs as a percentage of all claims payments made on behalf of participating agencies; and

(4) such other relevant factors as the Board may determine.

(b) The Office will use a weighted three-year rolling average to calculate payroll and injury frequency rate for each covered agency. In the weighted average the most recent completed plan year will constitute 50% of the total for that factor, the next most recent plan year will be given 33% of the total, and the earliest plan year will be given 17% of the total for the factor.

(c) The Office will use a simple three-year rolling average to calculate claim costs for each covered agency.

(d) Subject to modification by the Board pursuant to §251.515 of this subchapter, the factors used in the calculation shall be weighted as follows:

(1) Payroll--20%;

(2) Injury frequency rate--40%;

(3) Claims cost--40%.

§251.509. Omitted or newly created agencies.

(a) In the event that a covered agency is omitted from the annual assessment for any plan year, that agency will promptly:

(1) remit to the Office an assessed amount based on projected payroll, as reported by the agency; and

(2) reimburse the Office for all covered losses incurred in that plan year in excess of the assessed amount.

(b) Notwithstanding §251.507(b) of this subchapter:

(1) if an agency has existed for only the two most recent plan years of the weighted three-year rolling average period, then the most recent completed plan year shall constitute 60% of the total for the weighted factors and the next most recent plan year shall constitute 40% of the total for the weighted factors;

(2) if an agency has existed for only the most recent plan year of the weighted three-year rolling average period, then the most recent completed plan year shall constitute 100% of the total for the weighted factors; and

(3) the assessment for an agency that was not in existence during any of the plan years of the weighted three-year rolling average period shall be calculated using that agency's current or projected payroll, as reported by the agency, and the agency's actual claims costs, if any.

§251.511. Required reports.

(a) In addition to other reports required under this chapter, each covered agency shall report to the Office not later than February 1 of each plan year their total payroll and the number of covered FTEs, by funding source for the prior plan year. The report shall be made in the form and manner required by the Office.

(b) In addition to other reports provided by the Office to covered state agencies, the Office will report to each covered agency not later than March 1 of each plan year the agency's injury frequency rate and claims cost for the three most recent plan years. The Office may satisfy this requirement by posting the information required on its web site.

(c) The reports required by this section may be amended, supplemented or corrected at any time prior to June 1 of the plan year. The calculation of assessments to agencies will be made using the data contained in these reports as of June 1 of each year.

§251.513. Date of payment for assessments.

(a) Each covered agency's assessment payment must be received by the Office not later than September 1 of each plan year except as otherwise provided by this rule.

(b) Upon approval of the Office, the portion of an agency's assessment which will be paid from funds not held in the state treasury may be paid in two installments. An agency authorized by the Office to exercise this option must pay at least 50% of the agency's total assessment by September 1 of the plan year with the balance of the assessment due not later than January 15 of the plan year.

§251.515. Changes in the factors or weighting used in the assessment.

(a) The Board may modify the factors and/or relative weights set forth in §251.507 of this subchapter in open meeting and after notice as provided by the Open Meetings Act.

(b) Any person may request that the Board make specific changes to modify the factors and/or relative weights used in calculating agency assessments. Specific requests for changes must be delivered to the General Counsel for the Office by June 1 of any plan year to be considered for adoption in the following plan year.

(c) Any modification of the factors and/or weights used in calculating agency assessments will be made in accordance with the statement of purpose contained in §251.501 of this subchapter.

(d) The Office shall publish on its website the effective factors and/or weights to be used in calculating agency assessments on or before the 15th day following any modifications made by the Board pursuant to subsection (a) of this section.

§251.517. Unitization of agency assessments.

An agency may allocate the assessment authorized in these rules internally to promote the purposes set forth in §251.501. In allocating costs internally an agency is not bound to use the same factors and weighting established in these rules. The Office will provide data, to the extent that it is available, to assist agencies in properly allocating costs to the internal units designated by the agency.

§251.519. Distribution of existing claim fund appropriation.

(a) The Office will make recommendations to the Comptroller of Public Accounts regarding the distribution of funds appropriated to the Office on a one-time basis for FY2002 and FY2003. Funds distributed to participating agencies will become a part of the base-line appropriation for the agency receiving them. Agencies will receive an appropriation of the same amount in FY2003 that was calculated for that agency in FY2002.

(b) The amount distributed to each agency will be calculated to make the assessment "revenue neutral" as it impacts general revenue funds held in the state treasury.

(c) The Office will recommend an amount be distributed to an agency calculated by subtracting from the agency's assessment an amount equal to 25% of the agency's paid workers' compensation losses for FY2000 and the expected Risk Management contract amount which would have been charged without the change in funding methods. That total will be multiplied by the percentage of salary expenditures for FY2000 funded by general revenue to determine the expected additional general revenue appropriation necessary to maintain a revenue neutral status for general revenue funds in FY2002.

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 June 21, 2001.

TRD-200103511
Jonathan D. Bow
General Counsel
State Office of Risk Management
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 936-1502

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

SUBCHAPTER CC. CLAIMS

40 TAC §3.2901

The Texas Department of Human Services (DHS) proposes to amend §3.2901, concerning client responsibility to repay, in its Texas Works chapter. The purpose of the amendment is to add the requirement for DHS to establish and collect claims against Food Stamp clients who are found guilty of intentional violations for trafficking.

Jerry W. Friedman, Executive Deputy Commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Friedman 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 adoption of the proposed rule will be to deter the misuse of Food Stamp benefits and allow the recovery of any misused benefits from the households that commit intentional program violations due to trafficking. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because it will act as a deterrent to fraud and abuse in the Food Stamp program. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Diane Donaldson at (512) 231-5746 in DHS's Office of Program Integrity section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-155, 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 amendment is adopted under the Human Resources Code, Title 2, Chapter 22 and Chapter 31, which authorizes the department to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§31.001-31.0325, and 7 Code of Federal Regulations, Section 273.18.

§3.2901. Client Responsibility to Repay.

(a) (No change.)

(b) Food stamps.

(1) Clients must repay any benefits they receive that they are not entitled to as stipulated in the Food Stamp Act of 1977 as amended by Title VIII, Sections 809 and 844, of Public Law [,] 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) Clients must repay benefits that are trafficked when they commit an intentional program violation for the purpose of buying or selling coupons, Authorization to Purchase (ATP) cards, or

other benefit instruments for cash or consideration other than eligible food. Clients must repay benefits if they exchange them for firearms, ammunition, explosives, or controlled substances.

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 June 25, 2001.

TRD-200103605
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 438-3108

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PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 104. INFORMAL APPEALS, AND MEDIATION BY APPLICANTS/CLIENTS OF DETERMINATIONS BY AGENCY PERSONNEL THAT AFFECT THE PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §104.3

The Texas Rehabilitation Commission (TRC) proposes a change to Title 40, Chapter 104, §104.3, concerning informal appeals, formal appeals, and mediation by applicants/clients of determinations by agency personnel that affect the provision of vocational rehabilitation services by TRC. The change is being proposed to bring TRC's rules into conformance with regulations issued by the US Department of Education at 34 CFR §361.57(b)(1).

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Harrison 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 the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§104.3. General Provisions.

(a) General. The formal appeal and mediation process commences with the filing of a Petition for Administrative Hearing with the Office for Administrative Hearings and Subrogation. Appeals of determinations made by personnel of the commission that affect the provision of vocational rehabilitation services to applicants or eligible individuals may be made concerning:

(1) applicants for vocational rehabilitation services; and

(2) clients.

(b) Jurisdiction.

(1) The Impartial Hearing Officer acquires jurisdiction over a case after a client files a Petition for Administrative Hearing and the IHO is appointed pursuant to these rules.

(2) A Petition for Administrative Hearing shall be considered filed on the date the Petition is received and date-stamped by the Office for Administrative Hearings and Subrogation.

(3) The IHO's authority is limited to a review of a client's dissatisfaction with the furnishing or denial of services by personnel of the Commission. The IHO does not have authority to:

(A) change or alter rules, policies, or procedures of the Commission;

(B) hear alleged violations of the Americans with Disabilities Act, §504 of the Act, or other federal laws; or

(C) hear or decide class actions.

(c) Conduct and Decorum. Appropriate conduct and decorum shall be maintained and enforced by the IHO. Every party, witness, attorney, or other representative shall participate in all proceedings with proper dignity, courtesy, and respect for the Commission, the IHO, and all other parties. Attorneys and other representatives or parties shall observe and practice a high standard of ethical behavior.

(d) Computation of Time.

(1) Unless otherwise required by law in computing any period of time prescribed or allowed by these rules, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless such day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. Unless specifically stated otherwise, "days" as used in these policies refer to calendar days.

(2) Unless otherwise provided by statute, the time for filing any pleading may be extended by order of the IHO at the request of any party upon written motion duly filed with the Office for Administrative Hearings and Subrogation prior to the expiration of the applicable period of time for the filing of same. Said motion shall include a showing that there is good cause for such extension of time and that the need therefor is not caused by neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof. Any party may file written pleadings contesting a motion to extend which shall be served upon all other parties contemporaneously with the filing thereof.

(3) The date upon which a pleading or motion is filed is the date on which it is received and date-stamped by the Office for Administrative Hearings and Subrogation.

(e) Appearances and right to representation. Any party may appear on his/her own behalf or may be represented by an attorney at law in good standing with the State Bar of Texas or by an authorized representative. The IHO may require any person appearing in a representative capacity to provide such evidence of his authority as the IHO may deem necessary.

(f) Notification.

(1) An applicant or eligible individual or, as appropriate, the individual's representative will be provided notice of the right to obtain review of TRC determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under §104.5 of this chapter; the right to pursue mediation under §104.5(c) of this chapter with respect to determinations made by TRC personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual; the names and addresses of individuals with whom requests for mediation or due process hearings may be filed; the manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of §104.5 of this chapter; and the availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings. The notice will be provided in writing at the time the individual applies for vocational rehabilitation services under this part; at the time the individual is assigned to a category in the State's order of selection, for programs within which an order of selection has been established; at the time the IPE is developed; and whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

[(1) An applicant or an eligible individual or, as appropriate, the applicant's representative or individual's representative, shall be notified of the right to obtain review of determinations described in subsection (a) of this section in an impartial due process hearing under subsection (h) of this section, and of the right to pursue mediation with respect to the determinations under §104.5(c) of this title (relating to Formal Appeal and Mediation), and of the availability of assistance from the client assistance program. Such notification shall be provided in writing at the time an individual applies for vocational rehabilitation services, and at the time the individualized plan for employment for the individual is developed, and upon reduction, suspension, or cessation of vocational rehabilitation services for the individual.]

(2) The IHO shall issue notice of the date, time, and location for the hearing.

(g) Evidence and representation. An applicant or an eligible individual, or, as appropriate, the applicant's representative or individual's representative, will be provided with an opportunity to submit at the mediation session or hearing evidence and information to support the position of the applicant or eligible individual, and may be represented in the mediation session or hearing by a person selected by the applicant or eligible individual.

(h) Hearings.

(1) Hearing officer. A due process hearing shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved state plan, the Rehabilitation Act if 1973, as amended (including regulations implementing the Act), and state regulations and policies that are consistent with the Rehabilitation Act and its implementing regulations. The impartial hearing officer shall provide the decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the commission.

(2) List. The commission will maintain a list of qualified impartial hearing officers who are knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under the Rehabilitation Act of 1973, as amended, from which hearing officers will be selected. For the purposes of maintaining such list, impartial hearing officers shall be identified jointly by the Commission, and by members of the Rehabilitation Council of Texas.

(3) Selection. An impartial hearing officer shall be selected to hear a particular case relating to a determination on a random basis.

(i) Confidentiality. All personal information regarding applicants or clients in the possession of the commission must be used only for purposes directly connected with the administration of the Act. Information may not be shared with advisory or other bodies which do not have official responsibility for administration of the Act.

(j) Testimony under oath or affirmation. In any hearing, the IHO shall administer an oath or affirmation before permitting testimony from any witness.

(k) Class actions. Class actions are not permitted under these rules.

(l) Reasonable accommodation. The commission shall provide reasonable accommodation to the client or other individuals with disabilities, upon request, for purposes of the appeal process as required by the Americans with Disabilities Act of 1990, 42 United States Code §12101 et seq. and the Act, §504.

(m) Stay of official acts or services. A request for an informal or formal appeal does not of itself stay an official act of or the provision of services by the commission unless the official act or services are stayed by controlling law.

(n) Limitations on number of witnesses. The IHO has the right in any proceeding under these rules to limit the number of witnesses whose testimony will be repetitious and to set time limits in order to exclude irrelevant, immaterial, or unduly repetitious testimony, so long as all viewpoints are given a reasonable opportunity to be heard.

(o) Mileage and Witness fees.

(1) An individual who is not an employee of TRC and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give testimony or to produce documents is entitled to receive:

(A) mileage, in the same amount per mile as the mileage travel allowance for state employees, for traveling to and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the individual's place of residence; and

(B) a fee of not less than $10 a day for each day or part of a day the individual is required to be present or a fee equal to the per diem and travel allowances of a state employee, if an overnight stay is required.

(2) Mileage and fees to which a witness is entitled under this rule shall be paid by the party at whose request the individual appears or at whose request the deposition is taken.

(p) Impact on provision of services. Unless the individual with a disability so requests, or, in an appropriate case, the individual's representative so requests, pending a decision by a mediator or impartial hearing officer under subsection (h)(1) of this section or §104.6 of this title (relating to Motion for Reconsideration), the commission will not institute a suspension, reduction, or termination of services being provided for the individual, including evaluation and assessment services and plan development, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual, or the individual's representative. In the case of a client who has completed a term of training or similar services prior to the appeal, and the next term has not yet begun (prior to the current appeal), it is understood that such training or services are not "being provided."

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

Filed with the Office of the Secretary of State, on June 21, 2001.

TRD-200103513
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 424-4050

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40 TAC §104.5

The Texas Rehabilitation Commission (TRC) proposes a change to Title 40, Chapter 104, §104.5, concerning informal appeals, formal appeals, and mediation by applicants/clients of determinations by agency personnel that affect the provision of vocational rehabilitation services by TRC. The change is being proposed to bring TRC's rules into conformance with regulations issued by the US Department of Education at 34 CFR §361.57(d).

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Harrison 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 the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§104.5. Formal Appeal and Mediation.

(a) The formal appeal process commences with the filing of a Petition for Administrative Hearing with the Office for Administrative Hearings and Subrogation.

(b) Role of Office for Administrative Hearings and Subrogation. Upon receipt of the Petition for Administrative Hearing, the Office for Administrative Hearings and Subrogation shall:

(1) acknowledge receipt of the petition for administrative hearing (via certified mail, return receipt requested) and advise the appellant of the availability of the Client Assistance Program, including the address and telephone number;

(2) date-stamp the Petition and record a docket control number for the appeal;

(3) select the impartial hearings officer (IHO), who is appointed by the commissioner, on a random basis from a pool of qualified persons identified jointly by TRC and the Rehabilitation Council of Texas in accordance with the Rehabilitation Act and forward a copy of the Petition for Administrative Hearing to the IHO;

(4) forward a copy of the Petition for Administrative Hearing to the Office of the General Counsel, Deputy Commissioner for Rehabilitation Services and Commission Representative immediately upon receipt;

(5) provide administrative support to the IHO:

(A) serve as the custodian of records for all documents, motions, and pleadings directed to the IHO;

(B) coordinate and schedule all dates, meetings, hearings;

(C) make all necessary arrangements for the formal appeal:

(i) schedule and set up the hearing location;

(ii) if required, retain the services of a certified shorthand reporter to prepare a transcript of the proceedings;

(iii) provide any requested reasonable accommodations;

(6) compile and maintain the official record of the appeal;

(7) accompany IHO to prehearing conference, administrative hearing and provide necessary assistance during the proceedings;

(c) Mediation.

(1) An applicant or eligible individual and the State may elect to resolve disputes involving TRC determinations that affect the provision of vocational rehabilitation services through a mediation process whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

(2) The following apply to mediation.

(A) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of TRC;

(B) Use of the mediation process will not be used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in section 104.9 of this chapter, or any other rights provided under this chapter. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing;

(C) The mediation process will be conducted by a qualified and impartial mediator who is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education); is not a member of the Rehabilitation Council of Texas; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services; has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings. An individual serving as a mediator is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator. The mediator will be selected from a list of qualified and impartial mediators maintained by the TRC on a random basis; or by agreement between TRC and the applicant or eligible individual or, as appropriate, the individual's representative; or

in accordance with a procedure established by TRC for assigning mediators which ensures the neutrality of the mediator assigned.

(D) Mediation sessions will be scheduled and conducted in a timely manner and will be held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process will be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process will be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement will be sent to both parties.

(5) The costs of the mediation process will be paid by TRC. However, TRC will not pay for any costs related to the representation of an applicant or eligible individual by counsel or other advocate selected by the applicant or eligible individual.

~~[(c) Mediation. Applicants and eligible individuals who have requested appeals may agree with the Commission to attempt resolution of disputes involving determinations described in §104.3(a) of this title (relating to General Provisions) through mediation. The mediation process must be voluntary on the part of the parties. It may not be used to deny or delay the right of an individual to a hearing under §104.3(h) of this title, or to deny any other right afforded by law, and it will be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The Commission will bear the cost of the mediation process. Clients/Applicants are responsible for the cost of any attorney or other person representing him/her.]~~

~~[(1) List of mediators. The Commission will maintain a list of individuals who are qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under the Rehabilitation Act of 1973, as amended, from which mediators will be selected.]~~

~~[(2) Scheduling. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.]~~

~~[(3) Agreement. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement and signed by both parties or their representatives, and the mediator.]~~

~~[(4) Confidentiality. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.]~~

(d) Impartial Hearing Officer.

(1) Qualifications. The IHO:

(A) cannot be an employee of a public agency;

(B) cannot be a member of the Rehabilitation Council of Texas (the Act, §105, as amended in 1992); and

(C) must have knowledge of the delivery of vocational rehabilitation services, the state plan under the Act, §101, the federal regulations, and commission rules governing the provision of such services and training with respect to the performance of official duties;

(D) must not have been involved in previous decisions regarding the vocational rehabilitation of the applicant or client;

(E) must have no personal or financial interest that would conflict with his/her objectivity;

(F) must have successfully completed impartial hearings training presented by the commission; and

(G) must not be a client of TRC.

(2) Powers and Duties.

(A) The IHO shall have the authority and duty to:

(i) conduct a full, fair, and impartial hearing;

(ii) take action to avoid unnecessary delay in the disposition of the proceeding;

(iii) maintain order; and

(iv) permit deviations from the rules and procedures prescribed in subsections (f)-(j) of this section, except subsection (j)(4)(F), in the interest of justice or to expedite the proceedings. If prior to adjournment of a hearing either party disagrees with a ruling or otherwise so requests, the IHO shall include in the written record a justification, and an explanation of how the decision is in the interest of justice and/or reasonably necessary to expedite the proceedings. Actions taken under this subsection shall be limited to procedural matters, and no party shall lose any substantive rights.

(B) The IHO shall have the power to regulate the course of the hearing and the conduct of the parties and authorized representative(s), including the power to:

(i) administer oaths;

(ii) take testimony;

(iii) rule on questions of evidence;

(iv) rule on discovery issues;

(v) issue orders relating to hearing and prehearing matters, including orders granting permission to subpoena witnesses and imposing sanctions regarding discovery;

(vi) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(vii) admit or deny party status;

(viii) grant continuance(s);

(ix) require parties to submit legal memoranda, proposed findings of fact, and conclusions of law;

(x) make findings of fact and conclusions of law; and

(xi) issue decisions.

(C) An IHO shall disqualify him/herself if the IHO has directly or indirectly had prior involvement with any issues that are the basis for the hearing, or if the IHO has a personal relationship or familial relationship with any party or witness.

(D) Substitution of impartial hearing officers.

(i) If for any reason an IHO is unable to continue presiding over a pending hearing or issue a decision after the conclusion of the hearing, another IHO may be designated as a substitute in accordance with applicable law and these rules.

(ii) The substitute IHO may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as necessary and proper to conclude the hearing and render a decision.

(e) Ex Parte Communications. Unless required for the disposition of ex parte matters authorized by law, the IHO may not communicate, directly or indirectly, in connection with any issue of fact or law with the commissioner or any party or a party's representative, except upon notice to all parties.

(f) Prehearing Procedures.

(1) Prehearing Conference(s).

(A) When appropriate, the IHO may hold a prehearing conference to resolve matters preliminary to the hearing.

(B) A prehearing conference may be convened to address preliminary matters including the following listed in clauses (i)-(xv) of this subparagraph:

(i) issuance of subpoenas;

(ii) factual and legal issues;

(iii) stipulations;

(iv) clarification of the issues at the discretion of the IHO;

(v) requests for official notice;

(vi) identification and exchange of documentary evidence;

(vii) admissibility of evidence;

(viii) identification and qualification of witnesses;

(ix) motions;

(x) discovery disputes;

(xi) order of presentation;

(xii) scheduling;

(xiii) settlement conferences;

(xiv) mediation; and

(xv) such other matters as will promote the orderly and prompt resolution of the issues and conduct of the hearing.

(C) Among other matters, as stated in subsection (b) of this section, an IHO may order:

(i) that the parties jointly discuss the prospects of settlement or stipulations or other dispute resolution methods approved herein and be prepared to report thereon at the prehearing conference;

(ii) that the parties file and be prepared to argue preliminary motions at the prehearing conference;

(iii) that the parties be prepared to specify the controlling factual and legal issues in the case at the prehearing conference; and

(iv) that the parties make a concise statement of undisputed facts and issues at the prehearing conference.

(D) All or part of the prehearing conference may be recorded or transcribed.

(E) The IHO may, after acquiring jurisdiction, issue an order requiring a prehearing "statement of the case." The parties shall file a statement specifying the party's present position on any or all of the following listed in clauses (i)-(v) of this subparagraph as required by the IHO. Parties shall supplement this statement on a timely basis. The statement may include:

(i) the disputed issues or matters to be resolved;

(ii) a brief statement of the facts or arguments supporting the party's position in each disputed issue or matter;

(iii) a list of facts or exhibits to which a party will stipulate; and

(iv) a list of the witnesses which each party intends to call at the hearing, including a designation of each as either a fact or expert witness, and a brief statement summarizing the testimony and/or opinions (experts) of each witness.

(2) Prehearing Orders.

(A) The IHO may issue a prehearing order reciting the actions taken or to be taken with regard to any matter addressed at the prehearing conference.

(B) The prehearing order shall be a part of the hearing record.

(C) If a prehearing conference is not held, the IHO may issue a prehearing order to regulate the conduct of the proceedings of the formal hearing.

(3) Stipulations.

(A) The parties, by stipulation, may agree to any substantive or procedural matter.

(B) A stipulation shall be filed in writing or entered on the record at the prehearing (or hearing).

(C) The IHO may require additional development of stipulated matters.

(g) Pleadings.

(1) In a formal appeal all pleadings, including the Petition for Administrative Hearing, shall contain:

(A) the name of the party making the pleading;

(B) the names of all other known parties;

(C) a concise statement of the facts alleged and relied upon;

(D) a statement of the type of relief, action, or order desired;

(E) any other matter required by law;

(F) a certificate of service, as required by these rules; and

(G) the signature of the party making the pleading or the party's authorized representative.

(2) Any pleading filed pursuant to a formal appeal may be amended up to 14 days prior to the hearing. Amendments filed after that time will be accepted at the discretion of the IHO.

(3) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the Commission. All pleadings relating to any matter pending before the Commission shall be filed with the IHO through the Office for Administrative Hearings and Subrogation.

(4) All pleadings shall be typed or printed on 8 1/2 by 11 inch paper with a one-inch margin. Reproductions are acceptable, provided all copies are clear and permanently legible.

(5) Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the authorized representative.

(6) The party or the party's designated representative filing the pleading shall include a signed certification that a true and correct copy of the pleading has been served on every other party.

(h) Dismissal. After giving notice and hearing, the IHO may upon the motion of any party or the IHO's own motion, dismiss the appeal upon showing of any one of the following:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal;

(4) moot questions;

(5) lack of jurisdiction;

(6) failure to raise a material issue in the pleading;

(7) failure of a party to appear at a scheduled hearing.

(i) Motions.

(1) Unless otherwise provided by these rules, the following shall apply.

(A) A party may move for appropriate relief before or during a hearing.

(B) A party shall submit all motions in writing or orally at a hearing.

(C) Written motions shall:

(i) be filed no later than 15 days before the date of the hearing, except where good cause is stated in the motion, the IHO may permit a written motion subsequent to that time;

(ii) state concisely the question to be determined;

(iii) be accompanied by any necessary supporting documentation; and

(iv) be served on each party.

(D) An answer to a written motion shall be filed on the earlier of:

(i) seven days after receipt of the motion; or

(ii) on the date of the hearing.

(E) On written notice to all parties or with telephone consent of all parties, the IHO may schedule a conference to consider a written motion.

(F) The IHO may reserve ruling on a motion until after the hearing.

(G) The IHO may issue a written decision or state the decision on the record.

(H) If a ruling on a motion is reserved, the ruling shall be in writing and may be included in the IHO's decision.

(I) The filing or pendency of a motion does not alter or extend any time limit otherwise established by these rules.

(2) Continuance(s) may be granted by the IHO in accordance with applicable law. Motions for continuances shall be in writing or stated in the record and shall set forth the specific grounds upon which the party seeks the continuance.

(3) Unless made during a prehearing or hearing, a party seeking a continuance, cancellation of a scheduled proceeding, or extension of an established deadline must file such motion no later than 10 days before the date or deadline in question. A motion filed less than 10 days before the date or deadline in question must contain a certification that the movant contacted the other party(ies) and whether or not it is opposed by any party(ies). Further, if a continuance to a certain date is sought, the motion must include a proposed date or dates and must indicate whether the party(ies) contacted agree on the proposed new date(s).

(j) Hearing.

(1) The IHO shall set the date and time for the hearing. The location shall be the Commission's regional or area office nearest the Appellant's residence or as agreed to by the parties.

(2) Order of procedure at the hearing.

(A) The appellant may state briefly the nature of the claim or defense, what the appellant expects to prove, and the relief sought. Immediately thereafter, the respondent may make a similar statement, and any other parties will be afforded similar rights as determined by the IHO. Each party is allowed 10 minutes for such statement.

(B) Evidence shall then be introduced by the appellant. The respondent and any other parties shall have the opportunity to cross-examine each of the appellant's witnesses.

(C) Cross-examination is not limited solely to matters raised on direct examination. Parties are entitled to redirect and recross-examination.

(D) Unless the statement has already been made, the respondent may briefly state the nature of the claim or defense, what the respondent expects to prove, and the relief sought.

(E) Evidence, if any, shall be introduced by the respondent. The appellant and any other parties shall have the opportunity to cross-examine each of the respondent's witnesses.

(F) Any other parties may make statements and introduce evidence. The appellant and respondent shall have opportunity to cross-examine the other parties' witnesses.

(G) The parties may present rebuttal evidence.

(H) The parties may be allowed closing statements at the discretion of the IHO.

(I) The IHO may permit deviations from this order of procedure in the interest of justice or to expedite the proceedings.

(J) Parties shall provide four copies of each exhibit offered.

(3) No evidence shall be admitted which is irrelevant, immaterial, or unduly repetitious.

(4) Documentary evidence and official notice.

(A) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpts.

(B) When numerous similar documents which are otherwise admissible are offered into evidence, the IHO may limit the documents received to those which are typical and representative. The IHO may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

(C) The following laws, rules, regulations, and policies are officially noticed:

(i) the Rehabilitation Act of 1973, as amended, 29 United States Code, §701 et seq.;

(ii) Department of Education regulations, 34 Code of Federal Regulations, Part 361;

(iii) Texas Human Resources Code, Title 7, §111 et seq.;

(iv) TRC State Plan for Vocational Rehabilitation Services;

(v) TRC Rehabilitation Services Manual; and

(vi) TRC Administrative Policies and Procedures Manual.

(D) Exhibits.

(i) Exhibits shall not exceed 8 1/2 by 11 inches (unless they are folded to that size). Maps, drawings, and other exhibits which are not the required size shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(ii) Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(iii) The original of each exhibit offered shall be tendered to the court reporter for identification.

(iv) In the event an exhibit has been identified, objected to, and excluded, the IHO shall determine whether or not the party offering the exhibit withdraws the offer, and, if so, permit the return of the exhibit. If the excluded exhibit is not withdrawn it shall be given an exhibit number for identification, shall be endorsed by the IHO with a ruling, and shall be included in the record for the only purpose of preserving the exception.

(E) Offer of proof. When testimony on direct examination is excluded by ruling of the IHO, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing. The IHO may ask such questions of the witness as deemed necessary to satisfy that the witness would testify as represented in the offer of proof.

(5) Failure to attend hearing and default. If, after receiving notice of a hearing, a party fails to attend a hearing, the IHO may proceed in that party's absence and, where appropriate, may issue a decision against the defaulting party.

(k) Impartial Hearing Officer Decision.

(1) Within 30 days of the hearing completion date, the IHO shall issue a decision based on the provisions of the approved State plan, the applicable regulations, and the Act which shall contain separately stated:

(A) findings of fact;

(B) conclusions of law; and

(C) decision.

(2) The Office for Administrative Hearings and Subrogation shall submit the IHO opinion to the Commissioner with a copy to each party.

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 June 21, 2001.

TRD-200103514
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 424-4050

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40 TAC §104.9

The Texas Rehabilitation Commission (TRC) proposes a new section for Title 40, Chapter 104, §104.9, concerning informal appeals, formal appeals, and mediation by applicants/clients of determinations by agency personnel that affect the provision of vocational rehabilitation services by TRC. The change is being proposed to bring TRC's rules into conformance with regulations issued by the US Department of Education at 34 CFR §361.57(e)(1).

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Harrison 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 the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The new section is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§104.9. Time for Hearing.

A hearing conducted by an impartial hearing officer, selected in accordance with section 104.5 of this chapter, will be held within 60 days of an applicant's or eligible individual's request for review of a determination made by personnel of TRC that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of 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 June 21, 2001.

TRD-200103515
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: August 5, 2001
For further information, please call: (512) 424-4050

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PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.316

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §700.316, concerning eligibility requirements for Title IV-E, MAO, and state-paid foster-care assistance, in its Child Protective Services chapter. The purpose of the amendment is to remove the specific procedures that staff must follow when a lump-sum payment affects a child's foster care eligibility, and replace them with a reference to the statutes and regulations that control the management of the payments.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Fields also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that TDPRS will be able to receive and manage lump-sum payments in an efficient and effective manner. There will be no effect on large, small, or micro-businesses because the amendment does not impose any new requirements on these types of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Javier Zuniga at (512) 438-5029 in TDPRS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-176, Texas Department of Protective and Regulatory Services E-611, 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 this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code (HRC), §40.029, which authorizes the Board to adopt rules to ensure the Department's compliance with state and federal law and to facilitate implementation of departmental programs; and the Texas Family Code §264.101, which authorizes the Department to accept and spend funds available from any source to pay for foster care, including medical care, for a child in the Department's care.

The amendment implements the Texas Family Code, §264.101.

§700.316. Eligibility Requirements for Title IV-E, MAO, and State-Paid Foster-Care Assistance.

The child must meet all of the following criteria to be eligible for Title IV-E, Medical Assistance Only (MAO), or state-paid foster care assistance.

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

(7) Lump-sum Income. Non-recurring lump-sum payments must be handled in accordance with all applicable federal laws, federal regulations, and state laws. Lump sums placed in a trust inaccessible to the child will not affect a child's foster care eligibility. [~~Nonrecurring lump-sum payments received after certification for foster care assistance are generally considered as countable income. Exceptions are detailed in §§3.3208 through 3.3213 of this title (relating to Income) in the AFDC chapter of rules. If the lump-sum payment plus other countable income for a month is equal to or greater than the cost of foster-care maintenance, the child is ineligible for a period of time. The period of ineligibility is determined by dividing the amount of the lump-sum payment and other countable income by the monthly cost of care. The resulting whole number is the number of months the child is ineligible for foster care assistance. Any remaining amount from this division is considered as income the first month after the period of ineligibility.~~]

(8) (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 June 22, 2001.

TRD-200103565
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: August 24, 2001
For further information, please call: (512) 438-3437

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CHAPTER 700. CHILD PROTECTIVE SERVICES

The Texas Department of Protective and Regulatory Services (PRS) proposes the repeal of §700.1802 and §700.1807, concerning cost-finding analysis and increase in residential child care reimbursement rates for fiscal years 2000-2001; and proposes new §700.1802, concerning cost-finding analysis, in its Child Protective Services chapter. The purpose of the repeals and new section is to revise the foster care rate-setting methodology to provide a more equitable distribution of funding for the level of services provided to PRS children in conservatorship. New §700.1802 also gives PRS the ability to provide the rate increase intended by the 77th legislature for the 2002-2003 biennium. Section 700.1807 is repealed because it relates to the rate increase for the 2000-2001 biennium.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the sections will be in

effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The estimated cost to the state as result of the change will be $3,328,139 for fiscal year 2002 and $6,397,160 for fiscal year 2003. The additional costs for fiscal years 2004, 2005, and 2006 cannot be determined at this time because PRS does not know what the rates will be beyond fiscal year 2003. The estimated increase in revenue to the state because of this change is an additional $11,762,654 for fiscal year 2002 and $12,611,034 for fiscal year 2003. The increase in revenue for fiscal years 2004, 2005, and 2006 also cannot be determined at this time. There will be no fiscal implications for local government.

Ms. Fields also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that 24-hour residential care providers will receive an equitable rate for the level of services provided to PRS children in conservatorship. Proper compensation helps to ensure that children receive appropriate levels of service. There is no anticipated adverse impact on large, small, or micro- businesses as a result of the proposed rule changes. The methodology seeks to reimburse all foster care providers for a proportionate share of the established cost basis for each rate based upon the available foster care appropriations. The methodology could result in future reductions in individual rates if the reported cost basis for those rates does not substantiate the rate being paid. To avoid any potential impact on service delivery during the fiscal year 2002-2003 biennium, no rate reductions will be implemented during this biennium. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

In considering the proposed rate methodology, the Board recognizes that there are several issues of serious concern that have not been adequately addressed through the proposed new rate methodology. In particular, the Board is concerned that the methodology, when implemented, will not raise the daily foster-care rate for Levels of Care (LOC) 5 & 6 enough to meet market demands for providers who serve this population of children. Although only approximately five percent of PRS foster children are in LOC-5, and only one percent are in LOC-6, it has become increasingly difficult to find placements for these children. The total number of children in LOC 5-6 has increased significantly in recent years, while the total number of providers serving this population has significantly decreased. Providers who do serve this population often receive substantially higher reimbursement rates for private-pay placements and for out-of-state foster children who are placed in Texas. A brief survey of other states' child welfare agencies indicates that many pay substantially higher rates to providers serving this population of children.

Options for addressing this concern may include revisions to the cost-reporting methodology to ensure that it more fully captures all costs of care for children in LOC 5-6; identifying barriers that may discourage providers from fully reporting their true costs; and/or changing the rate- setting methodology to address market-driven supply and demand. Any such changes that result in an increase in rates for LOC 5 & 6 will necessarily result in a decrease in other LOC rates. Options for adjustments in other LOC rates may include a reduction in the new LOC-1 rate for children ages 12 and over; use of a blend of the USDA lower and median income rates as the benchmark for determining the costs of care at LOC-1; and/or reductions in rates for CPA foster homes and residential providers serving children at LOC 2-4. It should be noted that, for the upcoming biennium, the Legislature mandated that no LOC rate be reduced below its Fiscal year 2001 level. Accordingly, the Board is not at liberty to lower rates for children in LOC 2-4 in PRS foster homes or to lower the CPA/residential LOC-4 rate, even though the proposed methodology indicates that these categories will be paid a disproportionately higher percent of their costs than the other LOC categories.

In addition to the concern regarding LOC 5-6 rates, the new methodology is projected to result in a significant shortfall in funding for adoption assistance monthly payments due to the linkage between LOC 1 rates and the maximum monthly rate for adoption assistance. The projected shortfall in the coming biennium of roughly 9 million dollars is summarized in the fiscal impact portion of this preamble, above, and is detailed in the Memorandum to the Board concerning these proposed rules, which is contained in Board Agenda Item 10.b for the Board's June 22, 2001 meeting. Options for addressing this shortfall include a change to the proposed foster-care rate setting methodology that result in a reduction in the LOC-1 rate.

The Board strongly encourages providers and other interested parties to carefully review the proposed methodology and to use the public comment period to suggest alternatives that address the concerns discussed above.

Questions about the content of the proposal may be directed to Mary Fields at (512) 438- 5747 in PRS's Budget and Federal Funds Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-175, Texas Department of Protective and Regulatory Services E-611, 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.

SUBCHAPTER R. COST-FINDING METHODOLOGY FOR 24-HOUR CHILD-CARE FACILITIES

40 TAC §700.1802, §70.1807

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

The repeals are proposed under Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services (PRS), specifically §40.029 granting rulemaking authority to PRS, and §40.052 regarding delivery of services; and under Texas Family Code, §264.101, which authorizes the Board of PRS to adopt rules relating to the payment of foster care.

The repeals implement the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

The repeals also satisfy the requirement of the Department's Rider 21, Article II, of the General Appropriations Act for the

2000-2001 biennium; and the General Appropriations Act for the 2002-2003 biennium.

§700.1802. Cost-finding Analysis.

§700.1807. Increase in Residential Child Care Reimbursement Rates for Fiscal Years 2000-2001.

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 June 22, 2001.

TRD-200103574
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: August 24, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER R. COST-FINDING METHODOLOGY FOR 24-HOUR CHILD-CARE FACILITIES

40 TAC §700.1802

The new section is proposed under Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services (PRS), specifically §40.029 granting rulemaking authority to PRS, and §40.052 regarding delivery of services; and under Texas Family Code, §264.101, which authorizes the Board of PRS to adopt rules relating to the payment of foster care.

The new section implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

The new section also satisfies the requirement of the Department's Rider 21, Article II, of the General Appropriations Act for the 2000-2001 biennium; and the General Appropriations Act for the 2002-2003 biennium.

§700.1802. Cost-Finding Analysis.

(a) The Board of the Texas Department of Protective and Regulatory Services (PRS) reviews payment rates for providers of 24-hour residential child care services every other year in an open meeting, after considering financial and statistical information, PRS rate recommendations developed according to the provisions of this subchapter, legislative direction, staff recommendations, agency service demands, public testimony, and the availability of appropriated revenue. Before the open meeting in which rates are presented for adoption, PRS sends rate packets containing the proposed rates and average inflation factor amounts to provider association groups. PRS also sends rate packets to any other interested party, by written request. Providers who wish to comment on the proposed rates may attend the open meeting and give public testimony. Notice of the open meeting is published on the Secretary of State's web site at http://www.sos.state.tx.us/open. If the Board adopts the proposed rates, PRS notifies all foster care providers of the adopted rates by letter.

(b) PRS develops rate recommendations for Board consideration for foster homes serving Levels of Care 1 through 4 children as follows:

(1) For all Level of Care 1 rates, PRS analyzes the most recent statistical data available on expenditures for a child published by the United States Department of Agriculture (USDA) from middle income, dual parent households for the "Urban South." USDA data includes costs for age groupings from 0 to 17 years of age. An age differential is included with one rate for children ages 0-11 years, and another rate for children 12 years and older. Foster homes providing services to Level of Care 1 children receive the rate that corresponds to the age of the child in care.

(A) PRS excludes health care costs, as specified in the USDA data, from its calculations since Medicaid covers these costs. USDA specified child-care and education costs are also excluded since these services are available in other PRS day-care programs.

(B) PRS includes the following cost categories for both age groups as specified in the USDA data: housing, food, transportation, clothing, and miscellaneous.

(C) The total cost per day is projected using the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) Index from the period covered in the USDA statistics to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(2) For Levels of Care 2 through 4 rates, PRS analyzes the information submitted in audited foster home cost surveys and related documentation in the following ways:

(A) A statistically valid sample of specialized (therapeutic, habilitative, and primary medical) foster homes complete a cost survey covering one month of service if they meet the following criteria:

(i) the foster home currently has a PRS foster child(ren) residing in the home; and

(ii) the number of children in the home, including the children of the foster parents, is 12 or fewer.

(B) For rates covering the fiscal year 2002-2003 biennium, child-placing agency homes are the only foster homes that complete a cost survey because the children they serve are currently assigned levels of care verified by an independent contractor. By September 1, 2001, children served in PRS specialized foster homes will also be assigned levels of care verified by an independent contractor. All future sample populations completing a one-month foster home cost survey will include both child-placing agency and PRS specialized foster homes. As referenced in subsection (j) of this section, during the 2004-2005 biennium, when the rate methodology is fully implemented, PRS specialized foster homes and child-placing agency foster homes will be required to receive at a minimum the same foster home rate as derived by this subsection.

(C) Cost categories included in the one-month foster home cost survey include:

(i) shared costs, which are costs incurred by the entire family unit living in the home, such as mortgage or rent expense and utilities;

(ii) direct foster care costs, which are costs incurred for PRS foster children only, such as clothing and personal care items. These costs are tracked and reported for the month according to the level of care of the child; and

(iii) administrative costs that directly provide for PRS foster children, such as child-care books, and dues and fees for associations primarily devoted to child care.

(D) A cost per day is calculated for each cost category and these costs are combined for a total cost per day for each level of care served.

(E) A separate sample population is established for each type of specialized foster home (therapeutic, habilitative, and primary medical). Each level of care maintenance rate is established by the sample population's central tendency, which is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(F) The rates calculated for each type of specialized foster home are averaged to derive one foster care maintenance rate for each of the Levels of Care 2 through 4.

(G) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(c) PRS develops rate recommendations for Board consideration for child-placing agencies serving Levels of Care 1 through 4 children as follows:

(1) The rate-setting model defined in subsection (g) of this section is applied to child-placing agencies' cost reports to calculate a daily rate.

(2) At a minimum, child-placing agencies are required to pass through the applicable foster home rate derived from subsection (b) of this section to their foster homes. The remaining portion of the rate is provided for costs associated with case management, treatment coordination, administration, and overhead.

(3) For rate-setting purposes, the following facility types are included as child-placing agencies and will receive the child-placing agency rate:

(A) child-placing agency;

(B) independent foster family/group home;

(C) independent therapeutic foster family/group home;

(D) independent habilitative foster family/group home;

(E) independent primary medical needs foster family/group home; and

(F) maternity home.

(d) PRS develops rate recommendations for Board consideration for residential care facilities serving Levels of Care 1 through 6 as follows:

(1) For Levels of Care 1 and 2, PRS applies the same rate paid to child-placing agencies as recommended in subsection (c) of this section.

(2) For Levels of Care 3 through 6, the rate-setting model defined in subsection (g) of this section is applied to residential care facilities' cost reports to calculate a daily rate.

(3) For rate-setting purposes, the following facility types are included as residential care facilities and will receive the residential care facility rate:

(A) residential treatment center;

(B) therapeutic camp;

(C) institution for mentally retarded;

(D) basic care facility; and

(E) halfway house.

(e) PRS develops rate recommendations for Board consideration for emergency shelters as follows:

(1) PRS analyzes emergency shelter cost report information included within the rate-setting population defined in subsection (f) of this section. Emergency shelter costs are not allocated across levels of care since, for rate-setting purposes, all children in emergency shelters are considered to be at the same level of care.

(2) For each cost report in the rate-setting population, the total costs are divided by the total number of days of care to calculate a daily rate.

(3) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(4) The emergency shelter rate is established by the population's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(f) Level of care rates for contracted providers including child-placing agencies, residential care facilities, and emergency shelters are dependent upon provider cost report information. The following criteria applies to this cost report information:

(1) PRS excludes the expenses specified in §700.1805 and §700.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates). Exclusions and adjustments are made during audit desk reviews and on-site audits.

(2) PRS includes therapy costs in its recommended payment rates for emergency shelters and for Levels of Care 3 through 6, and these costs will be considered as allowable costs for inclusion on the provider's annual cost report, only if one of the following conditions applies. The provider must access Medicaid for therapy for children in their care unless:

(A) the child is not eligible for Medicaid or is transitioning from Medicaid Managed Care to fee- for-service Medicaid;

(B) the necessary therapy is not a service allowable under Medicaid;

(C) service limits have been exhausted and the provider has been denied an extension;

(D) there are no Medicaid providers available within 45 miles that meet the needs identified in the service plan to provide the therapy; or

(E) it is essential and in the child's best interest for a non-Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transition period not to exceed 90 days or 14 sessions, whichever is less. Any exception beyond the 90 days or 14 sessions must be approved by PRS before provision of services.

(3) PRS may exclude from the database any cost report that is not completed according to the published methodology and the specific instructions for completion of the cost report. Reasons for exclusion of a cost report from the database include, but are not limited to:

(A) receiving the cost report too late to be included in the database;

(B) low occupancy;

(C) auditor recommended exclusions;

(D) days of service errors;

(E) providers that do not participate in the level of care system;

(F) providers with no public placements;

(G) not reporting costs for a full year;

(H) using cost estimates instead of actual costs;

(I) not using the accrual method of accounting for reporting information on the cost report;

(J) not reconciling between the cost report and the provider's general ledger; and

(K) not maintaining records that support the data reported on the cost report.

(4) PRS requires all contracted providers to complete the first portion of the cost report including contracted provider identification; preparer/contact person; facility license type; reporting period; days of service by level of care provided during the reporting period; facility capacity and occupancy status; and cost report exemption determination. Providers that meet any one of the following criteria are not required to complete the entire cost report:

(A) total number of days of service for state-placed children equal to or less than 10% of total days of service;

(B) total number of PRS days of service equal to or less than 10% of total days of service;

(C) no services provided to PRS children;

(D) services provided to only Level of Care 1 children;

(E) contract with PRS terminated or was not renewed;

(F) occupancy rate for emergency shelters is less than 30%; or

(G) occupancy rate for all other facility types, except for child-placing agencies, is less than 50%.

(5) The occupancy rate equals the total number of days of service provided during the reporting period divided by the maximum operating capacity. The maximum operating capacity is the number of residents the facility is equipped to serve multiplied by the number of days in the reporting period.

(6) All contracted providers not meeting the exemption criteria defined in paragraph (4) of this subsection are included in the rate-setting population and must complete the entire cost report for rate-setting purposes, including:

(A) all child-placing agencies because they do not report occupancy;

(B) emergency shelters with a 30% or more overall occupancy rate; and

(C) all other facilities with a 50% or more overall occupancy rate.

(g) A rate-setting model is applied to child-placing agencies' and residential care facilities' cost report information included within the rate-setting population defined in subsection (f) of this section. Three allocation methodologies are used in the rate-setting model to allocate allowable costs among the levels of care of children that are served. The methodologies are explained below and are applied as follows:

(1) The first methodology is a staffing model, validated by a statistically valid foster care time study, driven by the number of direct care and treatment coordination staff assigned to a child- placing agency or residential care facility to care for the children at different levels of care. The staffing model produces a staffing complement that is applied to direct care costs to allocate the costs among the levels of care.

(A) Staff positions reported on the direct care labor area of the cost report are grouped into the following categories to more clearly define the staffing complement required at each level of care:

(i) case management;

(ii) treatment coordination;

(iii) direct care;

(iv) direct care administration; and

(v) medical.

(B) A categorized staffing complement for each Level of Care 1 through 6 is derived as follows:

(i) A 14-day foster care time study is applied to a representative sample of residential care facilities and child-placing agencies that completed a cost report.

(ii) Contracted staff, or employees, within the sampled facilities complete a foster care time study daily activity log that assigns half-hour units of each employee's time to the individual child(ren) with whom the employee is engaged during the time period. By correlating the distribution of the employee's time with the level of care assigned to each child, the employee's time is distributed across the Levels of Care 1 through 6.

(iii) The foster care time study daily activity log also captures the type of activity performed. The total amount of time spent in each of these activities is a component in determining the number of staff needed in each of the categories included in the staffing complement. The activities performed include:

(I) care and supervision;

(II) treatment planning and coordination;

(III) medical treatment and dental care; and

(IV) other (administrative, managerial, training functions, or personal time).

(iv) An analysis of the cumulative frequency distribution of these time units by level of care of all children served in the sample population, by category of staff performing the activity, and by type of activity, establishes appropriate staffing complements for each level of care in child- placing agencies and in residential care facilities. These time units by level of care are reported as values that represent the equivalent of a full-time employee. The results are reported in the following chart for incorporation into the rate-setting model:
Figure: 40 TAC §700.1802

(v) The foster care time study should be conducted every other biennium, or as needed, if service levels substantially change.

(C) Staff position salaries and contracted fees are reported as direct care labor costs on the cost reports. Each staff position is categorized according to the staffing complement outlined for the time study. The salaries and contracted fees for these positions are grouped into the staffing complement categories and are averaged for child-placing agencies and residential care facilities included in the rate-setting population. This results in an average salary for each staffing complement category (case management, treatment coordination, direct care, direct care administration, and medical).

(D) The staffing complement values, as outlined in the chart at paragraph (1)(B)(iv) of this subsection, are multiplied by the appropriate average salary for each staffing complement category. The products for all of the staffing complement categories are summed for a total for each level of care for both child-placing agencies and residential care facilities. The total by level of care is multiplied by the number of days of service in each level of care, and this product is used as the primary allocation statistic for assigning each provider's direct care costs to the various levels of care.

(E) Direct care costs include the following areas from the cost reports:

(i) direct care labor;

(ii) total payroll taxes/workers compensation; and

(iii) direct care non-labor for supervision/recreation, direct services, and other direct care (not CPAs).

(2) The second methodology allocates the following costs by dividing the total costs by the total number of days of care for an even distribution by day regardless of level of care. This amount is multiplied by the number of days served in each level:

(A) direct care non-labor for dietary/kitchen;

(B) building and equipment;

(C) transportation;

(D) tax expense; and

(E) net educational and vocational service costs.

(3) The third methodology allocates the following administrative costs among the levels of care by totaling the results of the previous two allocation methods, determining a percent of total among the levels of care, and applying those percentages:

(A) administrative wages/benefits;

(B) administration (non-salary);

(C) central office overhead; and

(D) foster family development.

(4) The allocation methods described in paragraphs (1)-(3) of this subsection are applied to each child-placing agency and residential care facility in the rate-setting population, and separate rates are calculated for each level of care served. Rate information is included in the population to set the level of care rate if the following criteria are met:

(A) Providers must have at least 30% of their service days within Levels of Care 3 through 6 for residential settings. For example, for the provider's cost report data to be included for calculating the Level of Care 3 rate, a provider must provide Level of Care 3 services for at least 30% of their service days.

(B) For Levels of Care 5 and 6, a contracted provider could provide up to 60% of "private days" services to be included in the rate-setting population. They must provide at least 40% state- placed services.

(5) Considering the criteria in paragraph (4) of this subsection, the rate-setting population is fully defined for each level of care. Based on this universe, each level of care rate will be established by the group's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(6) The total cost per day for each child-placing agency and residential care facility is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(h) PRS uses the Implicit Price Deflator - Personal Consumption Expenditures (IPD-PCE) Index, which is a general cost inflation index, to calculate projected allowable expenses. The IPD-PCE Index is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the United States Department of Commerce. PRS uses the lowest feasible IPD-PCE Index forecast consistent with the forecasts of nationally recognized sources available to PRS when the rates are prepared. Upon written request, PRS will provide inflation factor amounts used to determine rates.

(i) All reimbursement rates will be equitably adjusted to the level of appropriations authorized by the Legislature.

(j) There will be a transition period for the fiscal year 2002-2003 biennium. During this period current rates will not be reduced, and any increased funding will be applied to those levels of care that are less adequately reimbursed according to the methodology. Since increased funding was appropriated at a different percentage for each year of the 2002-2003 biennium, the rates will be set separately for each year instead of setting a biennial rate, and inflation factors will be applied to the middle of each year of the biennium. Full implementation of the methodology will occur during the fiscal year 2004-2005 biennium.

(k) The Board may adjust payment rates, if determined appropriate, when federal or state laws, rules, standards, regulations, policies, or guidelines are changed or adopted. These adjustments may result in increases or decreases in payment rates. Providers must be informed of the specific law, rule, standard, regulation, policy or guideline change and be given the opportunity to comment on any rate adjustment resulting from the change prior to the actual payment rate adjustment.

(l) To implement Chapter 1022 of the Acts of the 75th Texas Legislature, §103, the executive director may develop and implement one or more pilot competitive procurement processes to purchase substitute care services, including foster family care services and specialized substitute care services. The pilot programs must be designed to produce a substitute care system that is outcome-based and that uses PRS's outcome measures. Rates for the pilot(s) will be the result of the competitive procurement process, but must be found to be reasonable by the executive director. Rates are subject to adjustment as allowed in subsections (a) and (k) of this section.

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 June 22, 2001.

TRD-200103575
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: August 24, 2001
For further information, please call: (512) 438-3437

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CHAPTER 732. CONTRACTED SERVICES SUBCHAPTER L. CONTRACT ADMINISTRATION

The Texas Department of Protective and Regulatory Services (PRS) proposes the repeal of §§732.201 - 732.207, 732.209 - 732.236, and 732.262, and proposes new §§732.201 - 732.228 and 732.262, concerning contract administration, in its Contracted Services chapter. The purpose of the repeals and new sections is to delete unnecessary PRS rules and replace them with rules that are consistent with the contracting rules adopted by the Health and Human Services Commission.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Fields also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the rules will be consistent with the rules of other Health and Human Services Commission agencies and will match revised state and federal requirements. There will be no effect on large, small, or micro-businesses because the rules do not impose any new requirements. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Ron Curry at (512) 833-3405 in TDPRS's Contract Administration Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-177, Texas Department of Protective and Regulatory Services E-611, 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.

40 TAC §§732.201 - 732.207, 732.209 - 732.236, 732.262

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

The repeals are proposed under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§732.201. Scope and Limitations.

§732.202. Contractor's Records.

§732.203. Methods of Purchase.

§732.204. Duration and Renewal of Contracts.

§732.205. Extent of Competition.

§732.206. Competitive Sealed Bids.

§732.207. Competitive Negotiation.

§732.209. Noncompetitive Negotiation.

§732.210. Cancellation or Suspension of Solicitation.

§732.211. Development of the Procurement Package.

§732.212. Financial Ability to Perform.

§732.213. Affirmative Action.

§732.214. Advertisement of Solicitation.

§732.215. Procurement Clarifications.

§732.216. Confidentiality of Information.

§732.217. Receipt of Inadequate Number of Offers.

§732.218. Modification or Withdrawals of Offers before the Solicitation Closing Date.

§732.219. Debriefing.

§732.220. Receipt of Offers.

§732.221. Apparent Clerical Mistakes.

§732.222. Minor Irregularities.

§732.223. Mistakes Other than Minor Informalities/Irregularities and Clerical Mistakes.

§732.224. Withdrawal of Offers Due to Mistakes.

§732.225. Evaluation of Offers.

§732.226. Elements of Evaluation.

§732.227. Screening.

§732.228. Validation.

§732.229. Determining the Competitive Range.

§732.230. Negotiation.

§732.231. Notification of the Unsuccessful Offeror.

§732.232. Proposal Changes during Negotiation.

§732.233. Approval of Subcontracts.

§732.234. Requirements of the Competitive Sealed Bid Method.

§732.235. Equal Low Bids.

§732.236. Public Inspection.

§732.262. Records Kept by Contractors.

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 June 22, 2001.

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: August 24, 2001
For further information, please call: (512) 438-3437

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40 TAC §§732.201 - 732.228, 732.262

The new sections are proposed under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The new sections implement the Human Resources Code, §40.029.

§732.201. What is the purpose of contract administration?

(a) Contract administration deals with the purchase and administration of goods and services based on federal regulations and state law. The Department may implement additional requirements to meet the particular needs of certain program areas if those requirements do not conflict with the provisions of this chapter. The Department purchases goods and services on the basis of the best value to the State and the Department, in accordance with the Health and Human Services Commission purchasing rules.

(b) Sections 732.271 - 732.273 and §§732.275 - 732.277 of this title (relating to Settlement of Subcontract Claims, Notice to Contractor of Determination, Submission of Evidence, Abeyance and Removal of Current or Potential Contractual Rights, Causes and Conditions for Removal of Contractual Rights and for Abeyance, and Notice Requirements for Removal of Contractual Rights and for Abeyance) do not apply to Title XIX funds.

§732.202. How does the Department purchase goods and services?

The Department may purchase goods and services through competitive and noncompetitive procurement methods found in the Health and Human Services Commission purchasing rules at 1 TAC §391.101 (relating to Competitive Procurement Methods) and 1 TAC §391.103 (relating to Noncompetitive Procurements).

§732.203. How long may a contract period last and when may the contract be renewed?

(a) At the Department's option, a contract procured through competitive methods may be renewed annually for a period not to exceed four years without being subject to further competition.

(b) The Department may renew annually for an indefinite number of years a contract procured by noncompetitive methods; however, a periodic review, not less often than every four years or the time specified in the waiver authorizing noncompetitive procurement, whichever is less, must be made and documented to determine if competition is necessary or possible.

(c) Renewal of a contract is not automatic; the contract may be renewed at the Department's option, when authorized, and when it is in the Department's best interests.

§732.204. When may the Department purchase goods and services through competitive bidding?

The Department may purchase goods and services through competitive bidding when the conditions contained in the Health and Human Services Commission purchasing rule at 1 TAC §391.141 (relating to Competitive Bidding Standards) exist.

§732.205. When may the Department purchase goods and services through competitive negotiation?

The Department may purchase goods and services through competitive negotiation when the conditions contained in the Health and Human Services Commission purchasing rule at 1 TAC §391.151 (relating to Negotiated Procurement Standards) exist.

§732.206. When may the Department purchase goods and services through noncompetitive negotiation?

The Department may purchase goods and services through noncompetitive negotiation when the conditions contained in the Health and Human Services Commission (HHSC) purchasing rule at 1 TAC §391.161 (relating to Noncompetitive Negotiation Standards) and the exception in HHSC purchasing rule 1 TAC §391.109 (relating to Exceptions to Competitive Procurement Methods) exist. Additionally, noncompetitive negotiation may be used for the purchase of highly perishable material or medical supplies, services for which the prices are established by law, and for experimental, developmental, or research work.

§732.207. When may the Department cancel or suspend a solicitation?

(a) Cancellation of solicitation. The Department has the right to reject all bids/offers submitted in response to a solicitation. The Department may cancel a solicitation for any of the following reasons:

(1) the specifications and costs given in the solicitation instrument were inadequate, ambiguous, or otherwise deficient.

(2) the supplies or services are no longer required.

(3) the vendor responses received indicated that the goods and services requested can be purchased by a different, less expensive method.

(4) all otherwise acceptable vendor responses received are for unacceptable prices.

(5) the Department has good reason to believe during the course of the solicitation that the vendor responses are collusive or were submitted in bad faith.

(6) none of the vendors responding to the solicitation is considered responsive.

(7) it is determined that cancellation is in the Department's best interest.

(b) Suspension of solicitation. A suspended solicitation is one in which offers are not processed because of uncertainty in federal regulations, Departmental policy, or similar requirements; however, the offers will be considered for award and will be processed if the solicitation is still in the Department's best interest and uncertainties about the purchase are resolved to the satisfaction of the Department.

§732.208. How does the Department develop a solicitation instrument?

The Department develops a solicitation instrument based on the factors contained in the Health and Human Services Commission purchasing rule for competitive bidding at 1 TAC §391.141 (relating to Competitive Bidding Standards) or negotiated procurement at 1 TAC §391.151 (relating to Negotiated Procurement Standards).

§732.209. How does the Department advertise solicitations?

The Department may advertise a solicitation for competitive procurement using any of the methods described in the Health and Human Services Commission purchasing rule 1 TAC §391.401 (relating to Methods of Solicitation).

§732.210. How can answers be obtained to clarify questions about a solicitation instrument?

Persons who have questions about a solicitation instrument must request the information according to the instructions in the package. Oral answers to questions about a solicitation instrument are non-binding. They are not official until released in writing by the person designated in the solicitation instrument.

§732.211. Can the information submitted by a vendor be held confidential?

Unless otherwise deemed to be confidential under the Texas Public Information Act, all information submitted by a vendor in response to a solicitation is public record and may be withheld by the Department from the general public only until a vendor is selected and a contract is negotiated.

§732.212. What does the Department do when an inadequate number of responses are submitted for a solicitation?

If the Department receives fewer than two offers, staff should determine whether competition was inadequate and the reasons. The Department may cancel the solicitation and begin a new solicitation. The Department, however, may still award the contract. If the number of responses are equal to or less than the number of contracts sought by the Department, the Department may proceed to negotiations with any

vendor whose response to the solicitation was responsive. In addition, the Department may establish a waiver process to allow non-competitive negotiations with any vendor if an insufficient number of contracts have been successfully negotiated.

§732.213. How does the Department handle modifications or withdrawals of offers before the closing date of the solicitation?

(a) A vendor who wishes to modify or withdraw his offer before the established closing date may do so by mail or by coming to the office designated in the solicitation instrument.

(b) For modifications, the vendor must submit an original of the modified page(s) and the appropriate number of copies to be substituted in the previously submitted offer. The modifications are submitted with a letter documenting the changes and the specific pages for substitution. The signature(s) on the letter must be the same as the signature(s) on the offer. Modifications are accepted by the Department no later than the established closing date, except for modifications to the proposal that result from negotiations.

(c) To withdrawal an offer, the vendor must submit a letter requesting withdrawal of the offer no later than the closing date established in the solicitation instrument for contract award. The signature(s) on the letter must be the same as the signature on the offer.

§732.214. Is the Department required to conduct a debriefing?

Upon request, unsuccessful vendors are entitled to receive information from the Department concerning the strengths and weaknesses of their offers compared to the evaluation criteria stated in the solicitation instrument. Although they may request an oral debriefing, the Department's written debriefing is the official response.

§732.215. May clerical mistakes in an offer be corrected?

If the Department and the vendor agree, the Department may correct any clerical mistakes, apparent from the context, before the award. The Department first obtains from the vendor verification of what was actually intended.

§732.216. May minor irregularities in an offer be corrected?

Before the contract award, the vendor may be given an opportunity to correct any deficiency in an offer resulting from a minor irregularity. The Department may disregard the mistake rather than request correction if disregarding it is advantageous to the Department and does not affect the competitiveness of other offers.

§732.217. May mistakes other than clerical mistakes or minor irregularities in an offer be corrected?

After submission, but before the contract award, a vendor may request permission to correct an offer with mistakes other than clerical mistakes or minor irregularities if the correction does not have a positive or negative effect on the competitiveness of other vendors, the offer is otherwise responsive to the request, and the offer is in the Department's best interests. Staff must consult with Department legal staff before granting the request.

§732.218. May an offer be withdrawn after the closing date of the solicitation?

After the closing date for a solicitation, a vendor may withdraw rather than correct his offer only if the Department determines it is in the Department's best interest.

§732.219. How does the Department establish the mechanisms to be used when evaluating offers?

The Department must establish mechanisms beforehand for evaluating the offers including ways of determining responsive vendors, providing information for debriefings, and selecting successful vendors for contract awards.

§732.220. How does the Department screen vendors?

(a) A vendor must meet all screening requirements in the solicitation instrument; otherwise, the offer is eliminated from further consideration.

(b) Before a corporation's offer or contract renewal can be considered, the corporation must give the Department franchise tax certification or a certificate from the Texas Comptroller of Public Accounts. Making a false certification is a material breach of contract and, at the Department's option, grounds for contract termination.

(c) The Department must notify, in a timely fashion and in writing, each vendor whose offer does not meet screening requirements. The written notice specifies why the offer has been eliminated from further consideration. The notice also includes a statement of willingness to provide a debriefing.

§732.221. How does the Department review vendor responses?

(a) To be considered by the Department, the vendor must meet the Department's requirements, demonstrate its ability to perform successfully and responsibly under the terms of the prospective contract, including its financial ability to perform, and submit the completed offer according to the time frames, procedures, and format stipulated by the Department in the solicitation. The best value factors found in the Health and Human Services Commission purchasing rules 1 TAC §391.121 (relating to Best Value Factors) and 1 TAC §391.131 (relating to Selection and Publication of Best Value Criteria) may be considered in the evaluation of offers.

(b) Entities currently ineligible for, held in abeyance from, or barred from the award of a federal or state contract may not contract or subcontract with the Texas Department of Protective and Regulatory Services. Contractors must have processes to check subcontractors and maintain documentation.

§732.222. May the Department validate information submitted in an offer by a vendor?

The Department may validate any information in an offer by using outside sources or materials. The validation process is optional; however, if the Department validates the information in one offer, it must apply the process without providing unfair advantage to any offer or range of offers.

§732.223. May the Department decide in a competitive procurement to discuss a contract with more than one vendor?

When conducting a competitive negotiation procurement, the Department may make competitive field determinations and conduct discussions with vendors in the competitive field in accordance with the Health and Human Services Commission purchasing rule at 1 TAC §391.151 (relating to Negotiated Procurement Standards).

§732.224. Must the Department notify unsuccessful vendors?

Each vendor whose offer meets the screening requirements, but is not selected for a contract, is entitled to timely notification in writing that his offer is no longer being considered. The Department must include in the notice a statement of willingness to provide a debriefing.

§732.225. May a vendor revise the offer during a negotiation?

The vendor must clearly identify all changes in or revisions to the offer.

§732.226. May subcontracts be used to provide goods and services?

(a) Subcontracts, for the purposes of this rule, are contracts for providing a part or all of the program components. Such contracts are between the party contracting with the Department and the subcontractor. Subcontractors for ancillary or support services, such as janitorial services, are not covered by this rule.

(b) Contractors must obtain the Department's approval of program subcontracts. No subcontract will be approved unless it contains a clause that the subcontractor agrees to accept and abide by all terms

and conditions imposed on subcontractors under the primary contract between the Department and the contractor.

(c) The contractor must agree to require its program subcontractor(s), if any, to accept and abide by each of the provisions of the contract with the Department.

(d) The contractor must agree to refrain from entering into any program subcontract(s) for services without prior approval or waiver of the right of approval in writing by the Department of the subcontractor's qualifications to perform and meet the standards fixed by the contract and its attached plans of operation.

§732.227. What does the Department do when there are equal low bids submitted by two or more vendors?

When two or more low bids are equal in all respects, the Department gives priority to the bid that best meets the best value factors which were prioritized in the solicitation instrument.

§732.228. Who may inspect competitive bids after they are opened?

After the public opening of the competitive bids, anyone present may examine the bids in the presence of the Department's representative. Individuals may not inspect the original bids if copies of the bids are available for public inspection. If copies are unavailable, the original bids may be examined only under the supervision of a Department official and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration of the bids.

§732.262. What records must a contractor keep and supply to the Department?

(a) A contractor must allow the department and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate client and financial records, books, and supporting documents pertaining to services provided. The contractor and the subcontractor must make these documents available at reasonable times, reasonable places and for reasonable periods. In addition, each contractor receiving block grant funds must send the contract manager a copy of the contractor's annual audit or notify the contract manager in writing that the audit is available for review.

(b) The contractor must keep financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim or cost report was submitted to the department or its agent. The records and documents must be kept for a minimum of 3 years and 90 days after the end of the contract period or for 3 years after the end of the federal fiscal year in which services were provided (if a provider agreement/contract has no specific termination date in effect). If any litigation, claim, or audit involving these records begins before the 3 year period expires, the provider must keep the records and documents for not less than 3 years and 90 days or until all litigation, claims, or audit finds are resolved. The case is considered resolved when a final order is issued in litigation, or the department and contractor enter into a written agreement. The contractor must keep records of nonexpendable property acquired under the contract for 3 years after the final disposition of the property. In this section, contract period means the beginning date through the ending date specified in the original agreement/contract; extensions are considered separate contract periods.

(c) After medical services end, the contractor must keep the recipient's medical records for five years as stated in the provider agreement/contract.

(d) If a contractor is terminating business operations, the contractor must ensure that his records are stored and accessible and that someone is responsible for adequately maintaining the appropriate records.

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 June 22, 2001.

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3437

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §§19.160 - 19.164

The Texas Department of Agriculture has withdrawn from consideration proposed new §§19.160 - 19.164 which appeared in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3677).

Filed with the Office of the Secretary of State on June 25, 2001.

TRD-200103612
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: June 25, 2001
For further information, please call: (512) 463-4075

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. EXAMINATIONS

22 TAC §571.4

The Texas Board of Veterinary Medical Examiners has withdrawn from consideration proposed amendments to §571.4 which appeared in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1967).

Filed with the Office of the Secretary of State on June 20, 2001.

TRD-200103494
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: June 20, 2001
For further information, please call: (512) 305-7555

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER H. STANDARDS FOR CLASS V WELLS

30 TAC §331.138

The Texas Natural Resource Conservation Commission has withdrawn from consideration the proposed new §331.138 which appeared in the January 26, 2001, issue of the *Texas Register* (26 TexReg 926).

Filed with the Office of the Secretary of State on June 22, 2001.

TRD-200103531
Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
Effective date: June 22, 2001
For further information, please call: (512) 239-5017

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER C. UTILIZATION REVIEW

1 TAC §§371.212 - 371.214

The Texas Health and Human Services Commission (HHSC) adopts amendments to Chapter 371, Medicaid Fraud and Abuse Program Integrity, Subchapter C, §371.212, concerning the Case Mix Classification System, §371.213, concerning the authority for on-site utilization review activities, and §371.214, concerning Texas Index for Level of Effort (TILE) assessments with changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3090).

The amended rules are adopted, in part, to implement the utilization review function assigned to HHSC by Senate Bill 30, enacted by the 75th Legislature in 1997. These rules reflect the transfer of authority from the Texas Department of Human Services (TDHS) to HHSC. These rules also reflect a new process for utilization review of Medicaid hospice recipients residing in nursing facilities as required by Code of Federal Regulations, Title 42, Part 455 (concerning Medicaid Program Integrity) and Part 456 (concerning Utilization Control), and by the Human Resources Code, Title 2, §32.032 (concerning Prevention and Detection of Fraud).

HHSC received comments from the following organizations: Texas Health Care Association; Texas Association of Homes and Services for the Aging, and Texas Department of Human Services.

General Comment: One commenter inquired whether HHSC intended to continue to perform quality of care reviews for all children residing in nursing facilities regardless of payment source.

Response: HHSC intends to continue the reviews of all children. The language regarding these reviews was removed from the proposed §371.214 to allow for further study by HHSC staff. The language has been reinserted in §371.213.

Comment: The commenter observed that the reference in proposed §371.212(2)(D) to Chapter IV of 42 CFR Part 455 might be confusing and recommended deleting the reference.

Response: HHSC agrees and will delete the reference to Chapter IV.

Comment: Two commenters questioned the phrase in §371.212(3)(B)(i)(II)(-a-) that states "a description of the event or illness and the recipient's functional status before and after the event must be documented by nursing staff in the individual's clinical record or care plan". They stated that they had understood the intent of this section to be that the physical therapist could document the change in patient status in the nursing section of the clinical record. It was recommended that this phrase be changed to "a description of the event or illness and the recipient's functional status before and after the event must be documented in the nurse's section of the clinical record and/or care plan.

Response: HHSC disagrees about the intent of this language. The intent was to ensure that the change in the recipient's functional status was noted by a discipline other than physical therapy. Since nursing staff is responsible for completion of the Client Assessment Review and Evaluation (CARE) form, it is expected that nursing staff will document their observations in the clinical record or care plan. Consequently, HHSC does not believe this reference should be revised.

Comment: Concerning §371.212(3)(B)(ii)(V)(-b-), one commenter felt that it was unclear as to who submits the written monthly review if services were supervised or delivered by a licensed therapist.

Response: HHSC agrees and has added "by the licensed therapist" to the end of the item.

Comment: Concerning §371.212(3)(B)(iii), which relates to recipients in the rehabilitative/restorative therapies group, one commenter noted an error in an internal reference. Specifically, they recommended that the references should be to clauses (i), (i)(IV) and (V), and (ii) of subparagraph (B).

Response: HHSC agrees and has added the suggested language.

Comment: Concerning §371.212(7), three commenters noted that deleting the phrase "acting director of nurses" from the list of persons who are required to sign the CARE form suggests that in the absence of the director of nursing, only the facility nurse assessor is required to sign the form. Two commenters noted that by deleting this person, HHSC contradicted information in the proposal preamble.

Response: HHSC agrees with and appreciates the comment. The phrase "acting director of nurses" has been reinserted.

Comment: Two commenters observed that in §371.212 (7), the hospice nurse assessor is required to sign the CARE form indicating that to the best of their knowledge, the information submitted is accurate, but that the rule does not require the hospice nurse assessor to complete TILE training in order to learn how to complete the CARE form. The commenters expressed concern that a licensed nurse would be required to attest to the accuracy of the form, but might not understand the clinical values utilized. The commenters recommended changing the phrase "one of whom has received TILE training" to "both of whom have received TILE training".

Response: HHSC disagrees based on the fact that hospice nurse assessors are encouraged to complete the training. No changes to language were made.

Comment: Two commenters noted that the language in §371.212(7) requires the electronic version of the form to be signed and maintained by the nursing facility. They point out that at a stakeholder's meeting held on April 19, 2001, a working draft of the 3652-A instructions stated, "Retain a copy with the appropriate signatures for the nursing facility clinical records." The commenters state that the language in the instructions is acceptable because it is not common practice for nursing facilities to maintain copies of the electronically transmitted forms with the required signatures.

Response: HHSC feels that the language in the proposed §371.212(7) reflects current practice. As of the end of April, approximately 90% of CARE forms reviewed by HHSC Utilization Review nurse reviewers contained the required signatures. Additionally, the DHS contract with the nursing facility requires that 3652 electronic forms with the appropriate signatures be maintained (Section II, K). HHSC agrees that the language in the 3652-A instructions was not as specific as the rule or contract language and intends to correct that oversight prior to printing the instructions. No changes were made to the rule as a result of this comment.

Comment: Two commenters noted that the requirement in §371.214(a) for the nursing facility and hospice nurse assessors to jointly assess hospice recipients who are residing in nursing facilities might delay completion of the form. The commenters were concerned that the two nurses might not be able to easily coordinate their schedules to allow simultaneous assessment of the hospice recipient. The commenters suggested substituting language from §371.212(7) that requires the hospice nurse to sign the form and removing the word "jointly" from the second sentence in §371.214.

Response: HHSC never intended for both nurses to complete the assessment at the same time. Both nurses must assess the hospice recipient, and both must sign the Form 3652-A attesting to the accuracy of the assessment. The suggested substitution language from §371.212(7) removes the hospice nurse assessor's requirement to assess the patient, and therefore is unacceptable. HHSC agrees that the word "jointly" implied a simultaneous assessment and has removed that word.

Comment: Two commenters requested that §371.214(b) be clarified to express that the "one-time 60-day waiver" can be utilized each time a new Director of Nurses (DON) is hired by deleting the wording "one-time."

Response: HHSC agrees that the waiver can be requested each time a new DON is hired if the new DON hasn't completed the TILE training. However, deleting the wording "one-time" would allow a new DON to request multiple 60-day waivers. HHSC feels that the proposed language adequately describes the acceptable practice and has made no revision to the rule language.

Comment: In reference to §371-214(c)(1), two commenters requested that the nursing facility be given five days pre-notification instead of the current two day pre-notification. The commenters stated that more time is needed to assure that items that have been thinned from the medical record can be retrieved and made available.

Response: HHSC disagrees. The two-day pre-notification is a minimum and is routinely exceeded. Additionally, there are multiple DHS Nursing Facility Requirements for Licensure and Medicaid Certification that require maintenance of the file and/or disallow thinning of pertinent information from the clinical record. These include 40 TAC §19.1910 pertaining to Clinical Records, §19.1912, relating to Additional Clinical Record Service Requirements, and §19.801, concerning the Resident Assessment. No changes were made to the rule as a result of this comment.

Comment: Two commenters noted that §371.214(c)(1) states that "For routine visits, nurse reviewers must be given prompt access to all information and resources necessary to conduct the TILE review." The commenters point out that it is unreasonable to expect that all information will be immediately accessible for all patients reviewed. They suggest that the nurse reviewers should only have one to two charts at any given time and ask that "all information" be changed to "information."

Response: HHSC agrees in part. It would be unreasonable to expect that the totality of information on every patient be available at the start of the review. It is HHSC's expectation that the reviewers will have as much information as possible at the start of the review and that all information be made available as soon as possible, but definitely before the end of the review. Providing the nurse reviewers with only two charts at a time would hinder the review process and is not acceptable. HHSC agrees that the word "all" may imply an unrealistic expectation and has deleted it from the rule.

Comment: Two commenters stated that §371.214(c)(1) is inconsistent with case law. Namely, the use of Default TILE 212 without the ability to reimburse the nursing facility for lost funds conflicts with the decision made in *Texas Department of Human Services v. Christian Care Centers, Inc; 826 S.W.2d 715* (Tex.App. - Austin 1992). The commenters state that once the review has been performed that the TILE rate should be modified and the payment should be made retroactive back to the date that the Default TILE 212 was implemented.

Response: HHSC agrees and has modified §371.214(c)(1) to state that once the review has been performed and the facility has demonstrated that a higher TILE classification is medically necessary, the higher TILE will be paid retroactive to the date that the Default 212 was implemented.

Comment: Two commenters asked that §371.214(c)(2) be expanded to allow nurse reviewers to use staff interviews and nursing observation to play a part in discussions of errors in TILE levels. They point out that §371.212(2)(A) states that nurse reviewers can use staff interviews and nursing observation to assign activities of daily living (ADL) scores and recommend that language be changed to allow this practice. It was recommended that "staff interviews and nursing observation" be added to the third sentence in this section.

Response: HHSC agrees. Observations and interviews are primarily used for validation of TILE level and to ensure that the

residents are in fact residing in the facility. Since the TILE review is retrospective, the clinical record will contain documentation regarding patient status that may not be consistent with their current status. In some situations, however, patient observation and interviews may assist with determining prior level of care. Therefore, the next to last sentence in this paragraph has been changed to "Additional documentation, staff interviews and nursing observation to support nursing facility resident and hospice recipient assessments may be presented at any time during the review process or the exit conference, and adjustments may be made."

Comment: Two commenters suggested that the language in §371.214(c)(2)(A) be changed to clarify that the payment and recoupment may be made to either or both the nursing facility or hospice provider.

Response: HHSC agrees and has changed "nursing facility and hospice provider" to "nursing facility and/or hospice provider" in both places in that subchapter.

Comment: One commenter noted that the phrase "this title" §371.214(c)(4) is incorrect because it refers to Title 1, not Title 40, which contains the rules that regulate TDHS contract appeals. They suggested changing the reference to Title 40.

Response: HHSC agrees and has corrected the reference.

Comment: Two commenters asked that the error rate be clarified in §371.214(d). The commenters suggested that the 20% error rate be defined as 20% of the total patients reviewed and that each Form 3652-A should be limited to one error when calculating the error rate.

Response: HHSC responds that the procedure for calculating the 20% error rate has always been based on the total patients reviewed and has never included more than one error per form reviewed. No change was made as a result of this comment.

Comment: Two commenters requested that the language in §371.214(f) be changed from HHSC "will direct DHS to hold vendor payments" to "may direct".

Response: HHSC disagrees. In the given situation, HHSC will always direct DHS to hold vendor payments. Stating that this "may" occur would be misleading. Additionally, all language in this rule pertaining to HHSC directing DHS to make changes to vendor payments is phrased in the same manner.

These rule amendments are adopted under authority granted to HHSC by §531.033, Government Code, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to implement HHSC's duties, and under §531.021(a), Government Code, which authorizes HHSC to administer federal medical assistance (Medicaid) program funds.

§371.212. Case Mix Classification System.

The case mix classification system is defined in terms of recipient condition, functional performance in activities of daily living (ADL), and level of staff intervention. The classification system is divided into four clinical categories, which are further subdivided based on ADL scores that measure functional performance for eating, transferring, and toileting. The combination of clinical categories and ADL measurements yields an array of 11 Texas Index for Level of Effort (TILE) case-mix classifications.

(1) Assessment period. The information on the Client Assessment Review and Evaluation (CARE) form for assignment of a clinical category or ADL score must be based on the recipient's status in the facility during the four weeks immediately preceding the assessment date, except in any of the following instances:

(A) If the recipient has experienced what appears to be a permanent change in clinical or functional status within the past four weeks, the nursing facility or the hospice provider can choose to complete a new assessment. Information in the new assessment shall be based on the recipient's current status.

(B) If the recipient has been admitted or readmitted to a facility during the past four weeks, the assessment is based on the status since admission or readmission.

(C) The condition or event that precipitates the need for rehabilitative therapy/restorative nursing may have occurred no more than six months prior to the assessment period. An admission or transfer into a facility could qualify as an event.

(2) Documentation. The documentation in the clinical record must be descriptive and quantitative to allow the accurate completion of the CARE form items relating to the recipient's condition(s), treatment(s), and the ADLs of eating, transferring, and toileting.

(A) In the absence of required facility documentation, the Texas Health and Human Services Commission (Commission) nurse reviewers will use available data, staff interviews, and nursing observation to assign ADL scores.

(B) The required documentation must appear in the clinical record during the assessment period to qualify for a clinical category. Lack of documentation will result in a change to an assessment item for a clinical category.

(C) Lack of, conflicting, or altered documentation could be the basis for an adjustment in TILE.

(D) Suspected fraudulent documentation, such as falsified or fabricated medical records, may result in a referral for investigation to the Medicaid Program Integrity Division of the Commission, as required as part of the state's methods for identification, investigation and referral for fraud under the Texas Administrative Code, Title 40, Part 1, Chapter 79, Subchapter V (relating to Fraud or Abuse Involving Medical Providers) and Code of Federal Regulations, Title 42, Chapter IV, Part 455 (concerning Program Integrity: Medicaid).

(3) Clinical categories. Each recipient is assigned to one of the following four clinical categories based on qualifying conditions or treatments.

(A) The heavy-care group. To qualify for the heavy-care clinical group, a recipient must have at least one of the following conditions or be receiving at least one of the following treatments, with supporting documentation in the clinical record, and the recipient must have a total ADL score of at least six out of a possible nine.

(i) Coma. Persistent unconsciousness and unresponsiveness from which a resident cannot be aroused must be documented in the assessment period.

(ii) Quadriplegia. Neurologic disorder causing paralysis of the four extremities, excluding loss of movement caused solely by contractures. Paralysis is defined as loss of power of voluntary movement in a muscle through injury or disease of its nerve supply. A description of the recipient's functional abilities and limitations must be documented in the clinical record in the assessment period.

(iii) Stage III or IV decubitus with physician-ordered decubitus care and/or wound dressings twice a day. Decubitus covered by eschar is considered Stage IV. Decubitus must be described and care/dressings must be documented in the assessment period.

(iv) Non-oral administration of 60% or more of the recipient's nourishment. Times, amount, and types of feeding must be documented in the assessment period.

(v) Daily oral or nasal suctioning, which must be documented daily in the assessment period.

(vi) Daily tracheotomy care or suctioning, excluding self-care, which must be documented daily in the assessment period.

(B) The rehabilitation/restorative group. To qualify for the rehabilitation/restorative clinical group, a recipient must receive TILE 202 restorative nursing care as follow-up to rehabilitation therapy. The TILE 202 restorative nursing and rehabilitation therapy must meet the following criteria with supporting documentation in the clinical record. For hospice recipients residing in nursing facilities rehabilitation or restorative nursing care is only applicable for conditions unrelated to the terminal illness.

(i) The rehabilitation therapy must be:

(I) physical or occupational therapy, ordered by a physician, and provided by a licensed therapist or by certified or licensed occupational or physical therapy assistants (COTA/LPTA) under the supervision of a licensed therapist. Positioning, splinting, decubitus ulcer care, and training nursing staff (as in a functional maintenance program) are excluded from the TILE 202, even if provided by an occupational therapist or physical therapist;

(II) initiated due to an identifiable, documented event, i.e., an illness, injury or physical change or an exacerbation of a chronic illness in the past six months with an associated change in ADL functioning. An admission or transfer into a facility could qualify as an event. The functional change must be documented through one of the following:

(-a-) a description of the event or illness and the recipient's functional status before and after the event must be documented by nursing staff in the individual's clinical record or care plan; or

(-b-) completion of a Minimum Data Set 2.0 Significant Change with an updated care plan;

(III) expected to result in the recipient's making significant, measurable, functional progress, which must be documented in the therapy goals;

(IV) provided on a one-to-one basis three times per therapy week for at least two therapy weeks; and

(V) reimbursed by Medicare, Medicaid rehabilitative services, or another third party payer.

(ii) The TILE 202 restorative nursing must:

(I) be provided as part of a restorative care plan, based upon the therapist's written plan of care and developed by the restorative team, which must include and be signed by the therapist and a registered nurse;

(II) begin during the assessment period;

(III) begin within 14 days of the therapist's written restorative plan of care;

(IV) be provided for a minimum of 24 sessions within eight therapy weeks, and must continue as long as clinically indicated; and

(V) be supported by a Restorative Nursing Care Program form, or similar form containing the same elements, which must document each restorative session and the recipient's response to the restorative plan through:

(-a-) a weekly note by the nursing or therapy staff (as appropriate); and

(-b-) a written monthly review by the licensed nursing staff or, if services were supervised or delivered by a licensed therapist, by the licensed therapist.

(iii) A recipient will be considered to be properly classified in this clinical group if all criteria in clauses (i) and (ii) of this paragraph are met except clause (i)(IV) and (V) of this subparagraph, which must be met within three months of the date of assessment;

(C) The clinically unstable group. To qualify for the clinically unstable group, a recipient must have at least one of the following conditions or receive one of the following treatments during the assessment period.

(i) Recent amputation of arms, legs, or parts thereof in the six months preceding the assessment date. Date and site of amputation must be documented in the clinical record.

(ii) Seizures, which occurred in the facility, in the assessment period. A description of the seizure and nursing interventions must be documented in the clinical record.

(iii) Dehydration with documented intake/output monitoring (including frequency and amounts of output) on at least two shifts per day. Dehydration that was diagnosed, treated, and resolved outside the facility and is no longer symptomatic is excluded. The signs, symptoms, interventions, and measures taken to prevent recurrence must be documented in the assessment period.

(iv) Acute, symptomatic urinary tract infection (UTI) with a documented intake and output (including frequency and amounts of output) on three shifts a day. UTIs that were diagnosed, treated and resolved outside the facility and are no longer symptomatic and UTIs identified by urinalysis alone are excluded. The signs, symptoms, interventions and measures taken to prevent recurrence must be documented in the assessment period.

(v) Incontinence or a Foley catheter, with an individualized bowel or bladder rehabilitation program requiring staff intervention at least three times per day. The program must assess the cause of the incontinence and the rehabilitative potential, and document the interventions and outcomes. The care plan must include the individualized goals and approaches that reflect both the resident and nursing participation in the process. Frequency of staff intervention must be documented.

(vi) Oxygen administration, which must be documented on a daily basis during the assessment period. One day of oxygen use is excluded from reimbursement as a daily oxygen charge.

(vii) Respiratory therapy, ordered by a physician, performed by licensed nursing staff or a respiratory therapist, received at least three times per day, and documented in the assessment period. Respiratory therapy includes nebulizers, percussion, cupping, postural drainage, updrafts, and intermittent positive pressure breathing (IPPB) treatments, but excludes inhalers.

(viii) Wound dressing applied to an open wound at least two times per day, excluding simple skin tears and closed abrasions. A description of the wound and the treatment, including frequency, must be documented in the assessment period.

(D) The clinically stable group. This clinical group includes all recipients who do not qualify clinically for the heavy-care, rehabilitation/restorative, or clinically unstable group, and who have an ADL score between 3 and 9. The clinically stable group includes a mental/behavioral condition subgroup. A recipient qualifies for this subgroup if:

(i) they have an ADL score of exactly three; and

(ii) they have at least one of the following cognitive or behavioral characteristics:

(I) incoherent/frequent disorientation requiring daily staff intervention. Orientation problems must be described in the clinical record in the assessment period, including the staff intervention required and its frequency; or

(II) disruptive or aggressive behavior, requiring immediate staff intervention on a daily basis. The behaviors must be described in the clinical record, in the assessment period, including the frequency and the required staff intervention.

(4) Computation of the ADL scale. The ADL scale is used to assess recipients' daily functional abilities in eating, transferring and toileting. The facility nurse assessors rate these activities with a value of one to five on the CARE form. The CARE form values are recoded by DHS into a three-point system. The recoding results in points that range from one to three for each item and totals from three to nine for all three items. A recipient's total points for all three ADLs are used to determine case-mix classifications within the clinical categories. The ADLs and their corresponding points on the TILE nine-point scale are:

(A) Transferring, or the process of moving between positions, such as to or from a bed, a chair, or a standing position, but excluding to and from the toilet.

(i) One TILE point is given for recipients rated as:

(I) Independent; no staff assistance required, but recipient may use equipment such as railings, trapeze, etc.

(II) Pro re nata (PRN); recipient requires PRN assistance for transfers.

(ii) Two TILE points are given for recipients rated as "one to transfer"; requires one person continuously for physical or verbal assist on 60% or more of the transfers. When assistance is required and for what reason must be documented in the assessment period.

(iii) Three TILE points are given for recipients rated as:

(I) Two to transfer; requires assistance of two or more staff during the entire activity on 60% or more of the transfers. When assistance is required and for what reason must be documented in the assessment period.

(II) Not Transferred; may be transferred to a stretcher or chair once a week or less, excluding transfers to bath or toilet.

(B) Eating, including the use of an enteral or parenteral tube, but excluding tray set up and food preparation.

(i) One TILE point is given for recipients rated as:

(I) Independent or recipient has chosen not to receive nutrition.

(II) Intermittent assistance; requires verbal or physical assistance less than 60% of the time.

(ii) Two TILE points are given for recipients rated as:

(I) Being trained to feed themselves. An assessment of the retraining potential and a description of the training program must be documented in the clinical record in the assessment period. The retraining program must include a minimum of training at two meals per day.

(II) Requiring assistance to syringe or spoon-feed for 60% or more of the time. The type of assistance, when the assistance is required, and for what reason must be documented in the clinical record.

(iii) Three TILE points are given for recipients rated as receiving non-oral feedings for 60% or more of the recipient's nutrition using a tube such as a naso-gastric tube, gastrostromy tube, percutaneous endoscopic gastrostromy tube, or administration of total parenteral nutrition via a central line. The frequency, amounts, routes, and times the non-oral feedings were administered must be documented in the clinical record.

(C) Toileting, or the process of elimination including the use of a bedpan, urinal, bedside commode, or toilet, or ostomy or incontinent care.

(i) One TILE point is given for recipients rated as:

(I) Independent, including the use of special equipment or performing of own incontinent care, self-catheterization, ostomy care.

(II) Requires assistance but can be left alone for privacy. Assistance may include transferring on and off the commode, cleansing after elimination, adjusting clothing, or washing hands.

(ii) Two TILE points are given for recipients rated as incontinent or having an indwelling catheter, including staff-administered ostomy care, incontinence care using protective padding, incontinence briefs, changing clothes, or a propped urinal. A description of what staff are required to do 60% or more of the time must be documented in the clinical record.

(iii) Three TILE points will be given for recipients rated as:

(I) Requiring physical or verbal assist or supervision during entire toileting process, excluding incontinent care, and cannot be left alone. The functional, medical, or behavioral reason the recipient cannot be left alone must be documented in the clinical record in the assessment period.

(II) Receiving scheduled toileting by the staff every two hours during waking hours, or more often if needed by the resident, as incontinence management. Recipient does not initiate process and stays dry 60% or more of the time as the result of staff-initiated scheduled toileting. A description of staff actions and whether the resident was wet or dry each time he/she was taken to the toilet must be documented in the clinical record in the assessment period. Recipients who receive in and out catheterization by the staff two or more times each day are included in this category.

(5) Special cases. A recipient who qualifies for more than one of the 11 TILE case-mix groups is classified in the group with the highest case-mix index and associated per diem rate. If a provider incorrectly or incompletely reports data necessary for TILE determination, the recipient is temporarily classified in the Default TILE 212 group until the data are corrected as provided by §371.214 of this title.

(6) Case-mix classifications. Case-mix classifications are determined by the clinical group in combination with the ADL score as follows:

(A) TILE 201; heavy care and an ADL score of 8-9;

(B) TILE 203; heavy care and an ADL score of 6-7;

(C) TILE 202; rehabilitation and an ADL score of at least 3;

(D) TILE 204; clinically unstable and an ADL score of 7-9;

(E) TILE 205; clinically stable and an ADL score of 7-9;

(F) TILE 206; clinically unstable and an ADL score of 4-6;

(G) TILE 207; clinically stable and an ADL score of 5-6;

(H) TILE 208; clinically unstable and an ADL score of 3;

(I) TILE 209; clinically stable and an ADL score of 4;

(J) TILE 210; clinically stable, an ADL score of exactly 3, and includes a mental/behavioral subcategory;

(K) TILE 211; clinically stable and an ADL score of 3;

(L) Default TILE 212 ; provider incorrectly or incompletely reports data necessary for TILE determination or if the facility fails to cooperate fully with nurse reviewers as provided by §371.214 of this title.

(7) Required signatures. The Texas Nursing Facility CARE form must be signed by the director of nurses or the acting director of nurses and the facility nurse assessor, one of whom has received TILE training, as required by §371.214 of this title (relating to Texas Index for Level of Effort (TILE) Assessments). If the form is completed for a hospice recipient residing in the nursing facility, the form must also be signed by a hospice nurse assessor. These signatures certify the information claimed is accurate and complete and subject to penalties for falsification, as provided in 42 Code of Federal Regulations, Part 1003. A copy of the electronically transmitted form with the required signatures must be maintained by the nursing facility.

§371.213. Utilization Review and Control Activities Performed by Texas Health and Human Services Commission (Commission).

(a) According to state law and the state plan requirements, the Texas Health and Human Services Commission (Commission) staff conducts required on-site activities related to utilization review. These activities include the review of all children residing in nursing facilities for quality of care regardless of payment source.

(b) Facility staff must cooperate with and fully support the Commission staff during on-site reviews and facilitate personal contact with and observation of each resident and the review of each resident's clinical records.

§371.214. Texas Index for Level of Effort (TILE) Assessments.

(a) Nursing facility nurse assessors assess recipients for TILE determination by completing Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) forms. The nursing facility and hospice nurse assessors assess hospice recipients who are residing in nursing facilities for TILE determination by completing the Texas Nursing Facility CARE forms. Hospice recipients residing in nursing facilities must have all eligibility forms submitted prior to Texas Department of Human Services (DHS) paying nursing facility room and board to the hospice provider. These assessments establish TILE classifications as described in paragraphs (1)-(8) of this subsection. Nursing facility nurse assessors must complete and pass the Texas Health and Human Services Commission (Commission) TILE training course with a minimum score of 70%. The nurse's license number will be registered with the National Heritage Insurance Company (NHIC). Hospice nurse assessors may complete the Commission's Texas TILE training course.

(1) Preadmission assessments do not establish a TILE classification.

(2) Admissions assessments establish TILE classifications as follows:

(A) If the nursing facility resident has not previously attained a permanent medical necessity or if an individual is simultaneously admitted to a nursing facility as a hospice recipient, the nurse assessor submits an admission assessment within 20 calendar days of admission, as provided in the Texas Administrative Code (TAC), Title 40, Part 1, Chapter 19, Subchapter Y, §19.2403 (relating to Utilization Review Process). The admission assessment establishes a medical necessity (MN) and a TILE classification for 180 days.

(B) If the nursing facility resident has previously attained a permanent MN, the admission assessment is completed on an abbreviated form, which sets TILE only.

(3) One medical necessity review (MNR) is required 180 days after the effective date of the admission assessment. If the MNR indicates an MN for nursing facility care, DHS will notify the facility of the permanent MN. This notification becomes a part of the resident's permanent medical record. A permanent MN will be lost only if a resident is discharged to home for over 30 days. The MNR may also establish a new TILE classification.

(4) After the establishment of permanent MN, residents with a 211 TILE require no further assessment unless there is a change in their condition. All other TILE levels require a review every 180 days.

(5) If a recipient's medical condition changes to the extent that he qualifies for a different TILE, an off-cycle assessment may be submitted. If a nursing facility resident becomes a hospice recipient, an off-cycle assessment must be submitted. Only two off-cycle assessments for any one nursing facility resident or hospice recipient residing in a nursing facility are permitted per calendar year, one from January through June and one from July through December. The off-cycle assessment for a nursing facility resident that becomes a hospice recipient is not included in the two allowable off-cycle assessments. The assessment sets a new schedule for submission of forms if permanent MN has been achieved. Before permanent MN, the assessment will not set a new schedule for submission of forms.

(6) A new CARE form may be submitted for the purpose of correcting errors previously made in the assessment portion of the form (Items 30, 31, and 50-99). The submission of the correction does not change the schedule for submission of forms or necessarily change the TILE group. Corrections must be submitted within 60 days from the date of assessment on the incorrect form. The Commission will not accept requests for changes submitted:

(A) over 60 days from the date of assessment on the incorrect form; or

(B) after notification of an on-site review date.

(7) If a recipient experiences a significant change related to mental illness, mental retardation, and/or a related condition that indicates that the recipient might benefit from specialized services, a request for a recipient Preadmission Screening and Resident Review (PASARR) must be submitted to the local DHS' PASARR office using a CARE form.

(8) A facility may submit a request for retroactive payment in the following instances:

(A) when a facility provides care for a recipient for a period of time not covered by an effective MN determination at admission or by assessment CARE forms as provided in TAC, Title 40, Part 1, Chapter 19, Subchapter Y, §19.2413 (relating to Reconsideration of Medical Necessity Determination and Effective Dates); or

(B) if a recipient is found to be otherwise eligible for Medicaid for the three months prior to the month of his date of application for Medicaid assistance as provided in TAC, Title 40, Part 1, Chapter 19, Subchapter Y, §19.2408 (relating to Retroactive Medical Necessity Determinations).

(C) The effective date for a retroactive payment for a hospice recipient may not be prior to June 1, 2001.

(b) Nursing facilities with new directors of nurses, nurse managers and nurse assessors may request a one time 60-day waiver to complete the TILE assessments. At the end of the 60-day waiver period, the nursing facility director of nurses, nurse manager and nurse assessor must complete and pass the Commission TILE training course with a minimum score of 70%. The Commission assumes cost for the initial TILE training course. The facility or individual shall assume the cost of any additional required training and testing for the same individual.

(c) Review and appeal of case-mix assessments. Commission nurse reviewers conduct desk reviews and in-depth, on-site reviews of Texas Nursing Facility CARE forms completed by nursing facility and hospice staff to verify TILE and medical necessity information. The assessment forms and the entire medical record of a minimum of ten Medicaid recipients, excluding TILE 211, will be reviewed. Forms expired over 12 months will not be reviewed.

(1) Commission nurse reviewers will notify nursing facilities and hospice providers a minimum of two working days prior to routine on-site visits. They will be given information regarding the recipients whose medical records will be reviewed, the time period covered by the review and the accommodations necessary for the review. No notice is required for facilities whose last two on-site visits resulted in corrective action; visits for investigation of TILE issues, including suspected fraud; or visits requested by another state agency. For routine onsite visits, nurse reviewers must be given prompt access to information and resources necessary to conduct the TILE review. Failure to do so may result in the nursing facility being classified in the Default TILE 212 until the visit can be conducted. Once the visit is conducted and the facility demonstrates the medical necessity of a higher TILE classification, the default TILE 212 will be released retroactive to the date of the event that prompted the default. A default TILE will not be applied in the event of unforeseen environmental conditions.

(2) When a Commission nurse reviewer determines that the TILE classification is not substantiated and/or does not accurately reflect the recipient's status, the reviewer will discuss the error and give the provider an opportunity to submit additional documentation to support the item claimed. An exit conference is held with the nursing facility staff following the review. Hospice staff may attend if hospice recipients are reviewed. Additional documentation, staff interviews and nursing observation to support nursing facility resident and hospice recipient assessments may be presented at any time during the review process or the exit conference, and adjustments may be made. The nursing facility administrator and hospice provider are given formal notification of all TILE changes within 15 working days of the exit conference.

(A) At the direction of the Commission, DHS recoups funds previously paid to the nursing facility and/or hospice provider under incorrect TILE classification. At the direction of the Commission, DHS pays the nursing facility and/or the hospice provider any increase due to a change in TILE classification.

(B) The change in TILE classification and per diem rate is effective retroactively to the "effective date" of the assessment reviewed.

(3) If a Commission nurse reviewer and a facility or hospice nurse assessor are unable to agree about an assessment, either provider may submit a reconsideration request to the Commission's state office nurse specialist.

(A) The request for the reconsideration and all documentation supporting the requested changes must be received by the state office nurse specialist within 15 days of receipt of formal notification of TILE changes.

(B) The state office nurse will review all material submitted by the provider and all information collected during the Utilization Review.

(C) The TILE classification and associated per diem rate specified by the Commission nurse reviewer remain in effect during the reconsideration period.

(D) If the reconsideration establishes that the Commission has changed a TILE classification in error, the Commission will direct DHS to correct the error retroactively.

(4) If the provider disagrees with the findings of the state office nurse specialist, the provider may initiate a formal appeal, as stated in Title 40, Chapter 79, Subchapter Q (relating to Contract Appeals Process) by submitting a request to the Director, Hearings Department, Mail Code W-613, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030 within 15 days of receipt of notification of the results of the reconsideration.

(A) The TILE classification and associated per diem rate specified by the state office nurse specialist remain in effect during the formal contract appeal.

(B) If the contract appeal process establishes that the Commission has changed a TILE classification in error, the Commission will direct DHS to correct the error retroactively.

(d) TILE error rates on the assessment forms reviewed which exceed 20% may result in a facility's undergoing a monitoring period.

(1) During the monitoring period, nursing facilities may not submit Texas Nursing Facility CARE forms to NHIC either electronically or by mail. All Texas Nursing Facility CARE forms, which include both nursing facility residents and hospice recipients residing in nursing facilities, must be submitted to the Commission nurse reviewers.

(2) The length of the monitoring period is 60 days. If accuracy of forms is still at an unacceptable level at the end of 60 days, the Commission may give a one-time, 30-day extension, if the facility has shown an attempt to improve their accuracy. If forms are not accurate at the end of 90 days, the Commission places the facility on compliance.

(e) Compliance may result when a facility has a 20% or greater error rate on the current assessment forms reviewed and one of the following: a 20% or greater error rate by the end of a monitoring period; lack of documentation regarding key assessment items; a history of noncompliance; or medical records that contain alterations in areas designed to lower the TILE level and increase the payment.

(1) Within a 30 to 45-day compliance period, facilities must complete new Texas Nursing Facility CARE forms on all recipients not in the original review.

(2) During the compliance period, facilities may not submit Texas Nursing Facility CARE forms to NHIC either electronically or by mail. All Texas Nursing Facility CARE forms, which include both nursing facility residents and hospice recipients residing in nursing facilities, must be submitted to Commission nurse reviewers.

(f) If a facility has a 20% or greater error rate by the end of the compliance period, the Commission will direct DHS to hold vendor payments to the facility until the facility has less than a 20% error rate. A decision to place a facility on vendor hold will be made by UR staff in state office.

(g) The nursing facility nurse assessor and the director of nurses must complete and pass the Commission TILE training course with a minimum score of 70% within 60 days of the beginning of the compliance period or vendor hold. If a score of 70% or higher is not achieved by the director of nurses or facility nurse assessor, the nursing facility will remain on corrective action until such time as the acceptable score of 70% is achieved.

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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Marina S. Henderson
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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) adopts amendments to §20.1 and §20.3, new §§20.10 - 20.17, and the repeal of §20.2 and §§20.10 - 20.14, all concerning quarantine requirements for cotton pest control. New §20.16 is adopted with changes to the proposed text as published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3313). Amended §20.1 and §20.3, new §§20.10 - 20.15 and §20.17 and the repeal of §20.2 and §§20.10 - 20.14 are adopted without changes and will not be republished.

New §20.16 has been changed, based on a comment received from an individual cotton grower, to clarify that a USDA certificate of inspection is acceptable to meet the requirements of the exceptions to restricted movement listed at §20.16(c). The department believes that a USDA certificate of inspection would be acceptable because it is predicated upon the cleaning or fumigation of equipment. The amendments and new sections are adopted to prevent the artificial re-infestation of boll weevil into an area that is suppressed, functionally eradicated, or eradicated. The sections are further adopted to protect the Southern Rolling Plains Zone, and other zones reaching the eradication stage in the future, from boll weevil re-infestation through the establishment of quarantine restrictions on the movement of regulated articles from a quarantined area into a restricted area. These amendments and new sections were developed using input obtained from a Boll Weevil Quarantine Task Force composed of representatives from cotton producer associations including the Texas Cotton Ginners Association, the Texas Agricultural Extension Service, the Boll Weevil Technical Advisory Committee of the Texas Boll Weevil Eradication Foundation and the Foundation.

The repeal of §20.2 is adopted because the department adopted a new Subchapter B of Chapter 20, which does not require the payment of an inspection fee. The department also adopts the repeal of the current Subchapter B. Quarantine Requirements §§20.10 - 20.14. The repeal of these sections is adopted because new sections have been added to replace §§20.10-20.14 and current sections have been updated. New Subchapter B. Quarantine Requirements §§20.10-20.17 will replace those now in effect.

Section 20.1 defines terms used in Chapter 20 and is amended to include new definitions of the terms "compliance agreement, functionally eradicated area, hostable cotton, protection plan, restricted area, and trap " and amended definitions of "certificate, cotton, cotton products, destroyed, or destruction, eradicated area, seed cotton, suppressed area, and treatment." Definitions of "quarantined area" and "quarantined articles" are deleted since they are defined within new §20.11 and new §20.15, respectively. The definition of "inspector" is deleted because that term is not used in the new sections. The amendments to §20.3 clarify the section and make it consistent with the adopted new §§20.10-20.17.

New §20.10 and §20.11 defines the pest and the quarantined areas. New §§20.12 - 20.14 establishes three categories of boll weevil eradication (suppressed, functionally eradicated, and eradicated areas) and identifies counties within the functionally eradicated area. The Texas Boll Weevil Eradication Foundation recommended to the department that the Southern Rolling Plains Boll Weevil Eradication Zone be declared functionally eradicated and provided scientific documentation acceptable to the department indicating that movement of regulated articles into this zone presented a threat to the success of boll weevil eradication. The data indicated that boll weevil numbers were well below the requirement of an average of 0.001 per trap. Consequently, the commissioner declared the Southern Rolling Plains Zone to be functionally eradicated on September 20, 2000. Regulated articles are listed in new §20.15. The articles include equipment involved in harvesting and transportation of cotton as well as cotton products. New §20.16 describes restrictions for movement of cotton products and equipment as well as methods by which movement is allowed. Equipment listed as a regulated article must be cleaned or treated prior to moving into a restricted area. Other regulated articles may be moved into a restricted area provided that the producer, transporter, ginner, or other responsible party has implemented a protection plan approved by the department and operates under the conditions of a compliance agreement established with the department. New §20.17 provides for inspections and certificates to be issued by an authorized representative of the department to certify that regulated articles have been treated and do not represent a pest risk.

Comments generally in favor of the proposal were received from the Plains Cotton Growers, Rolling Plains Cotton Growers, Inc., and South Texas Cotton and Grain Association. Public hearings were held at Weslaco, Corpus Christi, Victoria, San Angelo, Abilene, and Lubbock to hear public comments. Ten oral comments

in favor of the proposal were received from cotton producers and industry representatives from across the state. The comments generally stated that the rule provided support to cotton producers for the investment they incurred toward boll weevil eradication. Three comments were received against the proposal. One industry representative requested permission to allow Malathion as a fumigation tool. Since Malathion is not considered a fumigant by the Environmental Protection Agency (EPA), it does not qualify as a product for this use.

Other oral comments expressed concern that boll weevils may be introduced into an area by transporting green bolls or seed cotton containing boll weevils within a module or transporting cotton burs for livestock feed. The quarantine specifies that persons involved in the transport of regulated articles will operate under the guidelines of a "protection plan" that specifies methods to safeguard against the incidental re-infestation of boll weevils by any method. Another oral comment was received to establish another restricted category that allows for regulations below the suppressed level. The criteria for suppression provides for flexibility but still reflect a significant reduction in weevil numbers. Developing an additional category below the suppressed level is not feasible because the level of weevils for this category would not significantly differentiate the risk of weevil infestation. The department does not feel that additional restricted categories are warranted at this time.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1, §20.3

The amendments to §20.1 and §20.3 are adopted in accordance with the Texas Agriculture Code (the 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; §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area; and §74.123, which authorizes the department to issue or authorize the issuance of certificates or permits relating to movement of a regulated article.

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 June 19, 2001.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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Proposal publication date: May 4, 2001
For further information, please call: (512) 463-4075

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4 TAC §20.2

The repeal of §20.2 is adopted in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for administration of the Code; and §74.006, which provides the department with the authority to adopt rules as necessary for the enforcement of boll weevil eradication.

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 B. QUARANTINE REQUIREMENTS

4 TAC §§20.10, 20.13, 20.14

The repeal of §§20.10, 20.13 and 20.14 is adopted in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for administration of the Code; and §74.006, which provides the department with statutory authority to adopt rules as necessary for the enforcement of boll weevil eradication.

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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4 TAC §§20.10 - 20.17

New §§20.10-20.17, are adopted under the Texas Agriculture Code (the Code), §71.003, which provides the department with the authority to declare quarantines around pest-free areas to protect such areas from a pest; §71.005, which provides the department with the authority to prevent the movement of any plant or pest which poses a risk to a pest-free area; §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area; and §74.123, which authorizes the department to issue or authorize the issuance of certificates or permits relating to movement of a regulated article.

§20.16. Restrictions.

(a) General. Movement of regulated articles is prohibited in the following cases:

(1) from or through a quarantined area to an eradicated area, a functionally eradicated area, or a suppressed area;

(2) from or through a suppressed area to an eradicated area or a functionally eradicated area;

(3) from or through a functionally eradicated area to an eradicated area; or

(4) when the department determines that the movement may cause an increase in infestation of boll weevil.

(b) Exemptions. The following are exempt from the requirements of this subchapter:

(1) cotton seed and vehicles transporting the seed;

(2) baled cotton, baled gin motes and linters and vehicles transporting baled cotton and baled gin motes and linters; and

(3) manufactured cotton products.

(c) Exceptions. The following are exceptions to the restrictions in subsection (a) of this section:

(1) Cotton harvesting equipment and other equipment associated with the production and transport of cotton as well as used gin equipment, otherwise prohibited from movement by these rules, may be moved to or through a restricted area provided the equipment is free of cotton products and boll weevils in any stage of development or treated in one of the following manners:

(A) physical removal of hostable material including, but not limited to, the following methods:

(i) removal by hand.

(ii) high-pressure air cleaning; or

(iii) high pressure washing; or

(B) fumigation of regulated articles as prescribed by the department.

(2) Cotton products and other regulated articles, otherwise prohibited from movement by these rules, may be transported to or through a restricted area provided that the producer, transporter, ginner, or other responsible party has implemented a protection plan approved by the department and operates under the conditions of a compliance agreement established with the department.

(3) A USDA certificate of inspection (PPQ Form 540- used to certify equipment free of pink bollworm) showing that cotton harvesting equipment or other equipment associated with the production and transport of cotton, as well as used gin equipment, has been cleaned or fumigated is acceptable to the department as an exception to the restrictions set forth in subsection (a) of this section.

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

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CHAPTER 27. TEXAS AGRICULTURAL FINANCE AUTHORITY: PREFERRED LENDER PROGRAM RULES

4 TAC §§27.1 - 27.8

The Board of Directors of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (the department) adopts new §§27.1 - 27.8, concerning procedures for participation in the TAFA Preferred Lender Program, with changes to the proposal published in the April 6, 2001 issue of the *Texas Register* (26 TexReg 2586). New §§27.3, 27.5 and 27.7 are adopted with changes based on comment received. New §§27.1, 27.2, 27.4, 27.6 and 27.8 are adopted without changes and will not be republished.

The new sections are adopted in order to provide lenders of Texas an opportunity to participate in a preferred lender program for the Young Farmer Loan Guarantee Program and the Farm and Ranch Finance Program and to establish standards and procedures for the new program. The preferred lender program will provide approved lenders the ability to receive application approval for eligible applicants within a two-week time period and will allow approved lenders to receive preapproval for all documentation required for closing an approved commitment.

New §27.3 is adopted with changes based on a comment received from Farm Credit Bank (FCB). In regards to the requirement in paragraph (3) that an applicant provide a certificate of good standing by its regulatory agency, FCB commented that this would not be possible for an FCB association because its regulator, the Farm Credit Administration, does not issue certificates of good standing. Section 27.3(3) is changed to allow the applicant to provide a letter from the association president or other appropriate individual indicating that the lender is in good standing with the appropriate regulatory agency. In regards to the documentation required by §27.3(5), FCB suggested that the terms used to describe certain documentaion be defined to ensure the requirements are clear to applicants. The section was changed to clarify the required application information for the applicant. New §27.5 has been changed, also based on a comments received from FCB requesting clarification of paragraphs (7) and (8). Paragraph (7) has been changed to clarify the period which should be covered by an applicant's cash flow budget and paragraph (8) has been changed to clarily that the credit report required is the applicant's credit bureau report. New §27.7 (a) has also been changed based on a comment received from FCB. FCB commented that the 30 payment past due notification requirement in the proposal, in practice, would require notification before the lender would normally receive reporting of the payment being past due. The notification requirement has been changed to provide that the notice must be provided within 15 days after a payment is 30 days past due. In regards to §27.8(g), FCB suggested that if inspections are to be conducted on all

loans, that the time be extended from 30 to 90 days to have flexibility in scheduling. The 30 days has been changed to 90 days to allow for flexibility in scheduling.

In addition to the comments previously addressed FCB also provided the following comments and questions which have not been incorporated into the adopted rules. In regards to new §27.2 and the definition of "Applicant", FCB questioned whether under the definition a farm credit district could apply for preferred lender status as an affiliate. An association or district may be approved as a preferred lender with the applications being considered as coming from the individual association or district, rather than a Production Credit Association or Federal Land Bank Association.

In regards to the requirement that an applicant submit at least four loan requests each fiscal year to maintain its status as a preferred lender, FCB asked if an association is divided into two divisions, will loans made by each division count towards the required four requests, or will both divisions have to make four loans each? In a situation such as this, the determination as to what would count towards the request requirement would be fact specific, and would depend on the status of the approved applicant. In regards to §27.6(b), and the review by assistant commissioner, FCB asked the purpose in review by the assistant commissioner. This subsection provides for review of the loan application by the deputy commissioner and/or the assistant commissioner. The "assistant commissioner" referenced is the assistant commissioner for finance and agribusiness development, who administers the TAFA programs, and the deputy assistant commissioner is the deputy assistant commissioner for finance and agribusiness development. This review is an internal procedure to further assure all program requirements are met. In regards to §27.8(g), and the inspection of the project and collateral pledged to the project to be constructed by department staff, FCB strongly encouraged the department to conduct inspections prior to closing the commitment rather than 30 business days after closing. The conducting of an inspection prior to closing is not possible because of the short time frame between the time of notification of approval from the commissioner to the lender and the time of closing.

New §27.1 states the purpose of the program. New §27.2 provides definitions to be used in the chapter. New §§27.3- 27.5 establish qualifications and application procedures for a preferred lender and required information for applications submitted for the consideration to the respective programs. New §27.6 establishes the commitment approval process, notification procedures for an approved or denied application. New §27.7 establishes procedures for the default of an approved commitment. New §27.8 establishes procedures for an annual review and notification process by TAFA for approved participating preferred lenders.

The new sections are adopted under the Texas Agriculture Code, §58.022 and §59.022, which provide the TAFA board with the authority to adopt rules and procedures for administration of the programs of TAFA.

§27.3. Qualifications for the Preferred Lender Program (PLP).

The applicant must submit an application for PLP status to the Authority to include:

(1) a statement requesting PLP status for either, or both, the Young Farmer Loan Guarantee Program and the Farm and Ranch Finance Program.

(2) a summary of the applicant's capability to adequately approve, including the approval process, and service the requested commitment(s);

(3) evidence of credit examination and supervision of applicable state and/or federal regulatory agencies to include a certificate of good standing from these agencies, or if the regulatory agency does not issue certificates of good standing, a letter from the applicant's president or other appropriate individual that the lender is in good standing with the appropriate regulatory agency;

(4) a statement of ability to properly service and discharge its loan making and servicing responsibilities;

(5) a sample of the applicant's credit management system, which contains policies and underwriting standards; loan and security documentation; credit file management documentation; collateral management system documentation; and portfolio management system;

(6) a compilation of the historical loan loss ratio for loans comparable to the two programs under these rules over the last five years, or a copy of the call report completed by the applicant and filed with their regulatory authority for a comparable period;

(7) a copy or sample of an approved loan request including application and underwriting information. Should this be a copy of an approved application, please delete names, addresses, and other confidential information;

(8) a copy of all loan documents, which are normally used by the Preferred Lender in closing an approved loan request;

(9) evidence of other Preferred Lender Program status designations, if any;

(10) a statement of any potential conflict of interest of the borrower with any employee of the Texas Department of Agriculture or the board of the Texas Agricultural Finance Authority; and

(11) an agreement that to maintain its PLP status, the applicant must submit at least four (4) loan requests each fiscal year, which can be a combination of the two programs.

§27.5. Required Information for a Commitment Request to the Program(s).

(a) The preferred lender will submit, at a minimum, the following, with each loan request submitted for participation in the program(s):

(1) the eligibility checklist for the respective program;

(2) the signed notification for the Texas Public Information Act;

(3) a copy of the lender's loan application;

(4) a copy of the lender's loan narrative;

(5) historical financial statements and/or tax returns for the last three years of the proposed borrower, if available;

(6) the borrower's balance sheet, which could be the year end statement and an interim statement, less than 90 days old;

(7) the borrower's cash flow budget for the period of the projected financing, as approved by the lender;

(8) a copy of the borrower's credit bureau report;

(9) a plan for servicing the loan;

(10) a statement of any potential conflict of interest of the borrower with any employee of the Texas Department of Agriculture or the board of the Texas Agricultural Finance Authority; and

(11) any other information that could be applicable to approving or denying the loan request under the program.

(b) In addition to the minimum requirements, the preferred lender will perform at least the same level of evaluation and documentation for the commitment that the preferred lender would perform for loans not in the program.

§27.7. Commitments in Default.

(a) The preferred lender will notify staff in writing of any condition of default, excluding payment default, that may occur by the borrower within 10 business days of the determination of default. In the case of a payment default preferred lender with notify staff of any payment default when such account is 30 days past due. Such notice must be received no later than 15 days after the date the account becomes 30 days past due.

(b) The preferred lender will notify staff in writing of any collection efforts to be taken by the preferred lender against the borrower.

(c) The preferred lender will notify staff of a request of any deferrals or restructures of the original commitment prior to any deferral or restructure, and receipt of written notification of approval from staff prior to any deferral or restructure.

(d) Any payment by the Authority will be pursuant to the appropriate agreement negotiated between the Authority and the preferred lender for the respective program.

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

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER I. INSURANCE

7 TAC §1.802

The Finance Commission of Texas adopts an amendment to 7 TAC § 1.802, concerning single interest insurance for a motor vehicle.

The purpose of the amendment is to exempt motor vehicle property insurance from the provisions of the property insurance rule. Prior to 1997 most loans on motor vehicles were governed by Chapter 4 of the Credit Code. When Chapter 342 was adopted, it merged the old Chapter 3 and Chapter 4 provisions. The rule §1.802 was adopted in May 1999 based upon the property insurance provisions as they had been applied under the old Chapter 3. Although no comments were received at the time the rule was adopted it has become apparent that writing property insurance on motor vehicles at non-standard rates was formerly permissible, but has been restricted by the adoption of 7 TAC §1.802. This amendment would remove the restriction and allow motor vehicle property insurance to be written at non-standard rates. Removing the restriction would furthermore restore parity between financing of motor vehicles under the loan chapter and the retail sales chapter. The amendment is adopted with non-substantive changes to the proposal as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2588).

The agency received 3 comments in support of the amendment. One comment also suggested clarification of the proposal, by changing the word automobile to motor vehicle. That non-substantive change is reflected in this adoption.

The amendment is adopted under the Texas Finance Code § 11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 grants the Consumer Credit Commissioner and the Finance Commission the authority to interpret the provisions of Title 4, Subtitle B, in which Chapter 342 is located.

These rules affect Chapter 342, Texas Finance Code.

§1.802. Authorized Property Insurance.

(a) Property insurance, other than insurance covering a motor vehicle, written in connection with a loan made under Chapter 342 must be written at rates not in excess of the rates fixed or approved by the Texas Department of Insurance if a rate structure has been fixed or approved for that particular type of coverage.

(b) If property insurance, other than insurance covering a motor vehicle, requested or required on a loan is sold or obtained by a licensee at a rate that is not fixed or approved by the Texas Department of Insurance, the licensee must first obtain prior acknowledgment from the commissioner that the coverage and the rate bear a reasonable relationship to:

(1) the amount, term, and conditions of the loan;

(2) the value of the collateral; and

(3) the existing hazards or risk of loss, damage, or destruction.

(c) Insurance, other than insurance covering a motor vehicle, written at rates not fixed or approved by the Texas Department of Insurance is subject to cancellation or adjustment if the insurance is not otherwise approved by the commissioner.

(d) If a licensee is seeking authority from the commissioner under subsection (b) of this section for a rate not fixed or approved by the Texas Department of Insurance, a copy of the relevant policy that is to be issued shall be filed with the Office of Consumer Credit Commissioner, together with any evidence that is probative on the factors listed in subsection (b) of this section.

(e) Property insurance written in connection with a Chapter 342 loan must be provided by a company authorized to do business in this state.

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 June 22, 2001.

TRD-200103581

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: July 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 936-7640

♦ ♦ ♦

7 TAC §1.805

The Finance Commission of Texas adopts an amendment to 7 TAC § 1.805, concerning authorized credit insurance.

The purpose of the amendment is to add the appropriate references under the Insurance Code that govern group debtor life and accident and health insurance. These are equivalent products to credit life and credit disability insurance, and thus are eligible to be written under Chapter 342. The amendment simply acknowledges that authority. The amendment is adopted without changes to the proposal as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2589).

The agency received no written comments on this proposal.

The amendment is adopted under the Texas Finance Code § 11.304 and § 342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

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

Filed with the Office of the Secretary of State on June 22, 2001.

TRD-200103582
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: July 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 936-7640

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.803

The Texas Credit Union Commission adopts amendments to rule §91.803 relating to investment limits and prohibitions, with no changes to the text as published in the February 2, 2001 issue of the *Texas Register* (26 TexReg 1049). The proposal was first published in the May 5, 2000 issue of the *Texas Register* (25 TexReg 3892) and withdrawn effective November 3, 2000. It was republished in the November 3, 2000 issue of the *Texas Register* (25 TexReg 10861) and withdrawn effective February 2, 2001 (26 TexReg 1049).

The amendments impose more stringent limitations on the maximum investments in any one security and specifically prohibits credit unions from engaging in certain types of investment activities. The amendments provide a specific exception for investments in a single financial institution that serve as an investing credit union's designated depository institution (i.e. at which the operating accounts are located), as well as for loan participations purchased from other credit unions. Lastly, the rule, while listing prohibited investments, gives the commissioner the ability to authorize a pilot investment program which could result in a credit union engaging in otherwise prohibited investments if a need and expertise to do so is demonstrated.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 91 rules was published in the *Texas Register* on February 4, 2000 (25 TexReg 823) for the purpose of accepting public comment.

No comments were received in response to the third publication of the proposed amendments.

The amendments are adopted under the provisions of §124.351 of the Texas Finance Code that are interpreted to authorize the Credit Union Commission to adopt rules authorizing other investments permissible for credit unions that are responsive to changes in economic conditions or competitive practices and to the need for safety and soundness of credit union investments.

The specific section affected by these amendments is Texas Finance Code §124.351.

This concludes the Credit Union Department's review of all administrative rules which became final prior to September 1, 1997, as required by Section 167 of the 1997 General Appropriations Act.

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

Filed with the Office of the Secretary of State on June 19, 2001.

TRD-200103473
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 9, 2001
Proposal publication date: February 2, 2001
For further information, please call: (512) 837-9236

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.6

The State Board of Dental Examiners adopts amendments to §108.6, Report of Patient Death or Injury requiring Hospitalization, with changes to the text published in the April 27, 2001 issue

of the *Texas Register* (26 TexReg 3109). Changes to the text of the rule are found in paragraphs (1) and (2).

Rule 108.6 provides for the reporting of adverse consequences resulting from the receipt of dental services by the treating dentist. The amended rule shortens the time period within which a patient death must be reported and clarifies language of the rule. In response to publication for comment, the Board received written comments from representatives of the Texas Dental Association.

The language of the rule is modified to require that a patient death occurring as a consequence of receiving dental services must be reported 72 hours of the time when the reporting dentist knew or should have known of the death. This time is shortened from 30 days. Language is also changed to reflect that a report of injury occurring as a consequence of receiving dental services must be reported within 30 days. The words "...or injury..." are added in the last paragraph, to make it clear that the paragraph addresses reports of both deaths and injuries.

The amended rule will assure the public that proper emphasis is placed upon the unfortunate circumstance of the death of a patient as a consequence of receiving dental services. Such an event requires timely inquiry and investigation and the Board is of the opinion that 30 days is too long a period of time to wait before reporting a patient death.

The written comments express strong support for the intent of the amendment but suggest additional language, which will address those situations where an adverse event has occurred but it is not clear that the event was a consequence of receiving dental services.

The language of the rule, as written leaves open the possibility that a treating dentist could conclude, on his/her own, that a patient death was not a consequence of the receipt of dental services and thus did not require a report. The Board should make that conclusion, after a thorough investigation. Addition of the words "...may have..." to paragraph (1) and the word "...possible..." to paragraph (2) as proposed by the Texas Dental Association eliminates guesswork. The Board approves the language suggested by the Texas Dental Association. Rule 108.6 is amended at paragraphs (1) and (2)

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§108.6. Report of Patient Death or Injury Requiring Hospitalization.

A dentist must submit a written report to the Board as provided below:

(1) The death of a dental patient which may have occurred as a consequence of the receipt of dental services from the reporting dentist must be reported within 72 hours of the death, or such time as the dentist becomes aware or reasonably should have become aware of the death;

(2) An injury to a dental patient requiring admission to a hospital, as a possible consequence of receiving dental services from the reporting dentist must be reported within 30 days of the injury.

(3) The receipt of the report shall not be considered in the nature of a complaint unless the Enforcement Committee determines that the circumstances surrounding the patient death or injury should be investigated by the Board.

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

Filed with the Office of the Secretary of State on June 20, 2001.

TRD-200103496
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 10, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-6400

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SUBCHAPTER C. ANESTHESIA AND ANESTHETIC AGENTS

22 TAC §108.32

The State Board of Dental Examiners adopts amendments to §108.32 Minimum Standard of Care, Anesthesia, with changes to the text published in the April 27, 2001 issue of the *Texas Register* (26 TexReg 3109). The change at paragraph (3) from "Shall obtain an review..." to "Shall obtain and review..." is a grammatical correction only. No other changes were made to rule 108.32.

The lead paragraph has been modified to delete the word "...parenteral..." as a modifier of "deep sedation and general anesthesia". Deletion of the word "parenteral" when it is such a modifier in Rules 108.32, 108.33, and 108.34 has the effect of requiring that all licensees who administer deep sedation and/or general anesthesia must have a permit to do so, whether the sedative agents are administered parenterally or by any other route. Without this change, dentists, by use of orally administered sedative agents, could deeply sedate patients without having a permit.

The amended rule will require that dentists who intend to administer deep sedation and/or general anesthesia must obtain a permit to do so, no matter how the sedative agents are administered.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§108.32. Minimum Standard of Care, Anesthesia.

In the interest of patient safety, a dentist licensed by the State Board of Dental Examiners and practicing in Texas, who desires to utilize nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, and/or deep sedation and general anesthesia:

(1) Shall maintain a patient record:

(A) from which a diagnosis may be made;

(B) which includes a description of treatment rendered;

(C) includes the date on which treatment is performed; and

(D) which includes any information a reasonable and prudent dentist in the same or similar circumstances would include.

(2) Shall maintain and review an initial medical history and perform limited physical evaluation for all dental patients to wit:

(A) The initial medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list", for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist in the same or similar circumstance would so do.

(B) The initial limited physical examination should include, but shall not necessarily be limited to, blood pressure and pulse/heart rate as may be indicated for each patient.

(3) Shall obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist under the same or similar circumstances would determine it is indicated.

(4) Shall, for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order.

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience in the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist in the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies.

(5) Shall successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross.

(6) Should maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient if the patient is a minor, or a legal guardian of the patient if the patient has been adjudicated incompetent to manage the patient's personal affairs. Such consent is required for all procedures where a reasonable possibility of complications from the procedure exists, and such consent should disclose risks or hazards that could influence a reasonable person in making a decision to give or withhold consent.

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 June 20, 2001.

TRD-200103497
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 10, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-6400

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22 TAC §108.33

The State Board of Dental Examiners adopts amendments to §108.33 Sedation/Anesthesia Permit without changes to the text published in the April 27, 2001 issue of the *Texas Register* (26 TexReg 3110).

The modifier "...parenteral..." has been deleted before "deep sedation and general anesthesia" in Subsections (b), (c), (f)(5), (f)(5)(A), (g)(3), (g)(3)(A), (g)(3)(A)(ii), (g)(3)(B), and (g)(3)(B)(i), (ii), (iii). Deletion of the word "parenteral" when it is such a modifier in Rules 108.32, 108.33, and 108.34 has the effect of requiring that all licensees who administer deep sedation and/or general anesthesia must have a permit to do so, whether the sedative agents are administered parenterally or by any other route. Without this change, dentists, by use of orally administered sedative agents, could deeply sedate patients without having a permit.

The language of subsection (g)(2)(A)(i) has been modified to substitute the words "for the" in place of "in" and to add the words "technique requested." Parenteral conscious sedation can be achieved intramuscularly, subcutaneously, intravenously or submucosally. These changes clarify that an applicant for a parenteral conscious sedation permit must have received training in the particular technique or techniques that he/she will utilize to achieve parenteral conscious sedation. Clause ii has been modified to add the words "...the parenteral conscious sedation technique requested."

The amended rule will require that dentists who intend to administer deep sedation and/or general anesthesia must be permitted to do so, no matter how the sedative agents are administered. Further, the public will be assured that one who holds a permit for a particular technique of administering parenteral conscious sedation will have received training in that particular technique.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

Filed with the Office of the Secretary of State on June 20, 2001.

TRD-200103498
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 10, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-6400

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22 TAC §108.34

The State Board of Dental Examiners adopts amendments to §108.34, Permit Requirements and Clinical Provisions without changes to the text published in the April 27,2001 issue of the *Texas Register* (26TexReg3113).

The modifier "...parenteral..." has been deleted before "deep sedation and general anesthesia" in Subsections (c) (1) (A) and (B), (c) (2) (B), (D) and (F), (c) (3), (A), (B)(ii), (C) (i), (iii), and (v), (D), (iv) and (v), (F) (i) and (ii), (G) (i). Deletion of the word "parenteral" when it is such a modifier in Rules 108.32, 108.33,

and 108.34 has the effect of requiring that all licensees who administer deep sedation and/or general anesthesia must have a permit to do so, whether the sedative agents are administered parenterally or by any other route. Without this change, dentists, by use of orally administered sedative agents, could deeply sedate patients without having a permit

The amended rule will assure the public that practitioners who wish to utilize any technique to achieve deep sedation or general anesthesia will have a permit from the Board.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

Filed with the Office of the Secretary of State on June 20, 2001.

TRD-200103499
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 10, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-6400

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SUBCHAPTER D. MOBILE DENTAL FACILITIES

22 TAC §108.43

The State Board of Dental Examiners adopts amendments to §108.43, Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units without changes to the text published in the April 27, 2001 issue of the *Texas Register* (26TexReg3117).

The language of Subsection (b) (3) is modified to provide that a practitioner who provides dental services to less than three persons at a private residence is not required to prepare an annual report of those services. All other requirements of the chapter apply to such a practitioner, but the Board agrees that the detailed reporting requirements for services provided in private homes is unduly burdensome.

The amended rule insures that application of the rule will not have an unduly harsh impact upon those who make house calls to patients.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

Filed with the Office of the Secretary of State on June 20, 2001.

TRD-200103500
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 10, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-6400

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CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.1

The State Board of Dental Examiners adopts amendments to §115.1, Definitions without changes to the text published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3118).

Paragraph 5 has been added to provide a definition of a supervising dentist, in the context of the practice of dental hygiene. Paragraph 6 has been added to define the term "General Supervision", and clarifies that a dental hygienist can be generally supervised by a supervising dentist even when the dentist is not on the premises. It should be noted that this definition has no effect on the provisions of Section 262.151 of the Occupations Code that a dental hygienist may see a patient when the dentist is not on the premises if the patient has been examined within the 12 months previous to the appointment with the hygienist.

The amended rule will clarify respective relationships between a dentist, a dental hygienist and a dental patient.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

Filed with the Office of the Secretary of State on June 20, 2001.

TRD-200103502
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 10, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-6400

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22 TAC §115.2

The State Board of Dental Examiners adopts amendments to §115.2, Permitted Duties without changes to the text published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3119).

Language of the lead paragraph has been changed to reflect the codification of the former Dental Practice Act into the Texas Occupations Code. Language in the paragraph has also been

modified to reflect that a dental hygienist must work in the office of and under the supervision of a licensed dentist or in an alternate setting. This language complies with the statutory language of Senate Bill 964, Section 20, enacted by the 76th Legislature, effective September 1, 1999. Paragraph 1 has been divided into two subparagraphs, which provide that a dental hygienist who graduated from an accredited and approved dental or dental hygiene school after December 31, 1980, may place pit and fissure sealants without first having obtained a certificate from the Board. Dental hygienists who graduated from such a school before December 31, 1980, must apply to the Board for certification to place pit and fissure sealants. Every dental hygienist who graduated from a Texas dental or dental hygiene school that is accredited and approved after December 31, 1980 has completed the necessary course work to obtain a certificate to place pit and fissure sealants from the Board. The Board agrees that is unnecessary to require such graduates to apply for that certificate.

The amended rule will be in compliance with statutory language and will recognize the realities of modern dental practice and education.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice

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 June 20, 2001.

TRD-200103501
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: July 10, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-6400

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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 adopts amendments to §463.9, concerning Licensed Specialist in School Psychology, without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2923).

The amendments are being adopted in order to clarify the training requirements for licensed specialists in school psychology.

The adopted rule will make the rules easier for the applicants for licensure to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are 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 June 18, 2001.

TRD-200103449
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 8, 2001
Proposal publication date: April 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 adopts amendments to §463.11, concerning Licensed Psychologist, without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2924).

The amendments are being adopted to update requirements, consistent with Attorney General Opinion JC-0321.

The adopted rule will make the rules easier for the general public and licensees to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are 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 June 18, 2001.

TRD-200103450
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 8, 2001
Proposal publication date: April 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 adopts amendments to §463.14, concerning Written Examinations,

without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2925).

The amendments are being adopted 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.

The adopted rule will protect the public by helping to ensure that only qualified applicants are licensed.

No comments were received regarding the adoption of the amendments.

The amendments are 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 June 18, 2001.

TRD-200103451
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 8, 2001
Proposal publication date: April 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 adopts amendments to §465.6, concerning Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2925).

The amendments are being adopted in order to address changing practices within the profession.

The adopted rule will make the rules easier for the general public and licensees to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are 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 June 18, 2001.

TRD-200103452
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 8, 2001
Proposal publication date: April 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 adopts amendments to §465.38, concerning Psychological Services in the Schools without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2926).

The amendments are being adopted in order to clarify contracting allowed by non-LSSPs in the public schools.

The adopted rule will make the rules easier for the general public and licensees to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are 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 June 18, 2001.

TRD-200103453
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 8, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 305-7700

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.2, §470.8

The Texas State Board of Examiners of Psychologists adopts amendments to §470.2, concerning Definitions, and §470.8, concerning Informal Disposition of Complaints and Application Disputes, without changes to the proposed text as published in the April 20, 2001, issue of the Texas Register (26 *TexReg* 2924).

The amendments are being adopted in order to eliminate the Applications Dispute Committee and replace it with the Application Committee.

The adopted rules will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are 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 June 18, 2001.

TRD-200103454
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 8, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 305-7700

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22 TAC §470.21

The Texas State Board of Examiners of Psychologists adopts an amendment to §470.21, concerning Disciplinary Guidelines, without changes to the proposed text as published in the April 20, 2001 issue of the *Texas Register* (26 *TexReg* 2927).

The amendment is being adopted in order to assign specific disciplinary actions for certain violations.

The adopted rule will protect the public by requiring disciplinary sanctions for certain serious rule violations.

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 June 18, 2001.

TRD-200103455
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 8, 2001
Proposal publication date: April 20, 2001
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER Z. POINT-OF-SERVICE RIDERS

28 TAC §§11.2501 - 11.2503

The Commissioner of Insurance adopts new Subchapter Z, §§11.2501 - 11.2503, concerning point-of-service riders. The sections are adopted with changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 73).

These new sections are necessary to implement legislation enacted by the 76th Texas Legislature in House Bill (HB) 1498 which amended the Texas Insurance Code as follows: Subchapter A, Chapter 26 was amended by adding Art. 26.09; Subchapter F, Chapter 3 was amended by adding Art. 3.64; Section 2, Art. 20A.02 was amended by amending Subsection (i) and adding Subsections (aa) and (bb); and Section 6, Art. 20A.06 was amended by amending Subsection (a) and adding Subsection (c).

The purpose and objective of these new sections are to develop provisions relating to point-of-service (POS) plans. A POS plan is a health care plan that combines health maintenance organization (HMO) and indemnity coverage. An enrollee in a POS plan can choose to obtain health care through the HMO delivery system or from a physician or provider outside of the delivery system on a fee-for-service basis. The sections implement provisions of HB 1498 relating to the issuance of a "point-of-service rider plan" by an HMO. The plan combines a traditional HMO plan with an indemnity rider that is underwritten by the HMO. A plan enrollee can use the rider to obtain services, benefits and supplies from physicians and providers who are not part of the HMO provider network.

Contemporaneously with this adoption, new 28 TAC §§21.2901, 21.2902, and 26.312, and amendments to §26.4 and §26.14 are published elsewhere in this issue of the Texas Register. The separately adopted new sections added to Chapter 21 implement the provisions of HB 1498 allowing POS plans to be created jointly by indemnity carriers and HMOs, either by issuing "a blended contract point-of-service plan," in which one contract issued by either the HMO or indemnity carrier contains the terms of both the HMO and indemnity components of the plan; or through a "dual contracts point-of-service plan." A dual contracts POS plan is composed of two separate contracts, one of which is issued by the HMO to the enrollee and contains the terms of the HMO portion of the plan, and the other which is issued by the indemnity carrier to the enrollee and contains the terms of the indemnity portion of the plan. The separately adopted amendments to and new section added to Chapter 26 clarify that small and large employer carriers may issue POS plans provided that the carrier complies with the standards relating to both the various types of POS plans set forth in new §§21.2901 and 21.2902 as well as the POS rider plans subject to the new sections adopted in this order. The Chapter 26 adoption also creates standards for POS coverage options that HMO large employer carriers are required by HB 1498 to offer to eligible employees if the only coverage available to the employees is through a network-based HMO.

New §11.2501 defines the terms used in the subchapter. New §11.2502 sets forth the solvency requirements for HMOs issuing POS rider plans under this subchapter as well as the method

for calculating the percentage of business that an HMO issuing these plans has actually issued in the form of POS rider business as compared to the total health coverage that the HMO has issued in the same period. This section also sets forth the requirements that an HMO that has issued POS riders that exceed the ten percent cap set by HB 1468 must follow for issuing any additional POS coverage; the requirements for an HMO that can no longer meet the solvency requirements; and an HMO's responsibilities should it discontinue its POS rider business either entirely or bring its POS rider expenditures below the ten percent cap. Section 11.2503 describes the coverage required under, and the contents required for, a POS rider plan issued by an HMO pursuant to this subchapter.

Based on comments received and for clarification, the department has made the following changes: The term "cost containment requirements" has been substituted for the word "precertification" in §11.2503(e)(1)(J) and (e)(1)(L) and a definition of "cost-containment requirements" has been added to §11.2501. This change has no substantive effect on these sections. Rather, "cost-containment requirements" has been substituted for clarity because of inconsistencies in the way carriers use the word "precertification." Cost containment requirements may be used by carriers as a condition of indemnity coverage. As used in the sections, the term refers to a process in which an HMO requires, as a provision of a POS rider, that an enrollee planning to undergo certain medical procedures must first call to notify the carrier. The HMO will then review the proposed procedure to determine if it is being conducted in the most appropriate setting, and for some plans, whether it is a benefit provided by the rider. For example, a rider might require this process before an enrollee undergoes inpatient surgery. Failure to comply with the requirements before receiving the treatment, assuming the treatment is found to be a covered benefit, will result in a lower level of coverage under the rider for the procedure.

The department also deleted the references to the initial start up requirement of $1.5 million for HMOs writing POS indemnity riders in §11.2502 and added a reference to the minimum statutory net worth requirements in the Texas Insurance Code to incorporate the phase-in language contained in Art. 20A.13B.

§11.2502(1). A commenter believes the $1.5 million net worth requirement set forth in the rule exceeds the statutory phase-in schedule for increasing HMOs' net worth between 1999 and 2002 as provided in Insurance Code Article 20A.13B.

Response. The department agrees that HMOs subject to these rules should be subject to the statutory phase-in requirements of Art. 20A.13B if applicable. The references to the initial start up requirement of $1.5 million have been deleted. Instead, HMOs must comply with the minimum statutory net worth requirements in the Texas Insurance Code. This provision incorporates the phase-in provision of Art. 20A.13B, if applicable to that HMO.

Comment. A commenter believes the requirements of §11.2502(1) to have an unjustified, disproportionate impact on smaller HMOs.

Response. Although the department has, in response to another comment, deleted the initial start up requirement of $1.5 million in §11.2502(1), the department does not agree that the requirements of §11.2502(1) have an unjustified, disproportionate impact on smaller HMOs. The section tracks the requirements of the statute. Art. 20A.06(c) as enacted by HB 1468 permits only those HMOs with the financial capacity to absorb the increased risk involved in issuing indemnity riders. Any HMO that wishes to underwrite its own POS rider must have a net worth and reserves sufficient to support undertaking the increased risk involved in writing indemnity coverage in addition to providing HMO coverage. The statute takes into account that there may be HMOs that do not have the financial capacity to or do not wish to maintain the higher solvency requirements by providing in Art. 20A.06(a)(6)(C) that HMOs may offer POS coverage by contracting with an indemnity carrier.

Comment. A commenter believes that the proposal does not set forth an estimate of the economic cost of the solvency requirements imposed by these sections and thus does not accurately state the reasonable actual costs required.

Response. The department disagrees. As stated in the preamble to the proposal of these sections, it is HB 1498, rather than these sections, that imposes the higher solvency requirements upon HMOs. Therefore, the cost to HMOs required to meet these requirements is a cost imposed by the statute rather than these sections. The department further notes that the solvency requirements include a net worth requirement for certain HMOs. These HMOs may reflect a financial statement credit for this additional capital. This additional capital is not a cost because a cost is a decrease to capital.

§11.2501(8) & (12). A commenter believes that the inclusion of "health care services, benefits and supplies obtained from participating physicians and providers under circumstances in which the enrollee fails to comply with the HMO's requirements for obtaining in-plan covered services" in the definitions of "out-of-plan covered benefits" and "POS indemnity coverage" appears to be a departure from the scope and focus of HB 1498.

Response. The department disagrees that these sections are not consistent with the scope and focus of HB 1498. The definitions are necessary to ensure that an HMO does impose its gatekeeping and network requirements on coverage obtained under the POS rider. The purpose of HB 1498 is to provide increased choice by allowing an enrollee that elects a POS rider the option to choose whether to: (1) obtain services through the HMO network with lower out-of-pocket costs but be required to utilize the network and its gatekeeping requirements to access services; or (2) utilize the POS rider to receive the services from the provider of his or her choice without the gatekeeping requirements of the HMO, knowing that the out-of-pocket costs will be greater than the cost of obtaining services through the HMO's coverage.

These sections fulfill the purpose of HB 1468 by permitting an enrollee to obtain covered services from his or her provider of choice without complying with the HMO's gatekeeper requirements. If coverage for services obtained from physicians and providers who are members of the HMO network were not included under the POS rider, an enrollee residing in an area dominated by one HMO that contracts with the majority of the providers in that area would have a restricted, rather than an enhanced, choice of physicians and providers.

An enrollee that purchases a POS plan pays a premium that includes both HMO and the POS rider coverage. The enrollee is responsible for paying all excess out-of-pocket costs for services received under the POS rider. The HMO considers the expense of reimbursing a physician or provider at a non-contracted rate in calculating the premium for the POS rider.

§11.2503(e)(1)(G) & (e)(1)(H). A commenter supports provisions prohibiting HMOs from requiring enrollees to use either HMO or rider coverage before using the other coverage, but expressed concern about provisions allowing a reduction in the amount of

coverage under the rider if HMO coverage is used first. The commenter believes enrollees should be allowed to use coverage in whatever order they want without penalty.

Response. Section 11.2503(e)(1)(G) allows an HMO to reduce the limits offered under the POS rider by services accessed by the enrollee under the HMO coverage. Section 11.2503(e)(1)(H) prohibits coverage under the HMO from being reduced by benefits the enrollee obtains through the POS rider. For example, an enrollee who always utilizes the POS rider coverage first during each plan year could utilize all coverage up to an annual limit imposed under the rider and then switch to HMO coverage for the remainder of the plan year. An enrollee that begins the plan year by using HMO coverage, which is then charged against the coverage available under the POS rider, could conceivably exhaust the rider benefits and be left with only HMO coverage for the remainder of the plan year.

The department disagrees that this constitutes a penalty. The section is not designed to require an enrollee to utilize coverage in a particular order. Federal law mandates §11.2503(e)(1)(H). Section 11.25003(e)(1)(G) is necessary because otherwise an HMO, in order to provide POS rider benefits, would be required to charge a premium that would be prohibitively high, possibly depriving all but the most affluent consumers of the ability to obtain this type of coverage. Rather than acting as a penalty, §11.2503(e)(1)(G) benefits consumers by keeping the POS option more affordable.

§11.2503(e)(1)(F). A commenter requests clarification about this section because it is unclear as to whether the 50% threshold applies to a single health care service or to an aggregate of all the health care services covered by the rider.

Response. The 50% limit on coinsurance applies to each health care service provided to an enrollee, not the aggregate of all services received for the plan year. The purpose of the section is to ensure that indemnity coverage provided through a POS rider meets the minimum coinsurance requirements imposed upon any indemnity coverage.

Comment. A commenter suggests limiting coinsurance arrangements to no more than 30%. The commenter believes that allowing cost sharing of up to 50% does not provide a valid option to health plan enrollees.

Response. The department disagrees. The POS option is intended to provide an enrollee with the option to obtain services outside of the HMO network. The statute contemplates that the enrollee choosing this option must bear the additional cost involved. Nothing in the statute suggests that the indemnity coverage provided under a POS rider should be subject to requirements that are not imposed on other types of indemnity coverage.

The 50% coinsurance maximum does not deprive enrollees of a valid POS option. Fifty percent is the maximum coinsurance the department will permit a carrier to require an enrollee to provide for indemnity coverage. Nothing in the statute indicates that indemnity coverage provided under a POS rider must exceed coverage provided under any other type of indemnity coverage.

§11.2503(e)(1)(L). A commenter believes that allowing potential penalties of up to 50% for failure to comply with cost containment requirement provisions could result in no real coverage. The commenter recommends that penalty for failure to comply be no more than 10 or 15 percent and either removing the term or adding a more specific definition of "other cost containment requirements."

Response. The department disagrees that the 50% limit results in a lack of real coverage. The POS option is intended to provide an enrollee with the option to obtain services outside of the HMO network. It does not exempt such coverage from the standards generally applied to indemnity coverage. Removal of the phrase "other types of cost containment" or limitations on the penalty to no more than 10 or 15 percent would result in the imposition of limitations on the types of cost containment that can be applied to a POS rider that are not imposed on other indemnity coverage offered by carriers. As stated previously, this is not supported by the statute. A definition of cost containment requirements was added to §11.2501.

General. A commenter indicates that there are provisions in the proposed sections stating that certain other statutory provisions continue to apply to HMOs that should be stated in both Subchapter Z and Subchapter U. The commenter also believes that the phrase "all applicable laws, including" should be placed in front of the specific laws.

Response. The department disagrees that a rule must recite that other rules and laws apply to plans issued under this subchapter in order for those rules and laws to apply. It is axiomatic that an HMO must comply with all other applicable statutes and rules when issuing a plan under this subchapter, regardless of whether the subchapter specifically includes such a statement.

For with changes: Office of Public Insurance Counsel, PacifiCare of Texas, and Texas Association of Health Plans.

The sections are adopted under the Insurance Code, Article 20A.22 and §36.001. Article 20A.22(a) provides that the commissioner shall adopt rules as necessary to implement the Texas Health Maintenance Organization Act. Section 36.001 provides that the commissioner may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

§11.2501. Definitions.

The following words and terms, when used in this subchapter, shall have the following meaning.

(1) Coinsurance--An amount in addition to the premium and copayments due from an enrollee who accesses out-of-plan covered benefits, for which the enrollee is not reimbursed.

(2) Corresponding benefits--Benefits provided under a point-of-service (POS) rider or the indemnity portion of a point-of-service (POS) plan, as defined in Articles 3.64(a)(4) and 20A.02(bb) of the Code, that conform to the nature and kind of coverage provided to an enrollee under the HMO portion of a point-of-service plan.

(3) Cost containment requirements--Provisions in a POS rider requiring a specific action, such as the provision of specified information to the HMO, that must be taken by an enrollee or by a physician or a provider on behalf of the enrollee to avoid the imposition of a specified penalty on the coverage provided under the rider for proposed service or treatment.

(4) Coverage--Any benefits available to an enrollee through an indemnity contract or rider, any services available to an enrollee under an evidence of coverage, or combination of the benefits and services available to an enrollee under a POS plan.

(5) Health plan products--Any health care plan issued by an HMO pursuant to the Code or a rule adopted by the commissioner.

(6) In-plan covered services--Health care services, benefits, and supplies to which an enrollee is entitled under the evidence of coverage issued by an HMO, including emergency services, approved out-of-network services and other authorized referrals.

(7) Non-participating physicians and providers--Physicians and providers that are not part of an HMO delivery network.

(8) Out-of-plan covered benefits--All covered health care services, benefits, and supplies that are not in-plan covered services. Out-of-plan covered benefits include health care services, benefits and supplies obtained from participating physicians and providers under circumstances in which the enrollee fails to comply with the HMO's requirements for obtaining in-plan covered services.

(9) Participating physicians and providers--Physicians and providers that are part of an HMO delivery network.

(10) Point-of-service blended contract plan (POS blended contract plan)--A POS plan evidenced by a single contract, policy, certificate or evidence of coverage that provides a combination of indemnity benefits for which an indemnity carrier is at risk and services that are provided by an HMO under a POS plan.

(11) Point-of-service dual contracts plan (POS dual contracts plan)--A POS plan providing a combination of indemnity benefits and HMO services through separate contracts, one being the contract, policy or certificate offered by an indemnity carrier for which the indemnity carrier is at risk and the other being the evidence of coverage offered by the HMO.

(12) Point-of-service rider (POS rider)--A rider issued by an HMO that meets the solvency requirements of §11.2502 of this title (relating to Issuance of Point-of-service Riders) and that provides coverage for out-of-plan services, including services, benefits, and supplies obtained from participating physicians or providers under circumstances in which the enrollee fails to comply with the HMO's requirements for obtaining approval for in-plan covered services.

(13) Point-of-service rider plan (POS rider plan)--A POS plan provided by an HMO pursuant to this subchapter under an evidence of coverage that includes a POS rider.

§11.2502. Issuance of Point-of-service Riders.

An HMO may issue a POS rider plan only if the HMO meets all of the applicable requirements set forth in this section.

(1) Solvency of HMOs Issuing Point-of-service Rider Plans.

(A) For HMOs that have been licensed for at least one calendar year, the HMO shall maintain a net worth of at least the sum of:

(i) the greater of:

(I) the minimum net worth required by the Code for that HMO; or

(II) 100% of the authorized control level of risk-based capital as set forth in §11.809 of this title (relating to Risk-Based Capital for HMOs); and

(ii) twenty-five percent of total gross point-of-service premium revenue reported in the preceding calendar year.

(B) For HMOs that have been licensed for less than one calendar year, the HMO shall maintain a net worth of at least the sum of:

(i) the minimum net worth required by the Code for that HMO; and

(ii) fifty percent of the yearly average of the two-year annual premium gross point-of-service premium revenue as projected in its application for a certificate of authority.

(C) Assets of the HMO shall be of a sufficient amount to cover reserve liabilities for the POS riders and shall be limited to those allowable assets listed under §11.803(1) of this title (relating to Investments, Loans and Other Assets).

(D) Reserves held by an HMO for POS riders shall be calculated in accordance with Chapter 3, Subchapter GG of this title (relating to Minimum Reserve Standards for Individual and Group Accident and Health Insurance).

(E) An HMO that has issued a POS rider plan under this section and whose net worth or assets subsequently fall below the requirements of subparagraphs (A), (B) or (C) of this paragraph shall cease issuing additional new POS rider plans to groups or individuals, except as provided in paragraphs (4) and (5) of this section, until it comes into compliance with the requirements of this paragraph.

(2) Limitations on POS Rider Expenses. An HMO's POS rider expenses must not exceed 10% of medical and hospital expenses on an annual basis for all health plan products sold by the HMO.

(A) An HMO may issue a POS rider plan under this section only if the total medical and hospital expenses incurred by the HMO for the preceding four calendar quarters for all POS riders issued by the HMO under this section do not exceed 10% of the annual medical and hospital expenses incurred by the HMO for all health plan products sold during the preceding four calendar quarters.

(B) An HMO that has issued any POS rider plans under this subchapter is responsible for compiling, maintaining, and reporting to the department the total medical and hospital expenses incurred by the HMO on an annual basis for all POS riders as well as the total medical and hospital expenses incurred by the HMO on an annual basis for all health plan products sold to ensure that the HMO is in compliance with the requirements of this subchapter.

(C) An HMO that has issued any POS rider plans under this subchapter and whose total medical and hospital expenses incurred for the preceding four calendar quarters for all POS riders issued under this subchapter has exceeded 10% of the total medical and hospital expenses incurred by the HMO for all health plan products for the preceding four calendar quarters shall:

(i) immediately cease issuance of additional new POS rider plans to groups or individuals, except as provided in paragraphs (4) and (5) of this section;

(ii) offer all subsequent new POS plans through POS blended contracts or POS dual contracts in accordance with Chapter 21, Subchapter U of this title (relating to Arrangements between Indemnity Carriers and HMOs for Point-of-service Coverage); and

(iii) not issue any additional new POS rider plans until it has either:

(I) established to the satisfaction of the commissioner that:

(-a-) its total medical and hospital expenses incurred for the preceding four calendar quarters for all POS riders issued under this section have not exceeded 10% of the total medical and hospital expenses incurred by the HMO for all health plan products for the preceding four calendar quarters; and

(-b-) its total medical and hospital expenses incurred for all POS riders issued under this section for the next four calendar quarters will not exceed 10% of the total medical and hospital

expenses incurred by the HMO for all health plan products for the next four calendar quarters; or

(II) become an indemnity carrier licensed under the Code.

(D) Notwithstanding subparagraph (C)(iii) of this subsection, an HMO that has issued POS riders for which the HMO's annual medical and hospital expenses incurred by the HMO for the POS riders have exceeded 10% of the HMO's total annual medical and hospital expenses incurred by the HMO for all health plan products that can establish, to the satisfaction of the commissioner, that its total medical and hospital expenses incurred on an annual basis for all POS riders issued under this section will not exceed 10% of the total annual medical and hospital expenses incurred by the HMO for all health plan products for the following one year period, may offer new POS rider plans under this section during that following year.

(3) Renewability and discontinuance of POS rider plans.

(A) POS rider plans issued under this subchapter are guaranteed renewable if the plan is:

(i) a small employer plan, pursuant to Article 26.23 of the Code;

(ii) a large employer plan, pursuant to Article 26.86 of the Code;

(iii) an individual plan, pursuant to §11.506(3)(D) of this chapter (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate); or

(iv) an association plan, pursuant to §21.2704 of this title (relating to Mandatory Guaranteed Renewability Provisions for Health Benefit Plans Issued to Members of an Association or Bona Fide Association).

(B) An HMO that discontinues a POS rider plan must comply with all laws and rules applicable to that plan.

(C) An HMO that discontinues existing POS rider plans in order to bring the HMO into compliance with the 10% cap:

(i) shall offer, if the discontinued plan is issued to:

(I) a small employer group, to each employer, the option to purchase other small employer coverage offered by the small employer carrier at the time of the discontinuation, pursuant to Article 26.24(d) of the Code;

(II) a large employer group, to each employer, the option to purchase any other large employer coverage offered by the large employer carrier at the time of the discontinuation, pursuant to Article 26.87(d) of the Code;

(III) an individual, the option to purchase to each enrollee any other individual basic health care coverage offered by the HMO pursuant to §11.506(3)(D)(v) of this title;

(IV) an association, the option to purchase any other health benefit plan being offered by the HMO pursuant to §21.2704(d)(1)(B) of this title.

(ii) shall not issue any additional new POS rider plans:

(I) for at least one calendar year after the date on which it last discontinued any of its existing POS rider business and then only if it can establish to the satisfaction of the commissioner that:

(-a-) its total medical and hospital expenses incurred for the preceding four calendar quarters for all POS riders issued under this subchapter will not have exceeded 10% of the total medical and hospital expenses incurred by the HMO for all health plan products for the preceding four calendar quarters; and

(-b-) its total medical and hospital expenses incurred for all POS riders issued under this subchapter for the next four calendar quarters will not exceed 10% of the total medical and hospital expenses incurred by the HMO for all health plan products for the next four calendar quarters; or

(II) until it has become licensed as an indemnity carrier under the Code.

(4) An HMO that ceases to issue a POS rider plan in order to comply with the 10% cap required under paragraph (2) of this section shall continue to offer the plan to each new member of a group to which the POS rider plan has been issued unless and until the HMO divests itself of the group's business by discontinuing the plan as set forth in paragraph (3) of this section.

(5) An HMO that ceases to issue a POS rider plan in order to comply with the 10% cap required under paragraph (2) of this section must continue to offer the plan to each new individual entitled to coverage under an existing individual plan for which a POS rider has been issued unless and until the HMO divests itself of the individual plan by discontinuing the plan as set forth in paragraph (3) of this section.

§11.2503. Coverage Relating to POS Rider Plans.

(a) An HMO may not consider an in-plan covered service to be a benefit provided under the POS rider.

(b) An HMO shall not require an enrollee to use either the POS rider benefits or in-plan covered services first.

(c) An HMO that includes limited provider networks:

(1) shall not limit the access, under the POS rider, of an enrollee whose in-plan covered services are restricted to the limited provider network, either to participating physicians and providers or to non-participating physicians and providers;

(2) shall not impose cost-sharing arrangements for an enrollee whose in-plan covered services are restricted to a limited provider network, and who, through the POS rider accesses a participating physician or provider outside the limited provider network, that differ from the cost-sharing arrangements for in-plan covered services obtained by the enrollee from a physician or provider in the limited provider network;

(3) may provide for cost-sharing arrangements for benefits obtained from non-participating physicians and providers that are different from the cost sharing arrangements for in-plan covered services, provided that coinsurance required under a POS rider shall never exceed 50% of the total amount to be covered.

(d) An HMO that issues or offers to issue a POS rider plan is subject, to the same extent as the HMO is subject in issuing any other health plan product, to all applicable provisions of Chapter 20A, and Articles 21.21, 21.21-A, 21.21-1, 21.21-2, 21.21-5 and 21.21-6 of the Code.

(e) A POS rider plan offered under this subchapter must contain:

(1) a POS rider that:

(A) shall contain coverage that corresponds to all in-plan covered services provided in the evidence of coverage as well as coverage that is provided to an enrollee as part of the enrollee's in-plan coverage through separate riders attached to the evidence of coverage;

(B) may include benefits in addition to in-plan covered services;

(C) may limit or exclude coverage for benefits that do not correspond to in-plan covered services;

(D) shall not limit coverage for benefits that correspond to in-plan covered services except as provided in subparagraphs (E), (F) and (G) of this paragraph;

(E) may include reasonable out-of-pocket limits and annual and lifetime benefit allowances which differ from limits or allowances on in-plan covered services provided under other riders attached to the evidence of coverage so long as the allowances and limits comply with applicable federal and state laws;

(F) may provide for cost-sharing arrangements that are different from the cost sharing arrangements for in-plan covered services, provided that coinsurance required under a POS rider shall never exceed 50% of the total amount to be covered;

(G) may be reduced by benefits obtained as in-plan covered services;

(H) shall not reduce or limit in-plan covered services in any way by coverage for benefits obtained by an enrollee under the POS rider;

(I) if applicable, shall disclose how the POS rider cost-sharing arrangements differ from those in the evidence of coverage, any reduction of benefits as set forth in subparagraph (G) of this paragraph, any deductible that must be met by the enrollee under the POS rider, and whether copayments made for in-plan covered services apply toward the POS rider deductible;

(J) shall provide coverage for services obtained without the HMO's authorization from a participating physician or provider. However, the enrollee must comply with any precertification requirements as set forth in subparagraph (L) of this paragraph that are applicable to the POS rider;

(K) shall include a description of how an enrollee may access out-of-plan covered benefits under the POS rider, including coverage contained in other riders attached to the evidence of coverage;

(L) shall disclose all precertification requirements for coverage under the POS rider including any penalties for failure to comply with any precertification or cost containment provisions, provided that any such penalties shall not reduce benefits more than 50% in the aggregate;

(M) if it is issued to a group, shall contain provisions that comply with Article 3.51-6 Sec. 1(d)(2)(vii)-(xiii) of the Code; and

(N) if it is issued to an individual, shall contain provisions that comply with Article 3.70-3(A)(5)-(11) of the Code;

(2) an evidence of coverage that includes a description and reference to the POS rider sufficient to notify a prospective or current enrollee that the plan provides the option of accessing participating physicians and providers as well as non-participating physicians and providers for out-of-plan covered benefits and that accessing these benefits through the POS rider may involve greater costs than accessing corresponding in-plan covered services; and

(3) a side-by-side summary of the schedule of the corresponding coverage for services, benefits, and supplies available under the POS rider and services, benefits, and supplies available in the evidence of coverage that together constitute the POS rider plan.

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

Filed with the Office of the Secretary of State on June 20, 2001.

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Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: January 5, 2001
For further information, please call: (512) 463-6327

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER U. ARRANGEMENTS BETWEEN INDEMNITY CARRIERS AND HMOS FOR POINT-OF-SERVICE COVERAGE

28 TAC §21.2901, §21.2902

The Commissioner of Insurance adopts new Subchapter U, §21.2901 and §21.2902, concerning point-of-service plans. The sections are adopted with changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 77).

The new sections are necessary to implement legislation enacted by the 76th Texas Legislature in House Bill (HB) 1498 which amended the Texas Insurance Code as follows: Subchapter A, Chapter 26 was amended by adding Art. 26.09; Subchapter F, Chapter 3, was amended by adding Art. 3.64; Section 2, Art. 20A.02 was amended by amending Subsection (i) and adding Subsections (aa) and (bb); and Section 6, Art. 20A.06 was amended by amending Subsection (a) and adding Subsection (c).

The purpose and objective of these new sections are to develop provisions relating to point-of-service (POS) plans. A POS plan is a health care plan that combines HMO and indemnity coverage. An enrollee in a POS plan can choose to obtain health care through the HMO delivery system or from a physician or provider outside of the delivery system on a fee-for-service basis. Under the adopted rules, the POS plan can be created jointly by indemnity carriers and HMOs, either by a "blended contract point-of-service plan," in which one contract issued by either the HMO or indemnity carrier contains the terms of both the indemnity and HMO components of the plan or through a "dual contracts point-of service plan." A dual contracts point-of-service plan is composed of two separate contracts, one of which is issued by the HMO to the enrollee and contains the terms of the HMO portion of the plan, and the other which is issued by the indemnity carrier to the enrollee and contains the terms of the indemnity portion of the plan.

Contemporaneously with this adoption, the adoption of new 28 TAC §§11.2501-11.2503 and 26.312, and adoption of amendments to §26.4 and §26.14, are published elsewhere in this issue of the Texas Register. The separately published new sections of Chapter 11 implement provisions of HB 1498 relating to the issuance of a "point-of-service rider plan" by an HMO which contains an indemnity rider that is underwritten by the HMO. That adoption also sets forth the financial criteria an HMO must meet

in order to issue these point-of-service rider plans. The separately adopted amendments and new section added to Chapter 26 clarify that small and large employer carriers may issue point of service plans provided the carrier complies with the standards relating to both the various types of POS plans set forth in this adoption as well as the amendments and new sections added to Chapter 11. The Chapter 26 adoption also creates standards for POS coverage options that large employer HMOs are required by HB 1498 to offer to eligible employees if the only coverage available to the employees is through a network-based HMO plan or plans.

New §21.2901 defines the terms used in the subchapter. New §21.2902 sets forth the respective requirements for blended contract POS plans and dual contracts POS plans, including the required terms of the written agreement that must be entered into between the HMO and indemnity carrier that are jointly issuing the plan, the basic requirements both for the contract or contracts that constitute the plan, as well as the plan itself, and the filing requirements for the plans.

For clarification, the department has made the following changes: The term "cost containment requirements" has been substituted for the word "precertification" in §21.2902(c)(8) and (d)(1)(E) and a definition of "cost containment requirements" has been added to §21.2901. This change has no substantive effect on these sections. Rather, "cost containment requirements" has been substituted for clarity because of inconsistencies in the way carriers use the word "precertification." Cost containment requirements may be used by carriers as a condition of indemnity coverage. As used in these sections, the term refers to a process in which a carrier requires, as a provision of the indemnity portion of a POS plan, that an enrollee planning to undergo certain medical procedures must first call and notify the carrier. The carrier will then review the proposed procedure to determine if it is being conducted in the most appropriate setting, and for some plans, whether it is a benefit provided by the plan. For example, a policy or contract might require this process before an enrollee undergoes inpatient surgery. Failure to comply with the requirements before receiving the treatment, assuming the treatment is found to be a covered benefit, will result in a lower level of coverage under the indemnity portion of the plan for the procedure.

§21.2901(5) & (11): A commenter believes that the inclusion of "health care services, benefits and supplies obtained from participating physicians and providers under circumstances in which the enrollee fails to comply with the HMO's requirements for obtaining in-plan covered services" in the definitions of "out-of-plan covered benefits" and "POS indemnity coverage" appears to be a departure in scope and focus from the provisions of HB 1498.

Response: The department disagrees that these sections are not consistent with the scope and focus of HB 1498. The definition is necessary to ensure that the HMO gatekeeping and network requirements are not imposed on the coverage obtained under the indemnity portion of the plan. The purpose of HB 1498 is to provide increased choice by allowing an enrollee that elects a POS plan the option to choose whether to: (1) obtain services through the HMO network with lower out-of-pocket costs but be required to utilize the network and its gatekeeping requirements to access services; or (2) utilize the indemnity benefits offered by the plan to receive the services from the provider of his or her choice without the gatekeeping requirements of the HMO, knowing that the out-of-pocket costs will be greater than the cost of obtaining services through the HMO coverage.

These sections fulfill the purpose of HB 1468 by permitting an enrollee to obtain covered services from his or her provider of choice without complying with the HMO's gatekeeper requirements. If coverage for services obtained from physicians and providers who are members of the HMO network were not included under the indemnity portion of the plan, an enrollee residing in an area dominated by one HMO that contracts with the majority of the providers in that area would have a restricted, rather than an enhanced, choice of physicians and providers.

An enrollee that purchases a POS plan pays a premium that includes both HMO and indemnity coverage. The enrollee is responsible for paying all excess out-of-pocket costs for indemnity benefits. The plan carriers consider the expense of reimbursing a physician or provider at a non-contracted rate in calculating the premium for the plan.

§21.2902(b)(2): A commenter feels that cancellation for nonpayment of a portion of premium should not apply to both parts of the coverage unless they are billed as a single premium.

Response: The department disagrees. This provision clarifies that coverage under a plan that combines both HMO and indemnity coverage as a POS plan is a distinct plan from a plan providing coverage solely through an HMO or an indemnity carrier. Renewability requirements for the plan apply to both the HMO and indemnity coverage contained in the plan. Conversely, although the amount of premium charged for the plan to cover the costs of the HMO coverage and the indemnity coverage will be determined separately, the total premium paid goes toward the total coverage available under the plan. Neither the coverage nor the premium is severable. Therefore, the carriers issuing the plan cannot treat an enrollee's failure to pay the entire premium as an election to sever the HMO coverage from the indemnity coverage. The subsection specifically requires that this provision be included in all POS contracts offered or issued to an enrollee so enrollees will be on notice of this requirement.

§21.2902(b)(4)(B) & (b)(4)(C): A commenter supports provisions prohibiting HMOs and insurers from requiring enrollees to use either HMO or indemnity coverage before using other coverage, but expressed concern about provisions allowing a reduction in the amount of coverage in the indemnity portion if HMO coverage is used first. The commenter believes enrollees should be allowed to use coverage in whatever order they want without penalty.

Response: Section 21.2902(b)(4)(B) prohibits coverage under the HMO from being reduced by benefits the enrollee obtains through the indemnity portion of the plan. Section 21.2902(b)(4)(C) allows the plan to reduce the annual limits in the indemnity portion of the plan by services accessed by the enrollee under the HMO coverage. For example, an enrollee who always utilizes the indemnity coverage first during each plan year could utilize all coverage up to an annual limit imposed on the indemnity benefits and then switch to HMO coverage for the remainder of the plan year. An enrollee that begins the plan year by using HMO coverage, which is then charged against the coverage available under the indemnity portion of the plan, could conceivably exhaust that plan year's annual indemnity benefits and be left with only HMO coverage for the remainder of the plan year.

The department disagrees that this constitutes a penalty. The rule is not designed to require an enrollee to utilize coverage in a particular order. Federal law mandates §21.2902(b)(4)(B).

Section 21.2902(b)(4)(C) is necessary because otherwise carriers, in order to provide POS plan benefits, would be required to charge a premium that would be prohibitively high, possibly depriving all but the most affluent consumers of the ability to obtain this type of coverage. Rather than acting as a penalty, §21.2902(b)(4)(C) benefits consumers by keeping the POS option more affordable.

§21.2902(c)(8) & (d)(1)(C): A commenter suggests limiting coinsurance to no more than 30%. The commenter believes that allowing cost-sharing of up to 50% does not provide a valid option to health plan enrollees.

Response: The department disagrees. The POS option is intended to provide an enrollee with the option to obtain services outside of the HMO network. The statute contemplates that the enrollee choosing this option must bear the additional cost involved. Nothing in the statute suggests that the indemnity coverage provided under a POS plan should be subject to requirements that are not imposed on other types of indemnity coverage.

The 50% coinsurance maximum does not deprive enrollees of a valid POS option. Fifty percent is the maximum coinsurance the department will permit a carrier to require an enrollee to provide for indemnity coverage. Nothing in the statute indicates that indemnity coverage provided under a POS plan must exceed coverage provided under any other type of indemnity coverage.

§21.2902(c)(8) & (d)(1)(E): A commenter believes that allowing potential penalties of up to 50% for failure to comply with cost containment requirement provisions could result in no real coverage. The commenter recommends that the penalty for failure to comply be no more than 10 or 15 percent and either removing the term or adding a more specific definition of "other cost containment."

Response: The department disagrees that the 50% limit results in a lack of real coverage. The POS plan is intended to provide an enrollee with the option to obtain services both in and outside of the HMO network. It does not exempt the indemnity portion of the coverage from the standards generally applied to indemnity coverage. Removal of the phrase "other types of cost containment" or limitations on the penalty to no more than 10 or 15 percent would result in the imposition of limitations on the types of cost containment that can be applied to a POS plan that is not imposed on other indemnity coverage offered by carriers. As stated previously, this is not supported by the statute. A definition of cost containment requirements was added to §21.2501.

General: A commenter indicates that there are provisions in the proposed rules stating that certain other statutory provisions continue to apply to HMOs that should be stated in both Subchapter Z and Subchapter U. The commenter also believes that the phrase "all applicable laws, including" should be placed in front of the specific laws since specific provisions of the Code still apply.

Response: The department disagrees that a section must recite that other rules and laws apply to plans issued under this subchapter in order for those rules and laws to apply. It is axiomatic that a carrier must comply with all other applicable statutes and rules when issuing a plan under this subchapter, regardless of whether the subchapter specifically includes such a statement.

For with changes: Office of Public Insurance Counsel and PacifiCare of Texas.

The new sections are adopted under the Insurance Code, Articles 3.64 and 20A.22 and §36.001. Article 3.64(f) provides that the Commissioner of Insurance may adopt rules to implement Article 3.64 of the Insurance Code. Article 20A.22(a) provides that the commissioner shall adopt rules as necessary to implement the Texas Health Maintenance Organization Act. Section 36.001 provides that the commissioner may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

§21.2901. Definitions.

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

(1) Corresponding benefits--Benefits provided under the indemnity portion of a point-of-service (POS) plan, as defined in Articles 3.64(a)(4) and 20A.02(bb) of the Code, that conform to the nature and kind of coverage provided to an enrollee under the HMO portion of a point-of-service plan.

(2) Cost containment requirements--Provisions in POS indemnity coverage requiring a specific action, such as the provision of specified information to the plan, that must be taken by an enrollee or by a physician or a provider on behalf of the enrollee in order to avoid the imposition of a specified penalty on the coverage provided under the plan for a proposed service or treatment.

(3) In-plan covered services--Health care services, benefits, and supplies to which an enrollee is entitled under the evidence of coverage issued by an HMO, including emergency services, approved out-of-network services and other authorized referrals.

(4) Non-participating physicians and providers--Physicians and providers that are not part of an HMO delivery network.

(5) Out-of-plan covered benefits--All covered health care services, benefits, and supplies that are not in-plan covered services. Out-of-plan covered benefits include health care services, benefits and supplies obtained from participating physicians and providers under circumstances in which the enrollee fails to comply with the HMO's requirements for obtaining in-plan covered services.

(6) Participating physicians and providers--Physicians and providers that are part of an HMO delivery network.

(7) Point-of-service blended contract plan (POS blended contract plan)--A POS plan evidenced by a single contract, policy, certificate or evidence of coverage that provides a combination of indemnity benefits for which an indemnity carrier is at risk and services are provided by an HMO under a POS plan.

(8) Point-of-service coverage (POS coverage)--Coverage provided under a POS plan.

(9) Point-of-service dual contracts plan (POS dual contracts plan)--A POS plan providing a combination of indemnity benefits and HMO services through separate contracts, one being the contract, policy or certificate offered by an indemnity carrier for which the indemnity carrier is at risk and the other being the evidence of coverage offered by the HMO.

(10) Point-of-service HMO coverage (POS HMO coverage)--Services provided by an HMO in an evidence of coverage under a POS plan.

(11) Point-of-service indemnity coverage (POS indemnity coverage)--Coverage for which an indemnity carrier is at risk under a POS plan for self-referred health care services, benefits and supplies, other than emergency services, selected at the option of the enrollee,

from non-participating physicians or providers, as well as services, benefits and supplies from participating physicians or providers under circumstances in which the enrollee fails to comply with the requirements of the HMO providing the POS HMO coverage under a POS plan for obtaining in-plan covered services.

§21.2902. Arrangements between Indemnity Carriers and HMOs to Provide Coverage.

(a) Written agreement between the HMO and the indemnity carrier. A POS plan offered under this subchapter must be evidenced by a written agreement between the HMO and indemnity carrier that must be filed with the department as a plan document and shall provide the following:

(1) the identity of each entity, including the HMO, the indemnity carrier, or any third party administrator (TPA) that will administer the coverages offered under the POS plan;

(2) all duties of the HMO and indemnity carrier to each other relating to the POS plan issued under this subchapter;

(3) all costs allocable to the HMO or the indemnity carrier relating to the POS plan;

(4) the HMO's network of providers and, if the POS indemnity coverage includes preferred provider benefits, as allowed by Article 3.70-3C of the Code and applicable rules, the indemnity carrier's list of preferred providers, which shall not be identical and;

(5) the respective premium rates for the POS HMO coverage and for the POS indemnity coverage shall be derived separately by the HMO and the indemnity carrier and shall be separately identified in each POS plan contract; however, the agreement may provide that for a POS plan offered by the entities under this subchapter:

(A) the HMO, the indemnity carrier or a TPA may collect the premiums for both coverages;

(B) the purchaser may issue one payment for both coverages; and

(C) the entity delegated to collect the premium shall then disburse the appropriate premium to the other party or parties;

(6) premium rates charged by the HMO must be based on the actuarial value of the POS HMO coverage and may be different from the premium rates charged by the indemnity carrier, which must be based on the actuarial value of the POS indemnity coverage offered by the indemnity carrier;

(7) the HMO and indemnity carrier must maintain separate books and records for the POS plan, including but not limited to information regarding premiums, lists of covered persons, claim payment data, complaint records, maintenance tax records, and all other books and records required to be maintained by law or rule;

(8) neither entity shall use the other to perform functions or duties that are its own responsibility by law or rule, including but not limited to, making all reports and filings required by law or rule;

(9) the entities may delegate those functions or duties permitted by law or rule to be delegated to another party to perform, including but not limited to contracting with providers, administering claims, and conducting grievance procedures, provided that the delegating entity shall remain responsible for ensuring that all delegated functions shall be conducted in compliance with all applicable laws and rules;

(10) the agreement between the indemnity carrier and the HMO may not be canceled or terminated until the coverage for each enrollee in a POS plan issued by both the indemnity carrier and HMO is terminated or canceled pursuant to the provisions of this subchapter; and

(11) the arrangements to be made in the event of insolvency, loss of certification or any other circumstances affecting the ability of the indemnity carrier, the HMO, or both to comply with this subchapter.

(b) Basic requirements. In addition to complying with all of the requirements listed in subsection (a) of this section, a contract creating a POS blended contract plan and contracts that together create a POS dual contracts plan must provide the following:

(1) enrollees shall not be required to first use either the POS indemnity coverage or POS HMO coverage;

(2) if the premiums necessary to maintain both the POS HMO coverage and the POS indemnity coverage are not paid, both coverages shall be cancelled simultaneously, and any premium the enrollee has remitted to maintain coverage shall be returned to the enrollee;

(3) the POS HMO evidence of coverage must include all mandatory HMO coverages and the POS indemnity coverage must contain all mandatory indemnity coverages;

(4) corresponding coverage for a POS plan must include the following:

(A) all mandatory benefit offers required by the Code that are accepted or rejected by the purchaser must also be accepted or rejected in the same manner with respect to both the POS HMO and the POS indemnity coverage;

(B) benefits under the POS HMO coverage may not be reduced by the benefits received under the POS indemnity coverage; and

(C) benefits for POS indemnity coverage under the plan may be reduced by benefits received under the POS HMO coverage.

(5) if medically necessary covered services, benefits and supplies are not available through the HMO's participating physicians or providers, the HMO is not relieved of its obligation to provide out-of-network services under Article 20A.09 of the Code on the basis that the same services are available to an enrollee through POS indemnity coverage; and

(6) each POS contract must identify the respective premium rates for the POS HMO coverage and for the POS indemnity coverage, as well as the name and address of the entity to whom the premiums must be paid.

(c) POS blended contracts. Contracts for POS blended contract plans must:

(1) list all POS HMO coverage;

(2) specify how services, benefits and supplies under the POS HMO coverage are accessed;

(3) list all POS indemnity coverage;

(4) specify how claims are made for POS indemnity coverage;

(5) disclose all copayments required;

(6) disclose all coinsurance required for POS indemnity coverage, which shall never exceed 50% of the total amount to be covered;

(7) disclose all deductibles required;

(8) disclose all precertification requirements for POS indemnity coverage under the plan including any penalties for failing to comply with any precertification or cost containment provisions, provided that any such penalties shall not reduce benefits more than 50% in the aggregate;

(9) disclose how the enrollee may complain about a denial of coverage and appeal an adverse determination rendered concerning the coverage under the POS plan and disclose any rights the enrollee may have to an independent review of an adverse determination under Article 21.58A of the Code;

(10) POS indemnity coverage issued to a group shall contain provisions that comply with Article 3.51-6 Sec. (1)(d)(2)(vii) - (xiii) of the Code; and

(11) POS indemnity coverage issued to an individual shall contain provisions that comply with Article 3.70-3(A)(5) - (11) of the Code.

(d) POS dual contracts. Contracts comprising a POS dual contract plan must comply with the following:

(1) The contract issued by the indemnity carrier shall comply with all applicable requirements for indemnity carriers and shall:

(A) list all indemnity coverage;

(B) specify how claims are made;

(C) disclose all applicable copayments and coinsurance, which shall never exceed 50% of the total amount to be covered;

(D) disclose all applicable deductibles;

(E) disclose all precertification requirements for POS indemnity coverage under the plan including any penalties for failing to comply with any precertification or cost containment provisions, provided that any such penalties shall not reduce benefits more than 50% in the aggregate;

(F) disclose how the enrollee may complain about a denial of coverage and appeal an adverse determination rendered concerning the coverage under the POS indemnity coverage and disclose any rights the enrollee may have to an independent review of an adverse determination under Article 21.58A of the Code, if applicable;

(G) POS indemnity coverage issued to a group, shall contain provisions that comply with Article 3.51-6 Sec (1)(d)(2)(vii) - (xiii) of the Code;

(H) POS indemnity coverage issued to an individual shall contain provisions that comply with Article 3.70-3(A)(5) - (11) of the Code.

(2) The contract issued by the HMO shall comply with all requirements for an HMO evidence of coverage and shall:

(A) list all covered services, benefits and supplies;

(B) specify how covered services, benefits and supplies are accessed by the enrollee; and

(C) disclose all applicable copayments.

(e) Filings. All plan documents for a POS plan offered under this subchapter shall be submitted to the Filings Intake Division in accordance with:

(1) Article 20A.09 of the Code and Chapter 11 of this title (relating to Health Maintenance Organizations) including the filing fee requirements; and

(2) Article 3.42 of the Code and Chapter 3, Subchapter A of this title (relating to Requirements for Filing of Policy Forms, Riders, Amendments, Endorsements for Life, Accident, and Health Insurance and Annuities) including the filing fee requirements.

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 June 20, 2001.

TRD-200103504
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 10, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 463-6327

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CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

SUBCHAPTER A. SMALL EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATIONS

28 TAC §26.4, §26.14

The Commissioner of Insurance adopts amendments to §26.4 and §26.14 and new §26.312, concerning point-of-service plans. The sections are adopted without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 80) and will not be republished.

These amendments and new section are necessary to implement legislation enacted by the 76th Texas Legislature in House Bill (HB) 1498 which amended the Insurance Code as follows: Subchapter A, Chapter 26 was amended by adding Art. 26.09; Subchapter F, Chapter 3, was amended by adding Art. 3.64; Section 2, Art. 20A.02 was amended by amending Subsection (i) and adding Subsections (aa) and (bb); and Section 6, Art. 20A.06 was amended by amending Subsection (a) and adding Subsection (c).

The purpose and objective of the new section and amendments are to develop provisions relating to point-of-service plans offered by small and large employer carriers pursuant to Chapter 26 of the Texas Administrative Code (TAC). A point-of-service (POS) plan is a health care plan that combines HMO and indemnity coverage. An enrollee in a POS plan can choose to obtain health care through the HMO delivery system or from a physician or provider outside of the delivery system on a fee-for-service basis.

Contemporaneously with this adoption, the adoption of new §§11.2501-11.2503, 21.2901, and 21.2902 are published elsewhere in this issue of the Texas Register. The separately published new sections added to Chapter 11 implement provisions of HB 1498 relating to the issuance of a "point-of-service rider plan" by an HMO which contains an indemnity rider that is underwritten by the HMO. That adoption also sets forth the financial criteria an HMO must meet in order to issue these point-of-service rider plans. The separately adopted new sections added to Chapter 21 implement HB 1497 provisions that an indemnity carrier and an HMO can jointly create a POS

plan, either by issuing "a blended contract point-of-service plan," in which one contract is issued by either the HMO or indemnity carrier that contains the terms of both the indemnity and HMO components of the plan; or through a "dual contracts point-of-service plan." A dual contracts point-of-service plan is composed of two separate contracts, one of which is issued by the HMO to the enrollee and contains the terms of the HMO portion of the plan; and the other which is issued by the indemnity carrier to the enrollee and contains the terms of the indemnity portion of the plan.

Amendments to §26.04(35) replace the former definition of a "point-of-service contract" with a new definition of "point-of-service coverage" which reflects the expansion of the types of point-of-service plans authorized by HB 1498 that can now be issued by large and small employer carriers under Texas Insurance Code Chapter 26. The amendment to §26.14 clarifies that a small employer carrier may issue POS plans provided that the carrier complies with applicable provisions of TAC Chapters 11 and 21 that are also being adopted elsewhere in this issue of the Texas Register. New §26.312 makes the same clarification for large employer carriers. New §26.312 also creates standards for POS coverage options that large employer carriers issuing HMO coverage to large employers are required by HB 1498 to offer to eligible employees if the only coverage available to the employees is through a network-based HMO plan or plans.

GENERAL: A commenter generally supports the rule and fully supports the intent to expand insurance coverage by providing at least one non-network option to employees who wish to purchase such coverage.

Response: The department appreciates this support. However, the department does wish to clarify that the provision of Art. 26.09 amended by HB 1498 as well as the section implementing that provision applies only to carriers providing coverage to eligible employees of large employers. Small employer carriers are not subject to the requirement.

Comment: A commenter believes the proposed sections expand the requirements of HB 1498 and exceed its statutory intent and authority. The commenter recommends that the department re-visit these sections of the rules.

Response: The department disagrees that the sections exceed the authority of HB 1498. The Commissioner has the authority to adopt rules as necessary to implement Chapter 26 of the Texas Insurance Code (Code). While HB 1498 does specifically exclude small employer plans from the applicability of Art. 26.09 of the Code, nothing in Chapters 3 or 20A of the Code as amended by the bill excludes small employers from applicability of those sections. Art. 26.48(a)(3) of the Code permits an HMO to offer a point-of-service contract in connection with an indemnity carrier. Article 26.42(c) of the Code permits HMOs to offer small employers any other health plan authorized under the Code. Art. 20A.06 of the Code, which authorizes an HMO to issue a point-of-service rider, does not exclude small employer carriers.

Adoption of the sections required to implement HB 1498 provides the department the opportunity to consider the general requirements that any plan incorporating a point-of-service component should meet. These sections incorporate these general requirements. They do not transfer to small employer carriers any of the statutory requirements of HB 1498 that are not applicable to small employer carriers. Just as a small employer HMO must comply, as applicable, with the general requirements for HMO plans in 28 TAC Chapters 11 and 21, and a small employer indemnity carrier must comply, as applicable, with the general requirements for group indemnity health plans under 28 TAC Chapters 3 and 21, these sections clarify that a small employer carrier issuing a plan that contains a point-of-service component must comply, as applicable, with the general requirements established in the new sections and amendments to 28 TAC Chapter 11 and 21 published elsewhere in this issue of the Texas Register relating to point-of-service coverage.

For: Office of Public Insurance Counsel.

For with changes: PacifiCare of Texas.

The amendments and new section are adopted under the Insurance Code, Article 26.04 and §36.001. Article 26.04 provides that the commissioner shall adopt rules as necessary to implement Chapter 26 of the Insurance Code. Section 36.001 provides that the commissioner may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

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

Filed with the Office of the Secretary of State on June 20, 2001.

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Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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SUBCHAPTER C. LARGE EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATION

28 TAC §26.312

The Commissioner of Insurance adopts amendments to §26.4 and §26.14 and new §26.312, concerning point-of-service plans. The sections are adopted without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 80) and will not be republished.

These amendments and new section are necessary to implement legislation enacted by the 76th Texas Legislature in House Bill (HB) 1498 which amended the Insurance Code as follows: Subchapter A, Chapter 26 was amended by adding Art. 26.09; Subchapter F, Chapter 3, was amended by adding Art. 3.64; Section 2, Art. 20A.02 was amended by amending Subsection (i) and adding Subsections (aa) and (bb); and Section 6, Art. 20A.06 was amended by amending Subsection (a) and adding Subsection (c).

The purpose and objective of the new section and amendments are to develop provisions relating to point-of-service plans offered by small and large employer carriers pursuant to Chapter 26 of the Texas Administrative Code (TAC). A point-of-service (POS) plan is a health care plan that combines HMO and indemnity coverage. An enrollee in a POS plan can choose to obtain health care through the HMO delivery system or from a physician

or provider outside of the delivery system on a fee-for-service basis.

Contemporaneously with this adoption, the adoption of new §§11.2501-11.2503, 21.2901, and 21.2902 are published elsewhere in this issue of the Texas Register. The separately published new sections added to Chapter 11 implement provisions of HB 1498 relating to the issuance of a "point-of-service rider plan" by an HMO which contains an indemnity rider that is underwritten by the HMO. That adoption also sets forth the financial criteria an HMO must meet in order to issue these point-of-service rider plans. The separately adopted new sections added to Chapter 21 implement HB 1497 provisions that an indemnity carrier and an HMO can jointly create a POS plan, either by issuing "a blended contract point-of-service plan," in which one contract is issued by either the HMO or indemnity carrier that contains the terms of both the indemnity and HMO components of the plan; or through a "dual contracts point-of-service plan." A dual contracts point-of-service plan is composed of two separate contracts, one of which is issued by the HMO to the enrollee and contains the terms of the HMO portion of the plan; and the other which is issued by the indemnity carrier to the enrollee and contains the terms of the indemnity portion of the plan.

Amendments to §26.04(35) replace the former definition of a "point-of-service contract" with a new definition of "point-of-service coverage" which reflects the expansion of the types of point-of-service plans authorized by HB 1498 that can now be issued by large and small employer carriers under Texas Insurance Code Chapter 26. The amendment to §26.14 clarifies that a small employer carrier may issue POS plans provided that the carrier complies with applicable provisions of TAC Chapters 11 and 21 that are also being adopted elsewhere in this issue of the Texas Register. New §26.312 makes the same clarification for large employer carriers. New §26.312 also creates standards for POS coverage options that large employer carriers issuing HMO coverage to large employers are required by HB 1498 to offer to eligible employees if the only coverage available to the employees is through a network-based HMO plan or plans.

The amendments and new section are adopted under the Insurance Code, Article 26.04 and §36.001. Article 26.04 provides that the commissioner shall adopt rules as necessary to implement Chapter 26 of the Insurance Code. Section 36.001 provides that the commissioner may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

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

Filed with the Office of the Secretary of State on June 20, 2001.

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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) adopts new Chapter 15, Fleet Vehicle Management, §15.1, Fleet Vehicle Management. Section 15.1 is adopted *without changes* to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2943).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the adopted rule is to implement the requirements of House Bill 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 (Management Plan) developed in accordance with Texas Government Code, §2171.104. The rule has been drafted to be consistent with the intent and language of the bill.

The rule is consistent with the Management Plan, and requires the executive director to adopt a policy consistent with the Management Plan. 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 §15.1(a) will establish that each vehicle will be assigned to the commission's motor pool and will be available to be checked out.

New §15.1(b) will establish 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.

New §15.1(c) will establish that the ED will adopt an operating policy that is consistent with the Management Plan developed in accordance with Texas Government Code, §2171.104.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the final 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 adoption 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 adopts state statutory requirements relating to vehicle fleet management as required by Texas Government Code, §2171.1045.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rule and performed a final assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's final assessment indicates that Texas Government Code, Chapter 2007 does not apply to the 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 rule and performed a final assessment of whether the adopted rule will constitute a takings under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and final assessment. The specific purpose of the 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 adopted rule will 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 adopted rule will 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 adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject 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 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 rule is not subject to the CMP.

HEARINGS AND COMMENTERS

The public comment period closed on May 21, 2001, and no comments were received.

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code, §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 adopted new section is also authorized by Texas Government Code, §2171.1045, which requires a state agency to adopt the vehicle fleet management rules.

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

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §331.2, Definitions; §331.7, Permit Required; §331.9, Injection Authorized by Rule; §331.10, Inventory of Wells Authorized by Rule; §331.11, Classification of Injection Wells; §331.12, Conversion of Wells; §331.82, Construction Requirements; §331.131, Applicability; §331.132, Construction Standards; and §331.133, Closure Standards for Injection Wells. The commission also adopts new §331.8, Prohibition of Motor Vehicle Waste Disposal Wells and Large Capacity Cesspools; §331.135, Construction Standards for Large Capacity Septic Systems; §331.136, Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells; and §331.137, Permits for Motor Vehicle Waste Disposal Wells. The commission withdraws §331.138, Monitoring Requirements for Motor Vehicle Waste Disposal Wells. Sections 331.7, 331.8, 331.9, 331.10, 331.11, 331.82, 331.132, 331.133, 331.136, and 331.137 are adopted *with changes* to the proposed text as published in the January 26, 2001 issue of the *Texas Register* (26 TexReg 926). Sections 331.2, 331.12, 331.131, and 331.135, are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Underground injection wells are regulated under the authority of Part C of the federal Safe Drinking Water Act (SDWA or the Act) (42 United States Code (USC), 300h et seq.). Part C mandates the regulation of underground injection of fluids through wells. Section 1421 of the Act requires the United States Environmental Protection Agency (EPA) to propose and promulgate regulations specifying minimum requirements for state programs to prevent underground injection that endangers drinking water sources. The EPA entered into a consent decree with the Sierra Club on August 31, 1994, subsequently modified on January 28, 1997, requiring the EPA to complete the promulgation of regulations for high risk Class V wells to prevent underground injection that endangers drinking water. Class V wells are generally shallow wells used to inject nonhazardous fluids into or above formations that contain underground sources of drinking water (USDW). The EPA has promulgated a final rule, Underground Injection Control Regulations for Class V Injection Wells, in the December 7, 1999 issue of the *Federal Register* (64 FR 68546). The new federal rule provisions are in Title 40 Code of Federal Regulations (CFR) Part 144, Underground Injection Control Program, and Part 146, Underground Injection Control Program: Criteria and Standards.

The new federal rules primarily address two types of Class V injection wells that have high potential for endangering USDWs: large capacity cesspools and motor vehicle waste disposal wells. The EPA's rulemaking links the Class V Underground Injection

Control (UIC) Program and the State Drinking Water Source Assessment and Protection Program for motor vehicle waste disposal wells. Under the new federal rules, subsurface fluid distribution system and improved sinkhole are defined as Class V injection wells and subject to these rules. In addition, construction of new large capacity cesspools and motor vehicle waste disposal wells was banned by the federal rules as of April 5, 2000. Under the EPA's rulemaking, all existing motor vehicle waste disposal wells in a groundwater protection area must close or obtain a permit within one year of the designation of the groundwater protection area, but no later than by January 1, 2005 (40 CFR §144.87(b)). Groundwater protection areas are delineated under the Drinking Water Source Assessment and Protection Program for source water protection areas for community or non-transient non-community water systems that use groundwater as a source of drinking water. The EPA's rulemaking also provides that states may delineate other sensitive groundwater areas for groundwater areas that are critical for public health protection because of hydrogeologic and other features that would cause USDWs to be vulnerable to contamination from injection wells. The EPA's rulemaking requires the closing of all other motor vehicle waste disposal wells in other sensitive groundwater areas, if the state delineates these areas. If the state does not delineate other sensitive groundwater areas, the owners or operators must close all other wells by January 1, 2007, unless the owner or operator of the well obtains a permit or converts the well (40 CFR §144.87).

Options for motor vehicle waste disposal well owners offered in the new federal rules are: 1) apply for a permit (40 CFR §144.84); 2) get an extension of the closure compliance date in groundwater protection areas for up to one year, if the most efficient compliance option is to route the waste to a sanitary sewer or to install a new treatment technology (40 CFR §144.87(b)); 3) convert the motor vehicle waste disposal well to another type of Class V well if all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well, and injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal (40 CFR §144.89(b)); or 4) close the well. A motor vehicle waste disposal well is defined in the federal rules as a well which currently receives or has ever received motor vehicle waste. The federal rules further state that if a motor vehicle waste disposal well owner or operator applies for a permit, the disposed waste must meet the primary maximum contaminant levels (MCLs) for drinking water, and other health-based standards at the point of injection. Additionally, the owner or operator must follow best management practices and monitor the injectate (40 CFR Part 144, Table 2). The federal rules also clarified plugging and abandonment requirements for Class IV and V wells, and adopted new and amended definitions.

To demonstrate environmental need, the EPA cited evidence in its rulemaking that fluids released in motor vehicle waste disposal wells commonly exceed primary MCLs for drinking water, and that these wells have been linked with contamination of USDWs. Data provided by the EPA indicates that fluids being injected may exceed health-based limits for contaminant levels in water by ten to 100 times. The data also demonstrates that contaminants known to be associated with motor vehicle waste disposal wells occur nationwide in public water systems. (64 FR 68548).

The EPA is banning large capacity cesspools because these have a high potential to contaminate USDWs. The effluent released from cesspools frequently exceeds drinking water MCLs for nitrates, total suspended solids, and coliform bacteria; and may contain other constituents of concern such as phosphates, chlorides, grease, viruses, and industrial chemicals such as trichloroethane and methylene chloride. Pathogens in untreated sanitary waste released into large capacity cesspools could contaminate water supply sources and pose a serious health risk with a single exposure (64 FR 68551). Also, the use of large capacity cesspools is recognized as an inferior method of disposing of waste that can be remedied by the installation of a septic system (64 FR 68553). Prior to this federal rulemaking, the commission banned and continues to ban cesspools in §285.3 of this title (relating to On-Site Sewage Facilities). New §331.8 will further clarify the existing ban on large capacity cesspools.

Section 1422 of the SDWA provides that states may apply to the EPA for primary enforcement responsibility to administer the federal UIC Program. The State of Texas has applied for and been approved by the EPA to administer the federal UIC Program in this state since January 6, 1982. The commission is, therefore, obligated to maintain rules at least as stringent as the federal rules to retain federal authorization to implement the UIC Program in Texas.

In Texas, the UIC Program is implemented under Texas Water Code (TWC), Chapter 27, Injection Wells, and the commission's rules, 30 TAC Chapter 331, Underground Injection Control. The new and amended federal rule requirements are incorporated into Chapter 331, Subchapter A, General Provisions, and Subchapter H, Standards for Class V Wells.

The main purpose of the commission's rulemaking is to implement these new federal rules. The commission is adopting new rules to require all existing motor vehicle waste disposal wells in groundwater protection areas to close or obtain a permit within one year of the date the groundwater protection areas are identified by the commission, or by January 1, 2005, whichever occurs earlier. This is in compliance with new 40 CFR §144.87(b). Additionally, upon the effective date of these rules, the commission prohibits the construction of new motor vehicle waste disposal wells. Because there are no currently inventoried (registered) motor vehicle waste disposal wells in the state and only a small number are believed to exist, the commission decided not to designate other sensitive groundwater areas (as allowed by the federal rules) and instead, is adopting these rules to require all existing motor vehicle waste disposal wells outside of groundwater protection areas to close or obtain a permit. Therefore, owners and operators of all motor vehicle waste disposal wells in areas other than groundwater protection areas must close the wells or obtain a permit by January 1, 2007. The commission determined that this will provide consistent and equitable regulation throughout the state, and will not require the commitment of additional resources to designate other sensitive groundwater areas. This decision to apply the rules statewide does not mean the commission determined that the entire state is a sensitive groundwater area. The phasing in of these deadlines is intended to give any owners of motor vehicle waste disposal wells the most time possible to close these wells. The commission solicited comments on the proposal to apply the rules statewide rather than designating other sensitive groundwater areas. No comments were received on this issue. Therefore, the commission adopts these rules, as proposed, requiring owners and operators of all motor vehicle waste disposal wells in areas other than groundwater protection areas to close the wells or obtain a permit by January 1, 2007.

The commission determined that the cost of complying with the options of obtaining a permit and meeting primary MCLs for

drinking water at the point of injection for motor vehicle waste disposal wells, or installing a new on-site treatment process, would most likely not be cost effective for a majority of the well owners or operators. Recycling or off-site disposal of motor vehicle waste is anticipated to be more cost effective than these options. No public comments were received on whether the commission should provide owners and operators the option to obtain a permit. Nevertheless, the commission has decided to retain the permit option in the rules.

The adopted rules include specific definitions of large capacity cesspools, septic systems, subsurface fluid distribution systems, and improved sinkholes to clarify their status as Class V injection wells. Regulations for temporary injection points are adopted to reflect advances in technology such as the current use of push point technology for the delivery of fluids into or above a USDW. The adopted amendments also clarify that the Class V wells listed in TWC, §32.001(8) shall be installed by a licensed water well driller. In addition, amendments are adopted to the construction and closure sections of the rules because they include the types of Class V injection wells that are the primary focus of the new federal rules, and the commission wants to update the construction and closure methods to reflect recent advances in technology. In addition to changes to implement the federal rules, these rules incorporate some minor clarifications and updates.

SECTION BY SECTION DISCUSSION

Subchapter A: General Provisions

Section 331.2, Definitions, is adopted to add the following new definitions: cesspool, drywell, groundwater protection area, improved sinkhole, point of injection, sanitary waste, septic system, and subsurface fluid distribution system. Section 331.2 also is adopted to amend the definition of "well" for compatibility with new 40 CFR §144.3. In addition, the commission adopts new definitions for large capacity cesspool, large capacity septic system, motor vehicle waste disposal well, temporary injection point, and well injection.

The definition for large capacity septic system found in §331.2(50) is "A septic system that is designed for a flow of greater than 5,000 gallons per day." In the federal rules, a large capacity cesspool is one which receives sanitary waste and serves more than 20 persons a day. The commission believes a cesspool capacity of 5,000 gallons per day is equivalent to a cesspool that serves 20 persons per day. The definition of large capacity septic system is not in the federal rules; however, the commission is adopting this definition to provide consistency with Chapter 285 of this title.

The new definition for motor vehicle waste disposal well is derived from new 40 CFR §144.81(16) and is adopted to clarify that wells which receive or have ever received motor vehicle waste are Class V injection wells. The new definition of temporary injection point is being adopted to keep the state rules up-to-date with push point injection technology used in remediation of groundwater. The new definition of well injection is adopted to simply state that well injection means the subsurface emplacement of fluids through a well. These definitions are being added and/or amended for compatibility with the federal rules located at 40 CFR §144.3.

The terms "improved sinkhole" and "subsurface fluid distribution system" are also defined under 40 CFR §144.3 as types of injection wells regulated under the UIC Program. These adopted definitions codify the EPA's interpretation that the intentional disposal of fluids in natural depressions, open fractures, and crevices (such as those commonly associated with cooling of lava flows or weathering of limestone), and the disposal of fluids through shallow horizontal distribution systems fit within the statutory definition of underground injection. Because improved sinkholes and subsurface fluid distribution systems are considered Class V wells, owners or operators of these wells must comply with the inventory requirements of this chapter. The definition of groundwater protection area is a geographic area near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water. Motor vehicle waste disposal wells in these areas are subject to earlier closure or permitting requirements. In compliance with the new federal rules, the definition of well is amended to clarify that a well includes both improved sinkholes and subsurface fluid distribution systems. Where necessary, the definitions in the section have been renumbered to accommodate the addition of the new definitions.

The adopted new definitions for cesspool, drywell, point of injection, sanitary waste and septic system are derived from the new federal definitions in 40 CFR §144.3.

Adopted new §331.7(c), Permit Required, clarifies that the owner or operator of large capacity septic systems, or septic systems which accept industrial waste, must obtain a wastewater discharge permit in addition to the requirements of this chapter. Large capacity septic systems are currently regulated by the commission under TWC, Chapter 26, and 30 TAC Chapter 305 of this title (relating to Consolidated Permits), and must be inventoried by submitting the information required under §331.10 of this title (relating to Inventory of Wells Authorized by Rule).

Adopted new §331.8, Prohibition of Motor Vehicle Waste Disposal Wells and Large Capacity Cesspools, implements the federal requirement under 40 CFR §144.87. Adopted new §331.8(a) implements a ban on the construction of all new motor vehicle waste disposal wells and large capacity cesspools. The construction of these two types of wells has been prohibited by the federal rules since April 5, 2000. Adopted new §331.8(b) specifies that the owner or operator of an existing motor vehicle waste disposal well located in a groundwater protection area must close the well within one year of the designation of the groundwater protection area, or by January 1, 2005, whichever occurs earlier, or must apply for a UIC Class V permit or extension prior to the closure date. This subsection also describes well permitting and closure procedures and requirements. If the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology, adopted §331.8(b)(1) establishes the procedure and requirements for applying for an extension from the closure date for one year, as provided in 40 CFR §144.87(b)(2). Adopted §331.8(b)(2) specifies that to continue operating during an extension, the owner or operator must ensure that the injectate meets primary MCLs for drinking water at 40 CFR Part 141, and other health-based standards at the point of injection. Since the commission is not adopting the option of identifying "other sensitive groundwater areas," adopted §331.8(c) establishes that the owner or operator of an existing motor vehicle waste disposal well in areas of the state other than groundwater protection areas must close the well by January 1, 2007, apply for a Class V UIC permit prior to January 1, 2007, or convert the well so it is not receiving motor vehicle waste. Adopted new §331.8(d) specifies that the owner or operator of an existing motor vehicle waste disposal well must close the well in accordance with closure standards specified in new §331.136 of this title (relating

to Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells). New §331.8(e) is added since the proposed rules were published and is adopted to clarify that owners or operators must close all existing large capacity cesspools, in accordance with closure standards in §331.136 of this title (relating to Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells).

Adopted §331.9, Injection Authorized by Rule, is amended to update the cross-reference to §331.133 of this title (relating to Closure Standards), and §331.136 of this title. Section 331.9(b) is also adopted to require that Class V wells used to dispose of greater than 5,000 gallons per day of sewage or sewage effluent must be authorized by a wastewater discharge permit. The amount of effluent is increased from 1,000 gallons per day to greater than 5,000 gallons per day for consistency with other commission rules and to be equivalent to federal rules where the capacity is specified as greater than 20 persons per day in 40 CFR §144.81(9).

Adopted §331.10(a) is amended to specify that the owner or operator and not the driller of the Class V well (except for those wells listed under subsection (b) of this section), must submit an inventory for each facility prior to construction, or within one year of January 1, 1982, if the well existed on that date. Adopted §331.10(b) states that drillers of closed loop and air conditioning return flow injection wells must submit an inventory form provided by the executive director as required under §331.132(b)(3) of this title (relating to Construction Standards). Minor grammatical changes are also adopted in this subsection. New §331.10(d) is adopted to require that inventory information for all Class V wells, with the exception of closed loop and air conditioning return flow wells, be submitted prior to construction, conversion, or use of the well. Inventory information for closed loop and air conditioning return flow wells may be submitted after construction of these types of wells.

Adopted new §331.10(e) specifies that owners and operators of existing subsurface fluid distribution systems and improved sinkholes must submit the inventory information within one year of the effective date of these rules. All new subsurface fluid distribution systems and improved sinkholes must comply with subsection (d) of this section.

Adopted new §331.11(a)(1)(C) is adopted to specify that radioactive waste disposal wells which inject fluids below the lowermost formation containing a USDW within 1/4 mile of the well bore are classified as Class I injection wells. This requirement is added to implement the new federal rules at 40 CFR §144.6(a)(3). These disposal wells are primarily associated with in situ uranium mining operations in South Texas and are used for disposal of uranium byproduct as defined in Texas Health and Safety Code, §401.003(3)(B). These wells have historically been permitted as Class I injection wells, and are identical to other Class I injection wells in terms of their design, the nature of injected fluids, and their potential to endanger USDWs; therefore, they warrant the same level of control as other Class I injection wells. This classification change does not mean that the Class II injection wells permitted by the Railroad Commission of Texas (RCT) used to inject oil and gas naturally-occurring radioactive material (NORM waste) are reclassified as Class I wells. These wells remain under RCT jurisdiction as Class II wells. However, any wells used to inject non-oil and gas NORM waste for disposal are Class I wells under TNRCC jurisdiction.

Adopted §331.11(a)(4) is amended to improve readability by moving the second sentence in the paragraph to the beginning of the paragraph. In response to comments on the proposed rules, §331.11(a)(4) has been modified to delete the list of wells under RCT jurisdiction because that list was incomplete and may change. Instead, new language is adopted which states that "Except for Class V wells within the jurisdiction of the Railroad Commission of Texas, all Class V injection wells are within the jurisdiction of the commission and include, but are not limited to: ..." Section 331.11(a)(4)(C) is amended to clarify that large capacity cesspools which are Class V wells are those cesspools which receive greater than 5,000 gallons of waste per day. Section 331.11(a)(4)(F) is amended to correct the spelling of drywell. Section 331.11(a)(4)(J) is amended to clarify that septic systems designed to inject greater than 5,000 gallons per day of waste or effluent are classified as Class V wells. Since the proposed rules were published, clauses (i) and (ii) have been deleted for clarification and to eliminate duplication with §331.11(a)(4)(C). Section 331.11(a)(4)(K), (L), and (O) are amended for punctuation. New §331.11(a)(4)(M) and (N) list motor vehicle waste disposal wells and improved sinkholes as types of Class V injection wells in accordance with the federal rules at 40 CFR §144.1 and §144.81. New §331.11(a)(4)(O) lists aquifer remediation wells, temporary injection points, and subsurface fluid distribution systems as additional types of Class V wells. Since the proposed rules were published, adopted new §331.11(a)(4)(P) has been added to clarify that subsurface fluid distribution systems are Class V wells.

Adopted new §331.12(a)(4) clarifies that prior to converting a Class V motor vehicle waste disposal well, the owner or operator must inventory the well with the executive director, as required in §331.10 of this title (relating to Inventory of Wells Authorized by Rule), and comply with the conversion requirements specified in §331.12(c). Adopted new §331.12(c) provides the conversion requirements for motor vehicle waste disposal wells in the limited cases when conversion to another type of Class V well is allowed. Adopted new §331.12(c)(1) states that the use of a semi- permanent plug is not sufficient to segregate waste; §331.12(c)(2) states the conditions under which the executive director may approve a Class V well conversion. Adopted new §331.12(c)(2)(A) specifies that the executive director may approve the conversion only if the well is inventoried. Adopted new §331.12(c)(2)(B) specifies that the executive director may approve the conversion only if all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well. Adopted new §331.12(c)(2)(C) limits the conversion of Class V wells to those circumstances where the future injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal.

Subchapter E: Standards for Class III Wells

Section 331.82(b) and (g), Construction Requirements, is amended to change "commission" to "executive director" to distinguish that the actions are actually performed by the executive director and not the commissioners. This amendment is not related to the new federal rules.

Subchapter H: Standards for Class V Wells

Adopted §331.131, Applicability, is amended to delete the word "new." This amendment clarifies that rules in Subchapter H are

applicable to "existing" as well as "new" Class V injection wells, and is consistent with the new federal rules.

Adopted §331.132(a), makes explicit the requirement that the types of injection wells listed in TWC, §32.001(8) shall be installed by a licensed water well driller. Section 331.132(b)(1) is adopted to specify that inventory information for Class V wells required by §331.10(a) of this title shall be submitted for review and approval prior to construction of the well. Additionally, subsection (b)(1) is adopted to require that inventory information for large capacity septic systems be submitted as part of the wastewater discharge permit application. Section 331.132(b)(2) exempts large capacity septic systems, subsurface fluid distribution systems, air conditioning return flow wells, closed loop injection wells, improved sinkholes, and temporary injection points from the requirement to submit the Texas Department of Licensing and Regulation state well report form to the executive director within 30 days of construction of the well. New §331.132(b)(5) requires the owner or operator of large capacity septic systems, subsurface fluid distribution systems, and improved sinkholes to report construction by submitting the reporting form provided by the executive director within 30 days after construction of the well is completed. Section 331.132(d)(1) is adopted to specify that surface completion requirements of a concrete slab or sealing block is required for all injection wells except temporary injection points, subsurface fluid distribution systems, improved sinkholes, and large capacity septic systems. Section 331.132(d)(2) has been changed since the proposed rules were published to clarify that the casing requirements only apply to wells that use casing. New 331.132(d)(4) is adopted to implement the requirement that temporary injection points shall be completed in such a manner as to prevent the movement of surface fluids into a USDW. Section 331.132(f) has been modified since the proposed rules were published and states that improved sinkholes, as well as closed loop injection wells and air conditioning return flow wells, are exempt from the completion standards in this section. New §331.132(h) is adopted to specify that sampling shall be done on a Class V injection well from the point of injection, which is the last accessible sampling point prior to the waste fluids being released into the subsurface environment, or as specified in a permit. This requirement is to ensure that any sampling is representative of the waste fluid being released and is consistent with the sampling requirement for permitted motor vehicle waste disposal wells in 40 CFR §144.88(b), Table 2.

Adopted §331.133, Closure Standards, is amended to change the title of the section to "Closure Standards for Injection Wells," and to provide that the closure standards specified in this section apply to all injection wells other than those specified. This is to distinguish these closure standards from the closure requirements for wells found in new §331.136 of this title. Section 331.133(a) has been modified since proposal to include a reference to §331.136, and to reference the *Federal Register*. The subsection is adopted to have consistent use of terminology; specifically, the term "close" is substituted for "plug or plugged." This subsection is also adopted to specify that the injection well must be closed in a manner that complies with §331.5 of this title (relating to Prevention of Pollution), 40 CFR §144.12 ("prohibition of movement of fluid into underground sources of drinking water," effective June 2, 1987), and disposal or other management of any contaminated soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well must be in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program). New §331.133(e) is adopted to specify the proper closure technique for temporary injection points. This subsection accommodates the use of temporary injection points for remediation of groundwater. New §331.133(f) is adopted to specify the closure standards for improved sinkholes. The owner or operator must close the sinkhole in a manner that prohibits the movement of contaminated fluids into USDWs, in compliance with §331.5 of this title (relating to Prevention of Pollution), and 40 CFR §144.12 ("prohibition of movement of fluid into underground sources of drinking water," as amended through June 2, 1987 at 48 FR 20676); and to demonstrate that fluids released through the well will meet the primary MCLs for drinking water contained in 40 CFR Part 141, and other appropriate health-based standards at the point of injection.

Adopted new §331.135, Construction Standards for Large Capacity Septic Systems, provides appropriate regulatory standards for the construction of large capacity septic systems. Adopted §331.135(a) requires large capacity septic systems to be constructed in accordance with the terms of the wastewater discharge permit. Under adopted §331.135(b), during construction the movement of fluids which might contaminate a USDW or violate primary drinking water standards, or other health-based standards is prohibited. There were no construction standards previously specified in commission rules for these types of Class V injection wells.

Adopted new §331.136, Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells, provides appropriate regulatory standards for the closure of these types of Class V injection wells. Since the proposed rules were published, the name of this section was changed to add subsurface fluid distribution systems to the title. These adopted standards, in part, implement the federal requirements for closure of Class V wells found in 40 CFR §144.89. These standards ensure that wells are closed in a manner that prevents the movement of contaminated fluids into a USDW, which may cause a violation of the primary drinking water or other health-based standards, or adversely affect public health. Adopted new §331.136(a) specifies that owners or operators of motor vehicle waste disposal wells, large capacity septic systems, large capacity cesspools, subsurface fluid distribution systems, and drywells must comply with the standards set forth in this section. Adopted new §331.136(b) specifies that owners or operators of large capacity cesspools and motor vehicle waste disposal wells must submit a preclosure notice form provided by the executive director 30 days prior to closure. In addition, adopted new §331.136(c) specifies closure procedures and requirements for large capacity cesspools, large capacity septic systems, drywells, subsurface fluid distribution systems, and motor vehicle waste disposal wells. Adopted new §331.136(c)(1) specifies that the owner or operator must close the well in a manner that prohibits the movement of contaminated fluids into USDWs in compliance with §331.5 of this title (relating to Prevention of Pollution) and 40 CFR §144.12 ("prohibition of movement of fluid into underground sources of drinking water," as amended through June 2, 1987 at 48 FR 20676). Paragraph (2) specifies that the owner or operator must dispose or otherwise manage any contaminated soil, gravel, sludge, liquids, or other material removed from or adjacent to the well in accordance with Chapter 350 of the title (relating to Texas Risk Reduction Program), and all other applicable state, federal, and local regulations and requirements. Paragraph (3) specifies that the owner or operator must submit a closure report to the executive director within 60 days of closing the well.

Adopted new §331.137, Permit for Motor Vehicle Waste Disposal Wells, establishes the minimum requirements for a motor vehicle waste disposal well permit. Adopted new §331.137(1) establishes that owners or operators of motor vehicle waste disposal wells must demonstrate that fluids released in their wells meet the primary drinking water MCLs contained in 40 CFR Part 141 and other health-based standards at the point of injection. Adopted new §331.137(2) establishes that owners or operators must follow prescribed best management practices as specified in their permits. Adopted new §331.137(3) establishes that owners or operators are required to monitor the quality of their injectate and sludge both initially and on a continuing basis as specified in their permit to demonstrate compliance with MCLs at the point of injection.

Proposed new §331.138, Monitoring Requirements for Motor Vehicle Waste Disposal Wells, has been withdrawn because the commission determined that general monitoring requirements are specified in §331.137 of this title, and more specific monitoring requirements will be included in the individual permit as determined by the executive director on a case-by-case basis.

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 the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rules is to protect the environment or reduce risks to human health from environmental exposure from contamination from large capacity cesspools and motor vehicle waste disposal wells. Cesspools had previously been banned in the state, but these rules adopt a provision clarifying this ban under the UIC Program. Because cesspools have already been banned and the commission has no inventory of registered motor vehicle waste disposal wells, the rules will not have a material adverse impact on the economy. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). 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. The adopted rulemaking does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

Chapter 27 of the TWC authorizes the commission to regulate injection wells and §27.019 authorizes the commission to adopt rules reasonably required for the regulation of injection wells. Section 330h(b)(1) of the federal SDWA requires that the EPA promulgate regulations for state underground injection programs containing minimum requirements for effective programs to prevent underground injection which endangers drinking water sources. The commission believes that the adopted rules do not exceed standards set by federal law. New federal requirements ban all new motor vehicle waste disposal wells and require existing motor vehicle waste disposal wells in groundwater protection areas or other sensitive groundwater areas to close or obtain a permit. The new federal requirement found in 40 CFR §144.87(c) provides: "States may also delineate other sensitive groundwater areas by January 1, 2004... If a state or EPA region fails to identify these additional sensitive groundwater areas by January 1, 2004, the new requirements of this rule will apply to all motor vehicle waste disposal wells in the state effective January 1, 2007..." Because the commission is choosing not to identify other sensitive groundwater areas, the requirements applicable to existing motor vehicle waste disposal wells must be implemented statewide by January 1, 2007. Under the adopted rules, all large capacity cesspools and new motor vehicle waste disposal wells are banned. Owners or operators of existing large capacity cesspools must close the cesspools under closure standards specified in these rules. Owners or operators of existing motor vehicle waste disposal wells must close the wells or apply for a permit.

The commission believes that the adopted rules do not exceed an express requirement of state law. Requirements for injection wells are found in TWC, §27.003, which provides that: "It is the policy of this state and the purpose of this chapter to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare, the operation of existing industries, and the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy." However, TWC, Chapter 27 does not provide specific standards or requirements for large capacity cesspools or motor vehicle waste disposal wells. Therefore, the commission does not believe that an express requirement of state law has been exceeded in the adopted rules.

The commission has also determined that the adopted rules do not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been delegated authority to administer the UIC Program in the state by the EPA under the federal SDWA. The SDWA requires the EPA to promulgate minimum requirements for effective state UIC Programs that prevent underground injection which endangers drinking water sources. The commission believes that the adopted rules do not exceed the new federal requirements for large capacity cesspools or motor vehicle waste disposal wells, nor exceed the requirements in the delegation agreement with the EPA for state authorization of the UIC Program.

The commission also believes that these rules are adopted under specific authority of the Injection Well Act, TWC, Chapter 27. Section 27.003 requires the use of all reasonable methods to implement the policy of the state to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare, the operation of existing industries, and the economic development of the state, and to prevent underground injection that may pollute fresh water. Section 27.019 requires the commission to adopt rules reasonably required for the regulation of injection wells. These adopted rules implement requirements for certain types of Class V wells to prevent underground injection that may pollute fresh water.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules 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 these adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The State of Texas has received authorization from the EPA to administer the UIC Program in Texas. The SDWA, 42 USC §300h, requires that the administrator of the EPA promulgate regulations for state underground injection programs containing minimum requirements for delegated programs to prevent underground injection which endangers drinking water sources. The adopted rulemaking will provide consistency with new federal rules for two categories of Class V wells the EPA has determined to be a source of endangerment to drinking water.

Nevertheless, the commission further evaluated these adopted rules and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and preliminary assessment. The primary purpose of these adopted rules is to implement federal requirements for large capacity cesspools and motor vehicle waste disposal wells. The adopted rules would substantially advance this purpose by banning new motor vehicle waste disposal wells and by requiring the owners and operators of existing motor vehicle waste disposal wells to close the wells or obtain a permit from the commission. Cesspools have already been banned in Texas.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted 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 which would otherwise exist in the absence of the regulations. In other words, these rules implement federal requirements for closure of motor vehicle waste disposal wells and large capacity cesspools, but because there are no inventoried motor vehicle waste disposal wells in the state and cesspools have already been banned, there will be no burden, restriction, or limitation on the owner's right to property. Additionally, a prohibition on such disposal wells and cesspools would not reduce property value by 25%.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The executive director reviewed the adopted 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 rules are not subject to the CMP.

HEARING AND COMMENTERS

The commission held a public hearing on February 20, 2001; there were no commenters present at the hearing. The public comment period closed March 5, 2001. The following commenters submitted written comments: the RCT and the EPA.

RESPONSE TO COMMENTS

§331.11

The EPA commented that the proposed amendments to Chapter 331 do not contain equivalent language to 40 CFR §144.1(g)(1)(iii) that specifically includes wells injecting hazardous wastes under the scope of the UIC Program.

The commission disagrees with the comment and responds that §331.1 states that the chapter applies to all injection wells. Section 331.11(a)(1)(A) states that injection wells within the jurisdiction of the commission include Class I wells used by generators of hazardous waste, or owners or operators of hazardous waste facilities, other than Class IV wells. Section 331.1 and §331.11(a)(1)(A) when read together adequately provide that wells injecting hazardous waste are under the scope of the UICProgram. The commission believes that this language is equivalent to the federal language at 40 CFR §144.1(g)(1)(iii).

The EPA also commented that the proposed amendments to Chapter 331 do not contain equivalent language to 40 CFR §144.1(g)(2)(v) that specifically excludes from the UIC Program any dug hole, drilled hole, or bored shaft which is not used for the subsurface emplacement of fluids.

The commission disagrees with the comment and responds that §331.1 states that the chapter applies to all injection wells. Section 331.1 when read in conjunction with §331.2(97) which defines an injection well as "a well into which fluids are being injected" adequately clarifies that any hole or bored shaft not used for the subsurface emplacement of fluids is excluded from the UIC Program. The commission believes this language is equivalent to the federal language at 40 CFR §144.1(g)(2)(v).

The RCT commented that the proposed revision to §331.11(a)(4) is incorrect in that the proposed language limited the Class V wells within the jurisdiction of the RCT to wells used for in situ combustion of fossil fuels, recovery of geothermal energy to produce electricity, and geothermal wells used in heating and aquaculture. In addition to those listed types of Class V wells, the RCT commented that it has jurisdiction over Class V wells at groundwater remediation sites associated with oil and gas activities and fluid return wells at oilfield water supply operations. The RCT also stated that there may be other types of Class V wells associated with activities it regulates. The RCT suggested that §331.11(a)(4) should be changed to: "Except for wells associated with activities regulated by the Railroad Commission of Texas, Class V wells are under the jurisdiction of the commission and include, but are not limited to: etc."

The commission agrees with the commenter that the language in this section could be improved. The commission also agrees that there may be other wells under the RCT jurisdiction which are not listed, and the types of wells under the RCT jurisdiction may change over time necessitating another rule change to update the list. Therefore, the commission has adopted §331.11(a)(4) to read,"Except for Class V wells within the jurisdiction of the Railroad Commission of Texas, all Class V injection wells are within the jurisdiction of the commission and include, but are not limited to: ..."

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§331.2, 331.7 - 331.12

STATUTORY AUTHORITY

The amendments and new section are 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; §27.003, which requires the use of all reasonable methods to implement policy on underground injection; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

§331.7. Permit Required.

(a) Except as provided in §331.9 of this title (relating to Injection Authorized by Rule), all injection wells and activities must be authorized by permit.

(b) For Class III in situ uranium solution mining wells, Frasch sulfur wells, and other Class III operations under commission jurisdiction, an area permit authorizing more than one well may be issued for a defined permit area in which wells of similar design and operation are proposed. The wells must be operated by a single owner or operator. Before commencing operation of those wells, the permittee may be required to obtain a production area authorization for separate production or mining areas within the permit area.

(c) The owner or operator of a large capacity septic system or a septic system which accepts industrial waste must obtain a wastewater discharge permit in accordance with Texas Water Code, Chapter 26 and Chapter 305 of this title (relating to Consolidated Permits), and must submit the inventory information required under §331.10 of this title (relating to Inventory of Wells Authorized by Rule).

§331.8. Prohibition of Motor Vehicle Waste Disposal Wells and Large Capacity Cesspools.

(a) The construction of new motor vehicle waste disposal wells and large capacity cesspools is prohibited.

(b) The owner or operator of a motor vehicle waste disposal well in a groundwater protection area must close the well within one year after designation of the groundwater protection area, or by January 1, 2005, whichever occurs earlier, or apply for a Class V underground injection control (UIC) permit prior to the closure date.

(1) The owner or operator of a motor vehicle waste disposal well located in a groundwater protection area may be granted an extension to the closure deadline by the executive director for up to one year if the most efficient compliance option for the well is connection to a sanitary sewer or installation of new treatment technology.

(2) To continue operating during the extension period, the owner or operator must ensure that the injectate meets primary maximum contaminant levels for drinking water and other health-based standards at the point of injection.

(c) The owner or operator of a motor vehicle waste disposal well in any area of the state other than a groundwater protection area, must close the well by January 1, 2007; apply for a Class V UIC permit from the executive director under §331.137 of this title (relating to Class V Well Permit), prior to the closure date; or convert the well in accordance with §331.12 of this title (relating to Conversion of Wells) so that it is not receiving motor vehicle waste.

(d) The owner or operator of an existing motor vehicle waste disposal well must close the well in accordance with closure standards specified in §331.136 of this title (relating to Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells).

(e) All existing large capacity cesspools must be closed. The owner or operator of an existing large capacity cesspool must close the well in accordance with closure standards in §331.136 of this title.

§331.9. Injection Authorized by Rule.

(a) Plugging and abandonment of a well authorized by rule at any time after January 1, 1982, shall be accomplished in accordance with the standards of §331.46 of this title (relating to Closure Standards). Class V wells shall be closed according to standards under §331.133 of this title (relating to Closure Standards for Injection Wells). Motor vehicle waste disposal wells, large capacity septic systems, large capacity cesspools, subsurface fluid distribution systems, and drywells shall be closed according to standards under §331.136 of this title (relating to Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells).

(b) Injection into Class V wells, unless otherwise provided, is authorized by virtue of this rule. Injection into Class V wells used for the disposal of greater than 5,000 gallons per day of sewage or sewage effluent must be authorized by a wastewater discharge permit from the commission under Chapter 305 of this title (relating to Consolidated Permits) before operations begin.

(1) Well authorization under this section expires upon the effective date of a permit issued under §331.7 of this title (relating to Permit Required).

(2) An owner or operator of a Class V well is prohibited from injecting into the well:

(A) upon the effective date of permit denial;

(B) upon failure to submit a permit application in a timely manner under subsection (c) of this section;

(C) upon failure to submit inventory information in a timely manner under §331.10 of this title (relating to Inventory of Wells Authorized by Rule);

(D) upon failure to comply with a request for information from the executive director in a timely manner; or

(E) upon failure to comply with provisions contained in Subchapter H of this chapter (relating to Standards for Class V Wells) and, if applicable, Subchapter K of this chapter (relating to Additional Requirements for Class V Aquifer Storage Wells).

(c) The executive director may require the owner or operator of an injection well authorized by rule to apply for and obtain an injection well permit. The owner or operator shall submit a complete application within 90 days after the receipt of a letter from the executive director requesting that the owner or operator of an injection well submit an application for permit. Cases for which a permit may be required include, but are not limited to, wells not in compliance with the standards required by this section.

(d) Class IV wells injecting hazardous waste-contaminated ground water that is of acceptable quality to aid remediation and that is being reinjected into the same formation from which it was drawn, as authorized by §331.6 of this title (relating to Prohibition of Class IV Well Injection), shall be authorized by rule.

§331.10. Inventory of Wells Authorized by Rule.

(a) The owner or operator of an injection well facility, except for those wells listed under subsection (b) of this section, must submit to the executive director prior to construction (or within one year after January 1, 1982 if the well existed on that date), an inventory for each facility containing:

(1) the name of the facility;

(2) the name and address of legal contact;

(3) the ownership of the facility;

(4) the nature, type and operating status of the injection well(s); and

(5) the location, depth, and construction of each well.

(b) Drillers of closed loop and air conditioning return flow injection wells authorized by rule shall inventory wells after construction by submitting the form provided by the executive director as required under §331.132(b)(3) of this title (relating to Construction Standards).

(c) Failure to comply with this section shall constitute grounds for termination of authorization by rule.

(d) Owners or operators of all Class V wells, with the exception of closed loop and air conditioning return flow wells, shall submit the inventory information required under subsection (a) of this section for review, modification, and approval by the executive director. The owner or operator of a Class V well must obtain approval from the executive director prior to construction, conversion, or operation of the well.

(e) Owners and operators of subsurface fluid distribution systems and improved sinkholes in existence on the effective date of this rule must submit the inventory information for these Class V wells to the executive director within one year of the effective date of these rules. Owners and operators of new subsurface fluid distribution systems and improved sinkholes must submit inventory information as required under subsection (d) of this section.

§331.11. Classification of Injection Wells.

(a) Injection wells within the jurisdiction of the commission are classified as follows.

(1) Class I:

(A) wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells;

(B) other industrial and municipal waste disposal wells which inject fluids beneath the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water (USDW); and

(C) radioactive waste disposal wells which inject fluids below the lower-most formation containing a USDW within 1/4 mile of the wellbore.

(2) Class III. Wells which are used for the extraction of minerals, including:

(A) mining of sulfur by the Frasch process; and

(B) solution mining of minerals which includes sodium sulfate, sulfur, potash, phosphate, copper, uranium and any other minerals which can be mined by this process.

(3) Class IV. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into or above a formation which within 1/4 mile of the wellbore contains a USDW.

(4) Class V. Class V wells are injection wells not included in Classes I, II, III, or IV. Generally, wells covered by this paragraph inject nonhazardous fluids into or above formations that contain USDWs. Except for Class V wells within the jurisdiction of the Railroad Commission of Texas, all Class V injection wells are within the jurisdiction of the commission and include, but are not limited to:

(A) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

(B) closed loop injection wells which are closed system geothermal wells used to circulate fluids including water, water with additives, or other fluids or gases through the earth as a heat source or heat sink;

(C) large capacity cesspools or other devices that receive greater than 5,000 gallons of waste per day, which have an open bottom and sometimes have perforated sides;

(D) cooling water return flow wells used to inject water previously used for cooling;

(E) drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(F) drywells used for the injection of wastes into a subsurface formation;

(G) recharge wells used to replenish the water in an aquifer;

(H) salt water intrusion barrier wells used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the fresh water;

(I) sand backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into mined out portions of subsurface mines;

(J) septic systems designed to inject greater than 5,000 gallons per day of waste or effluent;

(K) subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(L) aquifer storage wells used for the injection of water for storage and subsequent retrieval for beneficial use;

(M) motor vehicle waste disposal wells which are used or have been used for the disposal of fluids from vehicular repair or maintenance activities, such as an automotive repair shop, auto body shop, car dealership, boat, motorcycle or airplane dealership, or repair facility;

(N) improved sinkholes;

(O) aquifer remediation wells, temporary injection points, and subsurface fluid distribution systems used to inject nonhazardous fluids into the subsurface to aid in the remediation of soil and groundwater; and

(P) subsurface fluid distribution systems.

(b) Class II wells and Class III wells used for brine mining fall within the jurisdiction of the Railroad Commission of Texas.

(c) Baseline wells and monitor wells associated with Class III injection wells within the jurisdiction of the commission are also subject to the rules specified in this 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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SUBCHAPTER E. STANDARDS FOR CLASS III WELLS

30 TAC §331.82

STATUTORY AUTHORITY

The amendment is 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; §27.003, which requires the use of all reasonable methods to implement policy on underground injection; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

§331.82. Construction Requirements.

(a) Casing and cementing. All new Class III wells, baseline wells, and monitor wells associated with the mining operations shall be cased, cemented to the surface, and capped to prevent the migration of fluids which may cause the pollution of underground sources of drinking water (USDWs) and maintained in that condition throughout the life of the well. In addition, existing wells in areas where there is the potential for contamination and other harmful or foreign matter to enter groundwater through an open well, shall also be cemented to the surface and capped. The casing and cement used in the construction of each well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(1) depth to the injection zone;

(2) injection pressure, external pressure, internal pressure, axial loading, etc.;

(3) hole size;

(4) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(5) corrosiveness of injected fluids and formation fluids;

(6) lithology of injection and confining zones; and

(7) type and grade of cement.

(b) Alterations to construction plans. Any proposed changes or alterations to construction plans after permit issuance shall be submitted to the executive director and written approval obtained before incorporating such changes.

(c) Logs and tests. Appropriate logs and other tests shall be conducted during the drilling and construction of all new Class III wells and after an existing well has been repaired. A descriptive report interpreting the results of those logs and tests shall be prepared by a knowledgeable log analyst and submitted to the executive director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction, and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses.

(1) During the drilling and construction of Class III wells, appropriate deviation checks shall be conducted on holes where pilot holes and reaming are used at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(2) Mechanical integrity, as described in §331.43 of this title (relating to Mechanical Integrity Standards), shall be demonstrated following construction of the well.

(A) Except as provided by subparagraph (B) of this section, the following tests shall be used to evaluate the mechanical integrity of the injection well:

(i) to test for significant leaks under §331.43(a)(1) of this title, monitoring of annulus pressure, or pressure test with liquid or gas, or radioactive tracer survey, or for Class III uranium solution mining wells only, a single point resistivity survey in conjunction with a pressure test to detect any leaks in the casing, tubing, or packer; and

(ii) to test for significant fluid movement under §331.43(a)(2) of this title, temperature log, noise log, radioactive tracer survey, cement bond log, oxygen activation log, or for Class III uranium solution mining wells only, cement records that demonstrate the absence of significant fluid movement where other tests are not suitable. For Class III wells where the cement records are used to demonstrate the absence of significant fluid movement, the monitoring program prescribed by §331.84 of this title (relating to Monitoring Requirements) shall be designed to verify the absence of significant fluid movement.

(B) The executive director may allow the use of a test to demonstrate mechanical integrity other than those listed in subparagraph (A) of this paragraph with the written approval of the administrator of the EPA or his authorized representative. To obtain approval, the executive director shall submit a written request to the EPA administrator, which shall set forth the proposed test and all technical data supporting its use. The EPA administrator shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. Any alternate method approved by the EPA administrator shall be published in the *Federal Register* and may be used unless its use is restricted at the time of approval by the EPA administrator.

(3) Additional logs and tests may be required by the executive director when appropriate.

(d) Construction and testing supervision. All phases of well construction and testing shall be supervised by a person who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

(e) Injection zone characteristics - water bearing formation. Where the injection zone is a water bearing formation, the following information concerning the injection zone shall be determined or calculated:

(1) fluid pressure;

(2) temperature;

(3) fracture pressure;

(4) other physical and chemical characteristics of the injection zone;

(5) physical and chemical characteristics of the formation fluids; and

(6) compatibility of injected fluids with formation fluids.

(f) Injection zone characteristics - non-water bearing formations. Where the injection formation is not a water bearing formation, the fracture pressure shall be determined or calculated.

(g) Monitor well location. Where injection is into a formation which contains water with less than 10,000 mg/l TDS, monitoring wells shall be completed into the injection zone and into any USDW above the injection zone which could be affected by the mining operation. These wells shall be located to detect any excursion of injection fluids, production fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse, the monitoring wells shall be located so that they will not be physically affected. Designated monitoring wells shall be installed at least 100 feet inside any permit area boundary, unless excepted by written authorization from the executive director.

(h) Subsidence or catastrophic collapse. Where the injection wells penetrate a USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitor wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitor wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

(i) Monitor well criteria. In determining the number, location, construction, and frequency of monitoring of the monitor wells the following criteria shall be considered:

(1) the population relying on the USDW affected or potentially affected by the injection operation;

(2) the proximity of the injection operation to points of withdrawal of drinking water;

(3) the local geology and hydrology;

(4) the operating pressures and whether a negative pressure gradient is being maintained;

(5) the chemistry and volume of the injected fluid, the formation water, and the process by-products; and

(6) the injection well density.

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. STANDARDS FOR CLASS V WELLS

30 TAC §§331.131 - 331.133, 331.135 - 331.137

STATUTORY AUTHORITY

The amendments and new sections 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; §27.003, which requires the use of all reasonable methods to implement policy on underground injection; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

§331.132. Construction Standards.

(a) All Class V wells shall be completed in accordance with the specifications contained in this section, unless otherwise authorized by the executive director. Injection wells listed in Texas Water Code, §32.001(8) shall be installed by a water well driller licensed by the Texas Department of Licensing and Regulation.

(b) Reporting.

(1) Prior to construction. Except for closed loop injection and air conditioning return flow wells, information required under §331.10(a) of this title (relating to Inventory of Wells Authorized by Rule) shall be submitted to the executive director for review and approval prior to construction. For large capacity septic systems the information required under §331.10(a) of this title shall be submitted as part of the wastewater discharge permit application filed under Chapter 305 of this title (relating to Consolidated Permits).

(2) After completion of construction. Except for large capacity septic systems, subsurface fluid distribution systems, temporary injection points, closed loop injection wells, improved sinkholes, and air conditioning return flow wells, the Texas Department of Licensing and Regulation state well report form shall be submitted to the executive director within 30 days from the date the well construction is completed.

(3) Closed loop and air conditioning return flow wells. No reporting prior to construction is necessary for these two types of wells. The Texas Department of Licensing and Regulation state well report form shall be completed and submitted to the executive director within 30 days from the date the well construction is completed. Any additives, constituents, or fluids (other than potable water) that are used in the closed loop injection well system shall be reported in the Water Quality Section on the state well report form.

(4) Temporary injection points. Temporary injection points shall be completed in such a manner as to prevent movement of surface water or undesirable groundwater into underground sources of drinking water (USDW).

(5) Large capacity septic systems, subsurface fluid distribution systems, and improved sinkholes. The owner or operator of large capacity septic systems, subsurface fluid distribution systems, and improved sinkholes must submit the well report form provided by the executive director within 30 days from the date well construction is completed.

(c) Sealing of casing.

(1) General. Except for closed loop injection wells, the annular space between the borehole and the casing shall be filled with cement slurry from ground level to a depth of not less than ten feet below the land surface or well head. In areas of shallow, unconfined groundwater aquifers, the cement need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement need not be placed below the top of the water-bearing strata.

(2) Closed loop injection well. The annular space of a closed loop injection well shall be backfilled to the total depth with impervious bentonite or a similar material. Where no groundwater or only one zone of groundwater is encountered, sand, gravel, or drill cuttings may be used to backfill up to 30 feet from the surface. The top 30 feet shall be filled with impervious bentonite. Alternative impervious materials may be authorized by the executive director upon request.

(d) Surface completion.

(1) With the exception of temporary injection points, subsurface fluid distribution systems, improved sinkholes, and large capacity septic systems, all wells must have a concrete slab or sealing block placed above the cement slurry around the well at the ground surface.

(A) The slab or block shall extend at least two feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(B) The surface of the slab shall be sloped so that liquid will drain away from the well.

(2) For wells that use casing, the top of the casing shall extend a minimum of 12 inches above the original ground surface. The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(3) Closed loop injection wells which are completed below grade are exempt from the surface completion standards in this subsection. Pitless adapters may be used in close loop wells provided that:

(A) the adapter is welded to the casing or fitted with another suitably effective seal; and

(B) the annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.

(4) Temporary injection points shall be completed in such a manner as to prevent the movement of surface water or undesirable groundwater into a USDW.

(e) Optional use of a steel or PVC sleeve. If the use of a steel or PVC sleeve is necessary to prevent possible damage to the casing, the steel sleeve shall be a minimum of 3/16 inches in thickness or the PVC sleeve shall be a minimum of Schedule 80 sun-resistant and 24 inches in length, and shall extend 12 inches into the cement slurry.

(f) Well placement in a flood-prone area. All wells shall be located in areas not generally subject to flooding. If a well must be placed in a flood-prone area, it shall be completed with a watertight sanitary well seal to maintain a junction between the casing and injection tubing, and a steel sleeve extending a minimum of 36 inches above ground level and 24 inches below the ground surface shall be used. For the purpose of this subsection, a flood-prone area is defined as that area within the 100-year flood plain as determined on the Federal Emergency Management Agency (FEMA) Flood Hazard Maps for the National Flood Insurance Program. If FEMA has conducted a flood insurance study of the area, and has mapped the 50-year flood plain, then the smaller geographic areas within the 50-year boundary are considered to be flood-prone. Closed loop injection wells, improved sinkholes, and air conditioning return flow wells are exempt from the completion standards in this subsection.

(g) Other protection measures.

(1) Commingling prohibited. All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer containing fresh water.

(2) Undesirable groundwater. When undesirable groundwater, which is water that is injurious to human health and the environment or water that can cause pollution to land or other waters, is encountered in a Class V well, the well shall be constructed so that the undesirable groundwater is isolated from any underground source of drinking water and is confined to the zone(s) of origin.

(h) Sampling. For a Class V injection well, any required sampling shall be done at the point of injection, or as specified in a permit issued by the executive director.

§331.133. Closure Standards for Injection Wells.

(a) It is the responsibility of the owner or operator to close a Class V well which is to be permanently discontinued or abandoned under standards set forth in this section unless the well must comply with §331.136 of this title (relating to Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells). The well must be closed in a manner that complies with §331.5 of this title (relating to Prevention of Pollution) and 40 Code of Federal Regulations (CFR) §144.12 ("prohibition of movement of fluid into underground sources of drinking water," effective June 2, 1987 at 48 FR 20676). Any contaminated soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well must be managed in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program), and all other applicable federal, state, and local regulations and requirements.

(b) Closure shall be accomplished by removing all of the removable casing and the entire well shall be pressure filled via a tremie pipe with cement from bottom to the land surface.

(c) As an alternative to the procedure in subsection (b) of this section, if a Class V well is not completed through zones containing undesirable groundwater, water that is injurious to human health and the environment or water that can cause pollution to land or other waters, the well may be filled with fine sand, clay, or heavy mud followed by a cement plug extending from land surface to a depth of not less than ten feet below the land surface.

(d) As an alternative to the procedure in subsection (b) of this section, if a Class V well is completed through zones containing undesirable groundwater, water that is injurious to human health and the environment or water that can cause pollution to land or other waters, either the zone(s) containing undesirable groundwater or the fresh groundwater zone(s) shall be isolated with cement plugs and the remainder of the wellbore filled with bentonite grout (9.1 pounds per gallon mud or more) followed by a cement plug extending from land surface to a depth of not less than ten feet below the land surface.

(e) It is the responsibility of the owner or operator to ensure that temporary injection points are pressure grouted from the bottom of the well to the land surface, and the injection point is sealed to prevent the migration of fluids into underground sources of drinking water.

(f) It is the responsibility of the owner or operator to close improved sinkholes in a manner that prohibits the movement of contaminated fluids into underground sources of drinking water, in compliance with §331.5 of this title, and 40 CFR §144.12 (as amended through June 2, 1987 at 48 FR 20676); and to demonstrate that any fluids released through the closed well will meet the primary maximum contaminant levels (MCLs) for drinking water contained in 40 CFR Part 141, and other appropriate health-based standards at the point of injection.

§331.136. Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells.

(a) The owner or operator of a Class V motor vehicle waste disposal well, large capacity septic system, large capacity cesspool, subsurface fluid distribution system, or drywell that is to be permanently discontinued or abandoned must close the well under the standards set forth in this section.

(b) The owner or operator of a large capacity cesspool or motor vehicle waste disposal well must submit a preclosure notice form provided by the executive director no later than 30 days prior to closure.

(c) The owner or operator of a large capacity cesspool, large capacity septic system, subsurface fluid distribution system, drywell, or motor vehicle waste disposal well must:

(1) close the well in a manner that prohibits the movement of fluids into underground sources of drinking water, in compliance with §331.5 of this title (relating to Prevention of Pollution), and 40 Code of Federal Regulations §144.12 ("prohibition of movement of fluid into underground sources of drinking water," as amended through June 2, 1987 at 48 FR 20676);

(2) dispose or otherwise manage any contaminated soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program) and all other applicable federal, state, and local regulations and requirements; and

(3) submit a closure report to the executive director within 60 days of closing the well.

§331.137. Permit for Motor Vehicle Waste Disposal Wells.

An owner or operator of a motor vehicle waste disposal well who wishes to continue operation of a well may apply for an underground injection control permit. A Class V motor vehicle waste disposal permit shall contain the following minimum requirements.

(1) The owner or operator of a Class V motor vehicle waste disposal well must demonstrate that fluids released through the well will meet the primary maximum contaminant levels (MCLs) for drinking water contained in 40 Code of Federal Regulations (CFR) Part 141, and other appropriate health-based standards at the point of injection as specified in the Class V permit.

(2) The owner or operator of a Class V motor vehicle waste disposal well must follow specified best management plans (BMPs) for motor vehicle-related facilities as specified in the Class V permit.

(3) The owner or operator of a Class V motor vehicle waste disposal well must monitor the quality of the injectate and sludge (if present in dry wells or tanks holding injectate) both initially and on a continuing basis as specified in the Class V permit to demonstrate compliance with the primary MCLs for drinking water contained in 40 CFR Part 141.

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 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

The Texas Natural Resource Conservation Commission (commission) adopts 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. Section 334.503 is adopted *with changes* to the proposed text as published in the April 20, 2001 issue of the *Texas Register* (26 TexReg 2945). Sections 334.54 and 334.460 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules will 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.

Adopted §334.54, Temporary Removal from Service is 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 current adopted amendment would correct this error, so §334.54(d)(1) will 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) will 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) will 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 restores 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.

Adopted §334.460, Renewal of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager, is 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) has been amended so that, in the last sentence, the word "issued" has been changed to "renewed"; the word "subchapter" has been changed to "section"; and the phrase "original date of issuance or two years from the" has been deleted, such that the final sentence will 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 greatly clarifies the intent of the rule. Section 334.460(f)(2) has been amended to correct a typographical error in the second sentence in this paragraph, the number of days has been amended to read "30" rather than "60." This correction will 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.

Adopted §334.503, Reuse of Petroleum-Substance Waste, is 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" has been 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. Administrative changes have been made from proposal to adoption for *Texas Register* purposes.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted 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 adopted 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 adopted rules are intended to simply correct errors from the Chapter 334 rulemaking that went into effect November 23, 2000. Correction of these errors removes internal inconsistencies from these rule sections and thus make them easier to read and understand.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. 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 removes internal inconsistencies from these rule sections and thus make them easier to read and understand. This action does not create a burden on private real property, and does 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 do 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.

HEARINGS AND COMMENTERS

The public comment period closed on May 21, 2001 and no comments were received.

SUBCHAPTER C. TECHNICAL STANDARDS

30 TAC §334.54

STATUTORY AUTHORITY

The amendment is 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 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 adopted 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.

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

30 TAC §334.460

STATUTORY AUTHORITY

The amendment is 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 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 adopted 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.

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

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

30 TAC §334.503

STATUTORY AUTHORITY

The amendment is 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 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 adopted 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.

§334.503. Reuse of Petroleum-Substance Waste.

(a) Wastes that are intended for reuse are subject to all the applicable provisions of this subchapter, including, but not limited to, the following requirements. Sections 334.482, 334.496 - 334.500, and 334.502 of this title (relating to General Prohibitions; Shipping Procedures Applicable to Generators of Petroleum-Substance Waste; Recordkeeping and Reporting Procedures Applicable to Generators; Shipping Requirements Applicable to Transporters of Petroleum-Substance Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; Record-keeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities; and Design and Operating Requirements of Stockpiles and Land Surface Treatment Units).

(b) Petroleum-substance waste may be reused in accordance with §350.36 of this title (relating to the Relocation of Soils Containing COCs for Reuse Purposes). Recordkeeping and reporting requirements for any person who intends to reuse petroleum-substance wastes shall be in accordance with §350.36 of this title except under the conditions of subsection (c)(3)(A) - (C) of this section as the requirements of §350.36(b)(4) and (c)(4) of this title will not apply. Under the conditions of subsection (c)(3)(A) - (C) of this section, the person must maintain records and provide to the agency when requested such information deemed necessary by the agency to ensure compliance with the requirements of this subsection.

(1) For releases reported to the agency on or after September 1, 2003, the information that must be maintained under subsection (c)(3)(A) - (C) of this section includes, but is not limited to:

(A) identification, address, and name of the authorized representative of the generating facility;

(B) identification, address, and name of the authorized representative for the receiving facility or location;

(C) identification of the landowner of the receiving location or facility;

(D) the quantity, type, and contaminant levels of the reused wastes;

(E) documentation of the reuse methods and dates of reuse;

(F) documentation that asphalt mix or road base mix meets the specifications required by the final user; and

(G) documentation that the landowner of the receiving location has approved the use of the reused wastes on his property.

(2) For releases reported to the agency on or before August 31, 2003, the recordkeeping and reporting requirement for any person who intends to reuse petroleum-substance wastes must require that person to maintain records and provide to the agency when requested such information deemed necessary by the agency to ensure compliance with the requirements of this subsection. This information shall include, but is not limited to:

(A) identification, address, and name of the designated representative of the generating facility;

(B) identification, address, and name of the designated representative for the receiving facility or location;

(C) identification of the landowner of the receiving location or facility;

(D) the quantity, type, and contaminant levels of the reused wastes;

(E) documentation of the reuse methods and dates of reuse;

(F) documentation that asphalt mix or road base mix meets the specifications required by the final user; and

(G) documentation that the landowner of the receiving location has approved the use of the reused wastes on his property.

(c) Reuse requirements are as follows.

(1) For releases reported to the agency on or before August 31, 2003, any person who intends to utilize petroleum-substance wastes for reuse must obtain written approval from the landowner of the land on which the wastes will be placed and from the agency as specified by this subsection. The landowner's approval shall be submitted to the agency upon request.

(2) Petroleum-substance wastes shall be reused only in manners which are in accordance with §334.482 of this title and at contaminant levels specified by the agency.

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

(A) Petroleum-substance wastes may be utilized in cold-mix-emulsion bituminous paving at a cold-mix asphalt-producing facility registered under the terms of this subchapter. The petroleum-substance waste shall be mixed with aggregate or other suitable materials at a rate which will result in a mixture meeting or exceeding the specifications required by the final user.

(i) For releases reported to the agency on or before August 31, 2003, the petroleum-substance waste will contain less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste must not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program), and must not be at concentrations which compromise the integrity of the cold-mix asphalt product. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

(B) Petroleum-substance wastes may be utilized in asphalt mix at hot-mix asphalt-producing facilities registered under this subchapter.

(i) For releases reported to the agency on or before August 31, 2003, the petroleum-substance waste will contain less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes prior to mixing. The petroleum-substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized must be obtained prior to laying the asphalt.

(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste must not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title, and must not be at such concentrations which compromise the integrity of the hot-mix asphalt product. The petroleum- substance waste must be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility must also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized shall be obtained prior to laying the asphalt.

(C) Petroleum-substance wastes may be utilized in road base or parking lot stabilized base when the base will be covered with concrete or asphalt.

(i) For releases reported to the agency on or before August 31, 2003, the contaminant levels of the soil prior to mixing into the stabilized base are less than 0.5 mg/kg for each component of benzene, toluene, ethyl benzene, and total xylenes, and less than 500.0 mg/kg total petroleum hydrocarbons or at contaminant levels otherwise specified by the agency. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator must obtain

prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(ii) For releases reported to the agency on or after September 1, 2003, the concentration of benzene, toluene, ethylbenzene, and total xylenes, or any other relevant chemicals of concern derived from the petroleum substance waste shall not exceed levels which are protective of human health and the environment as generally determined in accordance with Chapter 350 of this title, and must not be at such concentrations which compromise the integrity of the stabilized base. The base must be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized road base must meet the criteria for clean soil as specified by the agency to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(D) For releases reported to the agency on or before August 31, 2003, petroleum-substance wastes may be utilized, if appropriate, in road base or parking lot stabilized base when the base will not be covered with asphalt or concrete. 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 base must be mixed according to the specifications required by the final user. The base must be professionally mixed by a facility registered under the terms of this subchapter. Soil which is not mixed into stabilized road base must meet the criteria for clean soil to be spread on a road or parking lot. The generator must obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(E) For releases reported to the agency on or before August 31, 2003, petroleum-substance wastes 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 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 June 22, 2001.

TRD-200103544
Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
Effective date: July 12, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 239-4712

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CHAPTER 343. OIL AND HAZARDOUS SUBSTANCES
SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §343.1, §343.2

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of Chapter 343, Oil and Hazardous Substances, §343.1, Definitions, and §343.2, Permit Exemption for Emergency Cleanup Activities, 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 notice of intention to review was published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2412). The commission reviewed the rules in Chapter 343 and made an assessment that the reason for their adoption no longer continues to exist.

As published in the Rules Review section of this issue of the *Texas Register*, the commission is also adopting the review of this chapter in accordance with Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEAL

Chapter 343 was adopted by the Texas Department of Water Resources (predecessor agency of the commission) with an effective date of February 17, 1978, to implement the Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977. In 1983, the 68th Legislature amended the provisions of the Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977, and redesignated the act as the Texas Hazardous Substances Spill Prevention and Control Act. No changes were made to Chapter 343 as a result of the amended act. However, Chapter 327, Spill Prevention and Control, was later adopted to implement the Texas Hazardous Substances Spill Prevention and Control Act and it included the rules in Chapter 343, updated to conform with the amended act, thus rendering Chapter 343 obsolete.

SECTION BY SECTION DISCUSSION

Chapter 343 consisted of only two sections. Section 343.1 provided a definition of hazardous substances. Section 343.2 provided permit exemptions for emergency cleanup activities as a means of establishing immediate and necessary control, containment, removal, and disposal of oil or hazardous substances spills or discharges within coastal lands or waters in the state. The section applied to such spills or discharges where delay necessitated by obtaining commission authorization would seriously impair efforts to prevent the imminent or substantial endangerment to health or the environment. The exemptions applied if the cleanup activities were conducted under the supervision of the executive director or his designated representative. The section required that the executive director file a report with the commission within 60 days of completion of the disposal activities. The commission was then required to hold a public hearing to determine if the disposal had created or would cause an adverse effect on the waters in the state or an impairment of the health, welfare, and physical property of the people in the state.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition

of a "major environmental rule" as defined in the 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 rulemaking does not meet the definition of "major environmental rule" because the rulemaking was not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking was intended to repeal Chapter 343 which consisted of obsolete and unused rules which had been superseded by other rules adopted by the commission in Chapter 327.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking for the repeal of rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking was to repeal Chapter 343 which consisted of obsolete and unused rules which had been superseded by other rules adopted by the commission in Chapter 327. The repeal of these rules will not burden private real property which is the subject of the rules because these rules were obsolete and were not being used by the commission since they had been superseded by other rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the repealed rules were 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 did they affect any action or authorization identified in the Coastal Coordination Act Implementation Rules, §505.11. This rulemaking concerned only the repeal of obsolete and unused rules of the commission. Therefore, the rulemaking is not subject to the CMP.

PUBLIC COMMENT

The public comment period closed on April 23, 2001. No comments on whether the reasons for the rules continue to exist were received.

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of the TWC and other laws of this state. The repeals are adopted as a result of a rule review done 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.

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 June 25, 2001.

TRD-200103610

Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
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Proposal publication date: March 23, 2001
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TITLE 31 NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 355. RESEARCH AND PLANNING FUND

SUBCHAPTER C. REGIONAL WATER PLANNING GRANTS

31 TAC §§355.91, 355.93, 355.100

The Texas Water Development Board (the board) adopts amendments to §§355.91, 355.93, and 355.100 concerning the Regional Water Planning Grants with changes to the proposed text as published in the April 6, 2001 issue of the *Texas Register* (26 TexReg 2632). The changes are based on recommendations received from regional water planning groups, their consultants, board staff, and the public regarding the first round of regional water planning. These amendments are designed to improve the regional water planning process.

Amendments to §355.91 add the Texas Department of Agriculture as a consultant to the board in determining state population and demand projections. A comment received from the South Central Regional Water Planning Group regarding §357.5(d)(1) of this title prompted the board to add regional water planning groups as consultants as well, which requires their addition in §355.91 since that section defines projections. These changes will enhance the reliability and accuracy of the projections by adding expertise and fact knowledge, which will ensure a more complete planning process by the regional water planning groups.

Amendments to §355.93 revise the list of activities for which the regional water planning groups can receive funding from the board. Section 355.93(b)(5) is added to state that a cost-benefit analysis of a water management strategy is not an activity eligible for reimbursement unless the analysis is necessary for a state or federal permit. Based on public comments received, the board revised the proposed rule to establish criteria for funding eligibility. The rule has been revised to require the regional water planning groups to conduct the analysis of the water management strategies required by §357.7(a)(8) of this title and to demonstrate to the executive administrator the necessity of conducting a cost-benefit analysis in order to select the appropriate water management strategy as a recommendation in the regional water plan. The purpose of this amendment is to recognize that a cost-benefit analysis may sometimes be necessary to select a water management strategy but to still keep the regional water planning process separate from actions related to applying for specific state or federal permits.

The amendments also broaden the scope of eligible activities by including certain administrative costs in §355.93(c). Several regional water planning groups requested that the board fund some or all of the administrative costs incurred in the planning process because the financial burden on the regional entities has been significant. The board agrees that some of these costs should be funded by the state to ensure that the planning process continues without hindrance. Therefore, the board adopts changes to §355.93(c)(1) to fund the costs of travel to and from regional water planning group related meetings for group members who are not eligible to be paid by their employer for the regional water planning group activities. The board discovered in the first round of planning that some regional water planning group members were bearing the cost of travel personally at substantial burden to themselves, which could cause the members to end their membership with the regional water planning group and cause the regional water planning group to lose a member who has been educated in the planning process and has direct knowledge of the planning activities that have occurred. The board adopts changes to §355.93(c)(2) to bear the costs associated with providing translators, determined to be necessary by the regional water planning groups, at regional water planning group activities and meetings. This will ensure public participation by everyone in the region, regardless of communication barriers. The amendments also change §355.93(c)(3) to fund the direct costs for placing public notices in newspapers for the public hearings required by Chapter 357 of this title. The public hearings are required by Texas Water Code §16.053 and Chapter 357 of this title. These hearings exceed the regular requirements of the Open Meetings Act, and impose a substantial fiscal burden on the regional water planning groups. Funding this expense will ensure regional water planning is able to continue with the appropriate public participation. The board also adopts changes to §355.93(c)(4) to fund the costs of mailing notices to mayors, county judges, special and general law districts, river authorities, and water rights holders. These notification requirements in Texas Water Code §16.053(h) are extensive and go beyond the usual notification requirements of the Open Meetings Act. It is important that these people and entities receive notice of certain planning activities because they have a vested interest or ownership in the water supplies involved. Lastly, the board adopts changes to §355.93(c)(5) to fund the direct costs of providing copies of information to regional water planning group members if that information is relevant to their work on the regional planning group. Copying expenses were high in the first round of planning and the board believes the sharing of information is vital to the education of the regional water planning members and the thoroughness of the planning process. Therefore, funding this activity is appropriate.

The amendments to §355.93(c) also require the regional water planning groups to certify that any expenses incurred are correct and necessary. This safeguards state funds and ensures that the regional water planning groups will keep track of expenses to avoid exceeding contractual limitations.

The amendments to §355.100 provide the regional water planning groups with alternative places they may place copies of their adopted regional water plans. Some of the regional water planning groups had been required to pay a substantial fee to county clerks for posting their initially prepared regional water plans in county clerks' offices. This amendment will provide less costly alternatives but still provide the public with an opportunity to access the regional water plan. Based on public comment, the proposed §355.100 was further amended to make it clear that the regional water plans must be provided to at least one public library in each county that is within the regional water planning area to provide the public with access to the plans for review and copy. This change merely clarifies an existing requirement.

The board conducted a hearing on the proposed rules on April 23, 2001 in Room 118, Stephen F. Austin Building, 1700 N. Congress Ave., Austin, Texas. The following made comments to board staff, either written or orally, at the public hearing or within the prescribed period following the publication of the proposed rules. The South Central Regional Water Planning Group, the National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, the Lone Star Chapter of the Sierra Club, the Lieutenant Governor of Texas, the Texas Economist, and individuals.

The South Central Regional Water Planning Group commented that it supports the addition of the Texas Department of Agriculture as a consultant for determining population and water demand projections in §355.91, which fills a gap observed in the previous cycle of regional water planning. The commentor has requested no change but supports the rule as published.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club filed a joint comment regarding §355.93(b)(1)(E), which was not subject to proposed changes. The comment recommended that the board amend the provision to make it clear that funding was obtainable for reviews of the status of environmental flows or the extent to which management strategies would affect those flows. The board adopts no change in the rules based on this comment. The wording currently in §355.93(b)(1)(E) is not limiting and, therefore, does not require change. Funding for such activities would already be permissible under the current language.

William R. Ratliff, the Lieutenant Governor of Texas, commented that he supports the changes to §355.93(c)(1) as long as the total cost is not in excess of $50,000 per year and the board makes the reimbursements from available funds. The board adopts no change in the rules based on this comment. The board will make reimbursements from available funds and will have language in the contracts with the political subdivisions representing each of the regional water planning groups that limits reimbursements of all regional water planning group travel to a total statewide amount of $50,000 per year.

The Texas Economist commented that the changes proposed to §355.93(b)(5) regarding additional funding for benefit-cost analysis. It recommends the board require the regional water planning groups to consider benefits and costs of each purpose for the major projects if the project or strategy is 50,000 acre feet or more or the total present value of the project or strategy is $1 million or more unless it can be shown that there is no reasonable alternative. The board adopts changes to §355.93(b)(5) to make the ability to obtain additional funding for benefit and cost analysis less restrictive. The changes remove the requirement that the analysis has to make a material difference in determining water management strategy feasibility and replaces it with the requirement that the regional water planning group first do the analysis required in §357.7(a)(8) of this title, which requires the regional water planning groups to do a quantitative analysis of the quantity and quality of water, impacts of the water management strategies, comparison of strategies, consideration of interbasin transfers and consideration of the social and economic

impacts of voluntary redistribution of water. The regional water planning groups will also have to demonstrate the need to do a cost-benefit analysis to select a water management strategy to recommend in the regional water plan. This change does not go as far as the commentor recommends because the cost to the state from such a requirement would be large, exceeding current appropriations, and the benefit obtained would not justify the expense.

The Environmental Defense Fund commented that the board's rules regarding the use of economic analysis are not sufficient and recommends that a multi-stakeholder group be established to develop sound economic principles for regional and state water planning. The board adopts no change in the rules based on this comment. The cost to the state of going beyond the restrictions in §355.93(b)(5) as adopted would be large, exceeding current appropriations, and the benefit obtained would not justify the expense.

An individual commented that the cost-benefit analysis should be performed on all proposed reservoirs prior to any other efforts. The board makes no changes to the rules based on this comment. The rules include appropriate processes for cost-benefit analyses. For new reservoir analysis, the costs and benefits are more appropriately addressed at the stage where the regional water planning groups determine feasibility of the strategy.

Individuals commented via a form letter that future regional water plans should include an economically sound assessment of the relative costs and benefits of water supply options. The board adopts no changes in the rules based on this comment. The rules allow funding for cost-benefit analysis when the water management strategy must receive a federal or state permit, has been subjected to the analysis of §357.7(a)(6) of this title, and is necessary to select the appropriate strategy as a recommended strategy in the regional water plan. There is, therefore, appropriate cost-benefit analysis in the rule and to go farther would incur large expenses, beyond current appropriations, and the benefit to the state would not justify these additional expenses.

The South Central Regional Water Planning Group submitted a comment supporting the changes made to §355.93(c)(1) through (5). The commentor has requested no changes but supports the rule as published.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club filed a joint comment recommending the board amend §355.93(c)(5) to include the cost of distributing a limited number of copies of regional water plans to the public. They state that having the plans on the Internet is useful but that there are members of the public who do not have Internet access. They recommend, in the alternative, that regional water planning groups be reimbursed for the cost of maintaining three copies of their plans in a public library in each county that can be checked out for review by the public. The board makes no change in the rules based on this comment. The rules already require the regional water planning groups to place one copy of their regional water plans in at least one public library and either the county courthouse library, the county clerk's office, or some other place accessible within the county courthouse in each county having land within the regional water group's planning area. There should be, therefore, copies of the regional water plans available to anyone who does not have the ability to access them over the Internet.

The South Central Regional Water Planning Group submitted a comment supporting the changes made to §355.100 because it facilitates the process of making copies of proposed and adopted regional water plans more readily available to the public. The commentor has requested no changes but supports the rule as published.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club filed a joint comment stating that the change to §355.100 is unclear whether the rule requires having a copy of the regional water plans placed in a public library in each county of the planning area. They recommend adding the phrase "in each county" after "public library" to remove ambiguity. They also recommend that a copy of each regional water plan be made available at the board's offices for review and copying. The board agrees there is the possibility of misunderstanding and amends §355.100 to add "in each county" as recommended. Further, the board does have a copy of each regional water plan at its offices that is available for review or copying upon request and no rule change is needed.

The amendments are adopted under the authority granted in Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas, Texas Water Code, §15.403, which authorizes the board to adopt rules to carry out the research and planning program for the proper conservation, management, and development of the state's water resources and regional planning, Texas Water Code §15.4061, which authorizes the board to adopt rules to establish criteria for eligibility for regional water planning money, and Texas Water Code §16.053, which requires the board to develop rules to provide procedures for adoption of regional water plans by regional water planning groups and approval of regional water plans by the board, and to govern procedures to be followed in carrying out the responsibilities under §16.053, Water Code.

§355.91. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the applicable provisions of the Texas Water Code, Chapters 15 and 16, and not defined here shall have the meanings provided by such chapters.

(1) Board--The Texas Water Development Board.

(2) Eligible applicant--A political subdivision that has been designated, in writing to the executive administrator, by the regional water planning group as a representative of the regional water planning group to receive funds for all or part of the cost of developing or revising regional water plans defined in Texas Water Code, §16.053 and Chapter 357 of this title (relating to Regional Water Planning).

(3) Executive administrator--The executive administrator of the board or a designated representative.

(4) Political subdivision--City, county, district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Acts of the 43rd Legislature, 1933, 1st Called Session, Chapter 76 (Vernon's Texas Civil Statutes, Article 1434a).

(5) Regional water plan--Plan or amendment to an adopted or approved regional water plan developed by a regional water planning

group for a regional water planning area pursuant to the Texas Water Code, §16.053 and Chapter 357 of this title (relating to Regional Water Planning Guidelines).

(6) Regional water planning area--Area designated pursuant to the Texas Water Code, §16.053 and §357.3 of this title (relating to Designation of Regional Water Planning Areas).

(7) Regional water planning group--Group designated pursuant to the Texas Water Code, §16.053 and §357.4 of this title (relating to Designation of Regional Water Planning Groups) to develop regional water plans.

(8) State environmental planning criteria--Criteria adopted by the board for inclusion in the state water plan after coordinating with staff of the Texas Natural Resource Conservation Commission, and the Texas Parks and Wildlife Department and used for evaluating the feasibility of alternative water management strategies for planning purposes in the absence of information from site specific studies.

(9) State population and demand projections--Population and water demand projections contained in the state water plan or adopted by the board after consultation with the Texas Natural Resource Conservation Commission, the Texas Department of Agriculture, the Texas Parks and Wildlife Department, and regional water planning groups in preparation for revision of the state water plan.

(10) State water plan--The most recent state water plan adopted by the board under the Texas Water Code, Chapter 16.

§355.93. Eligibility.

(a) Applicants. Eligible applicants may apply for grants to develop an initial scope of work or to develop or revise regional water plans.

(b) Activities. Those activities directly related and necessary to the development or revision of regional water plans are eligible for funding within the limits established in §355.99 of this title (relating to Funding Limitations), with the exception of:

(1) activities for which the board determines existing information or data is sufficient for the planning effort including:

(A) detailed evaluations of cost of water management strategies where recent information for planning is available to evaluate the cost associated with the strategy;

(B) evaluations of groundwater resources for which current information is available from the board or other entity sufficient for evaluation of the resource;

(C) determination of water savings resulting from standard conservation practices for which current information is available from the board;

(D) revision of the state population and demand projections;

(E) revision of state environmental planning criteria for new surface water supply projects; and

(F) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available;

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) activities related to planning for individual system facility needs other than identification of those facilities necessary to transport water from the source of supply to a regional water treatment plant or to a local distribution system;

(4) costs associated with administration of the plan's development, including but not limited to:

(A) compensation for the time or expenses of regional water planning groups members' service on or for the regional water planning group;

(B) costs of administering the regional water planning groups;

(C) costs of public notice and meetings, including time and expenses for attendance at such meetings;

(D) costs for training;

(E) costs of reviewing products developed due to this grant;

(F) costs of administering the regional water planning grant and associated contracts; and

(5) analyses of benefits and costs of water management strategies unless the water management strategy must receive a state or federal permit, the regional water planning group has completed the water management strategy analysis required in §357.7(a)(6) of this title (relating to Regional Water Plan Development), and the regional water planning group demonstrates to the satisfaction of the executive administrator that these analyses are necessary to determine which water management strategy to select.

(c) Notwithstanding subsection (b) of this section, the following administrative costs are eligible for funding in reasonable amount and as limited by contract as long as the regional water planning group either certifies that the expenses are eligible for reimbursement and are correct and necessary during a public meeting or delegates this responsibility to the regional water planning group chairperson, who will certify requests for reimbursement as an administrative function:

(1) travel expenses for regional water planning group voting members who are not eligible for reimbursement from their employer as determined by the executive administrator if the travel expenses are incurred in relation to attendance at posted meetings and other travel authorized by the executive administrator. Expenses will be reimbursed in amounts consistent with the travel regulations set out for state employees in the current General Appropriations Act;

(2) costs associated with providing translators deemed necessary by the regional water planning groups;

(3) direct costs, not including personnel costs, for placing public notices in newspapers for the public hearings required by §357.12(a)(3) and (4) of this title (relating to Notice and Public Participation);

(4) the cost of postage for mailing notices to mayors, county judges, special or general law districts, river authorities, public utilities, and holders of water rights pursuant to §357.12(a)(5) of this title; and

(5) the direct costs, not including personnel costs, of providing copies of information to both voting and non-voting members of the regional water planning group if that information is relevant to their work on the regional planning group.

(d) Bylaws. The board may not approve funds for a regional water planning area until a copy of the adopted bylaws of the regional water planning group that meet the requirements of §357.4(k) of this

title (relating to Designation of Regional Water Planning Groups) has been filed with the executive administrator.

(e) Subcontracting. A grant recipient or subcontractor of a grant recipient may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional water plan only if the grant recipient or subcontractor of a grant recipient has secured such services on the basis of demonstrated competence and qualifications through a request for qualifications process.

§355.100. Availability of Reports and Planning Documents.

All reports, planning documents and any other work products resulting from projects receiving board funding assistance must be made available to the board, the Texas Parks and Wildlife Department, Texas Department of Agriculture, and the Texas Natural Resource Conservation Commission and one copy of the regional water plans placed in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the regional water planning area.

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 June 20, 2001.

TRD-200103493
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: July 10, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 463-7981

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CHAPTER 357. REGIONAL WATER PLANNING GUIDELINES

31 TAC §§357.2, 357.4 - 357.7, 357.10 - 357.13

The Texas Water Development Board (the board) adopts amendments to §§357.2, 357.4 - 357.7, and 357.10 - 357.13 concerning the Regional Water Planning Guidelines. Sections 357.2, 357.5 - 357.7, 357.11 and 357.12 are adopted with changes to the proposed text as published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2635). Sections 357.4, 357.10 and 357.13 are adopted without changes and will not be republished. The changes are based on recommendations received from regional water planning groups, their consultants, board staff, and the public regarding the first round of regional water planning. These amendments are designed to improve the regional water planning process.

The amendment to §357.2 adds a definition for wholesale water provider. This assists the regional water planning groups in more accurately identifying suppliers of water for regional needs pursuant to §16.053 of the Texas Water Code. It will also broaden the scope of the planning performed because the board will provide each regional water planning group with a list of the persons and entities that qualify as wholesale water providers. The definition was revised from the proposed version based on comments received that stated that some water suppliers were not properly included in the definition. The board removed the language that made it discretionary to add some water suppliers and made the language mandatory. The board also revised the definition to make it clear the determination of wholesale water provider is based on wholesale sales during the planning period, not the planning cycle, in order to have proper inclusion of all wholesale water providers in the planning analysis. This will not cause a larger number of water providers to be evaluated and planned for than in the current process where the regional water planning groups designate major water providers at their discretion. This change will provide a more complete planning process and recognizes the complex water transactions that occur in Texas where water may be sold several times before reaching the ultimate user. It will also provide uniformity in the designation and analysis of water providers. The section was also further revised from its proposed version based on public comment to substitute the term "retail public utility" for "utility" in §357.7 and to define retail public utility consistently with Chapter 13 of the Texas Water Code. Retail public utility is added and defined as described in §13.002(19), Texas Water Code. This will ensure thorough planning and will avoid unnecessary confusion.

Amendments to §357.4 require non-voting regional water planning group members to be provided the same notification and materials that voting members are provided. This will enable non-voting members to be more effective on the group and ensure more participation in the planning process. The rest of the changes to this section are renumbering changes to account for this new requirement.

The amendments to §357.5(d)(1) and (2) add the Texas Department of Agriculture as an agency that the board will consult when adopting state population and water demand projections. The proposed rule has been further revised based on comments received recommending the regional water planning groups also be added as consultant. These amendments will ensure that the board has gathered as much information as possible to provide accurate projections. Due to public comment, the proposed §357.5(d)(2) has been further revised to provide criteria for when it is appropriate for a regional water planning group to request revisions to the population and water demand projections. By requiring requests to demonstrate that new information or changed conditions requires a change to the projections, revisions will only be done when necessary and the regional water planning groups will have notice of what evidence they must present to request a revision. Further, the revisions also require the regional water planning groups to hold a public meeting on the revision request prior to submitting the request to the board. The public must have an opportunity to submit oral and written comments and these comments will be summarized in the request for revisions. This will ensure the public has meaningful comment opportunities prior to the adoption of revisions to projections.

The amendments to §357.5(e)(1) and (4) are to clarify the regional water planning groups' responsibility to adjust their water management strategies to provide for environmental needs, to include environmental analyses in the planning process, and to clarify the information about environmental impacts of water management strategies that must be included in the regional water plans. This amendment will help protect natural resources as required by Texas Water Code §16.053(a) and provide environmental information for evaluating water management strategies as required by Water Code §16.053(e)(5)(F).

Based on public comment, the board revised the first sentence of §357.5(e)(1) to remove a typographical error from the proposed rule. The phrase "on water management strategies" was

removed from the end of the first sentence of the paragraph. This will ensure the paragraph is correct and understandable.

In addition, the changes to §357.5(e)(4) will also require the regional water planning groups to state and document why cost-effective water management strategies that are environmentally sensitive are not considered and adopted. The proposed rule was further revised based on comment to provide criteria for determining cost-effectiveness and environmental sensitivity. The board revised the rules to require the regional water planning groups to use the criteria described in §357.7(a)(8)(i) and (ii). This will provide the regional water planning groups with guidance and utilize analyses already required for planning. The regional water planning groups are also required to submit to the public for comment, during a public meeting, the process by which they will identify those water management strategies that are potentially feasible to meet the needs of the region. These changes will provide a better public understanding of the process, thus improving the public's participation, and ensure a better description of the regional planning groups' analysis process, including their analysis of environmental impacts.

The amendment to §357.5(e)(5) remove unnecessary language to clarify that regional water plans must incorporate water conservation planning and drought contingency planning as required by Texas Water Code §16.053(e).

The amendment to §357.5(e)(7) clarifies that the drought triggers must apply to the sources of water used to supply water users. This change is to clarify an incorrect reference and will provide the regional water planning groups more guidance on the use of drought triggers in their regional water plans.

The deletion of §357.5(m) is to remove a subsection that will no longer apply. This subsection applied to actions of a regional water planning group before the adoption of a regional water plan. The 16 regional water planning groups have now adopted regional water plans.

Amendments to §357.6 remove the requirement that regional water planning groups send inquiry letters to all other regional water planning groups about the need to form informational subareas. The amendment changes this to a discretionary function of the regional water planning groups. This will save costs associated with sending out numerous letters inquiring about informational subareas and lets the regions choose when and where the subareas would best be formed. The section does retain, however, the requirement that the information subarea be formed if one regional planning group has asked for it and the conditions of the section are met. The board revised the proposed rule based on comments received. The section has been revised to make it clear the request to form an information subarea must come from a regional water planning group and undeleted the language that had been deleted in the proposed rules regarding developing the scope of work to describe how information will be exchanged by the regional water planning groups in the information subarea. These revisions will remove any confusion regarding forming an information subarea and will establish the process for exchanging information prior to planning activities.

Amendments throughout §357.7 would remove the term major water provider and replace it with wholesale water provider. As noted above, wholesale water provider is a broader term and will enhance the scope of water planning by requiring a more detailed review of projected demands, adequacy of existing supplies, needs and potential solutions for these wholesale water providers. Based on a public comment received, the board further revised proposed §357.7 to replace the term "utility" with "retail public utility" as defined by Chapter 13 of the Texas Water Code to ensure inclusion of municipal corporations, water supply corporations, and political subdivisions of the state within the definition, which will ensure proper planning analysis. The phrase "for municipal use" has also been added to proposed §357.7 in response to the public comment with regard to retail public utilities that provide more than 280 acre-feet per year to further clarify the intent of the section and to prevent municipal corporations, water supply corporations, and political subdivisions from being excluded from the analysis. The board further revised §357.7 due to public comment to remove all references to the requirement that regional water planning groups designate in their contracts with the board which counties will be reported by individual utilities and which will be reported by wholesale water provider or other reporting unit. This will provide the regional water planning groups more time to determine how to report for the counties within their region and ensure better analyses in the regional water plans.

The amendments to §357.7(a)(1) add the phrase "businesses dependent on natural water resources" to the analysis required of the regional water planning groups of the economic activities in the region. This is to encourage the regional water planning groups to identify and consider those businesses that operate on natural water resources, such as boat rental businesses and guided fishing tours, and provide a more complete analysis of the regions.

Amendments to §357.7(a)(2) - (5) would break the paragraphs into two subparagraphs to clarify that analysis should be by city, utility, and category, as well as wholesale water provider. Counties with more than five utilities that supply more than 280 acre-feet of water per year may be evaluated at the level of wholesale water provider or some other common association, rather than utility. This option for counties with more than five utilities acknowledges that meaningful analysis of water demands and needs can be done at a higher, more cost-effective level in some cases. This will result in regional water plans that are more detailed and comprehensive, thus increasing the quality of the regional water plans.

Proposed §357.7(a)(2) was revised based on public comments recommending that the water savings from the use of the plumbing fixtures identified in Chapter 372 of the Texas Health and Safety Code should be included in the demand analysis, not the supply analysis. This water savings was in the demand analysis in the first round of regional water planning and keeping it there will avoid unnecessary confusion for the next round of planning.

The proposed §357.7(a)(3) was revised based on public comments received regarding water availability and using a standard other than firm yield. The proposed rule has been revised to state that current available water supplies includes only that water that is physically and legally available at the time the regional water planning group begins its analysis under this section. The proposed rule was also revised to allow the regional water planning groups to use an operational procedure other than firm yield when analyzing surface water during the drought of record so long as the amount of water available does not exceed the system firm yield. This will delegate more authority to the regional water planning groups in determining the best procedure to use to determine water availability and drought response while maintaining uniformity and consistency among the regional water plans. Amendments to this section also require

the regional water planning groups to use the Texas Natural Resource Conservation Commission's water availability model information and the board's groundwater availability model information once it is available unless better site-specific information is available for use. This will provide the regional water planning groups with the most accurate data and enhance the value of the regional water plans. The changes also allow regional water planning groups to assume that water supplies based on contractual agreements will continue past the existing term of the contract if the contract contemplates renewal or extension. This reflects the reality that such contracts are typically renewed or extended.

Amendment to §357.7(a)(5) will require the water management strategies recommended by the regional water plans to meet the water supply obligations necessary to implement recommended water management strategies of wholesale water providers and water users for which drought of record plans are developed under the paragraph. This change will improve the quality and effectiveness of the plans for drought of record to provide a sufficient supply of water.

Amendments to §357.7(a)(6) allow the regional water planning groups to present data in units smaller than those required by §357.7(a)(2) - (5). This allows the regional water planning groups to determine the appropriate reporting unit if they wish to focus on smaller units.

The amendments to §357.7(a)(7) require the regional water planning groups to consider and adopt water conservation strategies unless it is inappropriate and documents its reasons. This change will enhance the consideration of water conservation in regional water plans. Further, several regions recommended this change as a means of more specifically addressing conservation in the regional water plans. The amendments also simplify the evaluation requirements for water management strategies. This will simplify the data that the regional water planning groups need to report in their regional water plans. Based on public comments received, the board further revised the proposed rule to separate water conservation and drought response into separate subparagraphs to make it clear the two concepts are separate and distinct. This will avoid confusion and ensure compliance with the requirements for regional water planning in §16.053, Texas Water Code. To further clarify that these concepts are separate and to avoid confusion with the term "water management strategies," the board also renamed these concepts "water conservation practices" and "drought management measures." Also based on public comment, the board added aquifer storage and recovery to the list of water management strategies involving new supply development in proposed §357.7(a)(7)(E). The proposed rules had deleted aquifer storage and recovery from the list of potential water management strategies but it is a valid water management strategy that should be listed.

The amendments to §357.7(a)(8) require the regional water planning groups to include in their regional water plans a clear discussion of the cost, quantity, and environmental impacts associated with each water management strategy evaluated in terms of present costs and discounted present value costs. The method of analysis must be determined before the analysis begins. The amendments also add the effects on water quality as a factor that must be considered when evaluating water management strategies. These changes will assist the regional water planning groups in evaluating water management strategies and will ensure that all of the required analyses of Texas Water Code §16.053 are included. It more thoroughly defines the environmental analysis that must be done for water management strategies. It will also provide the public with a clear discussion of alternatives and means to make comparisons. The amendments to 357.7(a)(8) also add standards for analysis of interbasin transfers. Based on public comment, this provision was revised to make it clear interbasin transfers as used in this section only applies to surface water. This will ensure that all regional water plans include the same elements in their analysis and will provide information needed by the Texas Natural Resource Conservation Commission when reviewing interbasin transfers. Due to public comment, the board also revised §357.7(a)(8)(C) to clarify what is meant by an evaluation of the threats to agricultural and natural resources in the regional water planning area. By referring to §357.7(a)(1), the regional water planning groups will know which threats are to be evaluated and will prevent them from performing unnecessary work. This will enhance the regional water plans and avoid unnecessary expense.

The proposed changes to §357.7(a)(8)(A)(ii) are withdrawn due to the passage of Senate Bill 2 during the 77th Session of the Texas Legislature. This bill enacts changes that will affect the analysis described in §357.7(a)(8)(A)(ii) and, therefore, the board will need to revise this rule in the future. Because the proposed revisions need to be amended in the future, they are withdrawn and the language remains unchanged.

The amendments to §357.7(a)(9) remove a redundant term from §357.7(a)(9)(B). This subsection requires the regional water planning groups to make specific recommendations of water management strategies or long-term scenarios to meet long-term needs. It further defines long-term scenario as a combination of various water management strategies. Removing the word "alternatives" from this subsection clarifies the meaning of scenarios and removes confusion of the work to be performed.

The addition of §357.7(a)(11) requires the regional water planning groups to have a separate chapter in the regional water plans to consolidate the water conservation and drought management recommendation of the regional water plans. This will make it much easier for the board and the public to identify the water conservation and drought management strategies of the regional water plans, which will facilitate the board and the public making effective, timely comments on initially prepared plans. This will also enhance the public participation, which is a cornerstone of the §16.053 of the Texas Water Code.

The amendments to §357.10 clarify that the regional water planning groups must submit their initially prepared regional water plans, adopted regional water plans, and data in the format required by this chapter and the executive administrator. This ensures consistency of the plans and data submitted and ensures that the requirements of §16.053 of the Texas Water Code and this chapter are met. The amendments require the regional water planning groups to include, in their regional water plans, a summary of the comments received from the public, the board, other Texas state agencies, and federal agencies. The amendments also clarify that the regional water planning groups are required to explain how the regional water plan was changed based on the comments received or state why a change was unnecessary. These amendments ensure meaningful public participation in the planning process, a cornerstone of Texas Water Code §16.053, by making sure they have the ability to address

the initially prepared regional water plans and that their comments will be considered by the regional water planning groups. It also results in regional water plans that have considered comments from all sources.

Amendments to §357.11 change some of the requirements for submitting initially prepared regional water plans and clarify that the regional water planning groups submit their initially prepared regional water plans to the public at the same time they are submitted to the board. The changes require the regional water planning groups to certify that the initially prepared plan is complete and that it has been adopted by the group. This will help ensure that the requirements of Texas Water Code §16.053 and chapters 355, 357, and 358 of this title are met. The changes will improve the efficiency of plan adoption process, allow the regional water planning groups to start collecting comments on the initially prepared plan from all sources at the same time, and assures the public that it is receiving an initially prepared plan that is thoroughly considered.

The amendments to §357.11 also extend the time the board has to provide comments on the initially prepared plans from 30 to 120 days. The changes establish that the time period state and federal agencies have to submit comments is also 120 days. This will provide the board and other governmental agencies with sufficient time to study the initially prepared plans and make appropriate and comprehensive comments. Each of these entities is reviewing plans from all regions and should be given a longer time to review the plans. Also, the short time deadlines of the initial regional water planning cycle are not a factor in the future cycles. Based on public comment, the board also extended the time the public has to comment on the initially prepared plans from 60 days to a minimum of 90 days. The regional water planning groups will have to accept public comment at least 30 days before the public hearing held on the plan and then at least another 60 days after the public hearing. Lastly, public comment also prompted the board to add a 30-day comment period for regional water plan amendments. A shorter comment period for amendments is justified because amendments do not involve the review of entire regional water plans, only those sections that are being amended. These changes will guarantee the public the ability to comment on any regional water plan being adopted and will provide sufficient time to submit meaningful comments to the regional water planning groups.

The amendments to §357.12 would clarify that the regional water planning groups must adopt an initially prepared plan before the public hearing. This change is similar to the one in §357.11 and assures the public that it is receiving and commenting on a thoroughly considered initially prepared plan. It provides the public with an initially prepared plan that is one step away from becoming the adopted plan of the regional water planning group. Therefore, comments made by the public and others would be directly considered for potential revision and adoption in the regional water plan.

The amendments to §357.12(b) provide the regional water planning groups with alternative places they may place copies of their initially prepared regional water plan in compliance with §16.053(h)(3) of the Texas Water Code. That section requires placement of the initially prepared plan in each county courthouse in the region. Existing rules require the initially prepared plan to be placed in the county clerk's office. Some of the regional water planning groups had been required to pay a substantial fee to county clerks for posting their initially prepared regional water plans in county clerks' offices. This amendment will provide less costly alternatives that fit the requirements of the state law. Based on public comment, the proposed §357.12(b) was further amended to make it clear that the regional water plans must be provided to at least one public library in each county that is within the regional water planning area to provide the public with access to the plans for review and copy. This change merely clarifies an existing requirement.

The amendments to §357.12(d) require the regional water planning groups to publish their agenda, meeting notices, initially prepared regional water plans, and adopted regional water plans on the Internet. The amendments provide that the regional water planning groups can satisfy this requirement by submitting their material to the board for publishing on the board's web site. This will provide the public with an easy way to access regional water planning material and enhance public participation.

Lastly, the amendments to §357.13 clarify that projects brought to the board for funding must be consistent with the approved regional water plans, as required by §16.053(j) of the Texas Water Code. The changes describe how the board will determine if a project is consistent with an approved regional water plan.

The board conducted a hearing on the proposed rules on April 23, 2001, in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas. The following made comments to board staff, either written or orally, at the public hearing or within the prescribed period following the publication of the proposed rules. The South Central Texas Regional Water Planning Group, the National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, the Lone Star Chapter of the Sierra Club, the TeXas Economist, and individuals.

An individual commented that there seems to be a conflict between the board's rules, especially the definition of wholesale water provider in §357.2(9), and the Texas Natural Resource Conservation Commission's application and approval process for certificates of convenience and necessity because it appears wholesale water providers are being given a superior position. The board makes no change to the rules based on this comment. The designation of wholesale water providers is a tool for planning for water. Based on the first round of regional water planning, the board determined that there is a need to broaden the scope of planning in the next round. Using wholesale water providers will bring uniformity to the regional plans while causing the analysis to take into account the complex water transactions that occur in Texas through wholesale water providers. There is no preference given to wholesale water providers by these rules.

The South Central Texas Regional Water Planning Group commented that the proposed change to §357.2(9) is helpful but fails to provide for proper inclusion of water suppliers such as Bexar Metropolitan Water District. It recommended the language be amended to include wholesale water providers and retail water providers. The board adopts a change to §357.2(9) based on this comment. The board amends the definition of wholesale water provider to require the inclusion of entities that expect to enter contracts to sell more than 1000 acre-feet of water wholesale during the planning period to ensure inclusion of all significant wholesale water providing entities. However, the board does not add retail water providers to the definition because they are already included in §357.7 in the language requiring analysis by retail public utilities that provide more than 280 acre-feet per year.

The South Central Texas Regional Water Planning Group commented that it supports the changes to §357.4. The commentor has requested no change but supports the rule as published.

Texas Parks and Wildlife commented that it supports the changes to §357.4 because it is necessary in order for the non-voting members to effectively support the regional water planning groups. The commentor has requested no change but supports the rules as published.

The South Central Texas Regional Water Planning Group commented that it concurs with the addition of the Texas Department of Agriculture to the list of consultants the board will use for developing population and water demand projections in §357.5(d)(1), but it recommends the section be further revised to include the regional water planning groups as consultants, as well. The group also commented that the first round of regional water planning required the regional water planning groups to use dry year water use coefficients that resulted in the development of plans to meet needs as if every year is going to be a dry year. It suggests the methods and data used in calculating projections be revised. The board adopts a change to §357.5(d)(1) based on this comment. The section is revised to include regional water planning groups as consultants to enhance the accuracy and reliability of projections by adding expertise and fact knowledge. The board does not adopt a change to the rules based on the comment regarding dry year water use coefficients. During the first round of planning, the board provided the regional water planning groups with projections by decade. The drought of record projections were used for every tenth year. The board did not develop projections for years other than this tenth year in every decade. This process will be repeated as the board develops projections for the second round of planning.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment recommending a change to §357.5(d)(2) to ensure that revisions to population and water demand projections are made only when new information or changed conditions demonstrate that the projections are no longer accurate. The board adopts changes to §357.5(d)(2) based on this comment. The board revises the section to require the regional water planning groups to base requests for projection revisions on new information or changed conditions that demonstrate the current projections no longer represent a reasonable projection of anticipated conditions. The rule has also been revised to require the regional water planning groups to first hold a public meeting and allow public comment before requesting revisions. Public comments received will have to be summarized in their request for revisions.

The South Central Texas Regional Water Planning Group commented that §357.5(e)(1) should not be amended as proposed because the changes appear to be the reverse of the process used in the first round of regional water planning. It also asked how regional water planning groups are supposed to determine appropriate provision for environmental needs. Lastly, it recommended not adopting the changes because the explanation for the changes appears to be inconsistent with the proposed language. The board adopts no changes to the rules based on this comment. The revision is not a reversal of the process used in the first round of regional water planning. Instead, the revision conforms the rule to the practice used in the first round and more clearly aligns this rule with §16.053(e)(5)(F), Texas Water Code, which requires the regional water plans to include consideration of appropriate provision for environmental water needs. The board also believes the rule already provides guidance for determining appropriate environmental water needs. The rule states the regional water planning groups should use the environmental information obtained from site-specific studies or, in the absence of such information, the state environmental planning criteria adopted by the board for inclusion in the state water plan. Therefore, the board does not believe the proposed rule contradicts its stated purpose.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that additional refinements to §357.5(e)(1) are needed to avoid ambiguity and ensure a comprehensive review of environmental water needs. They recommend the rules address two distinct evaluations of environmental flows: minimizing adverse impacts from proposed water management strategies and providing for adverse impacts from current water management practices. Lastly, they recommend removing the phrase "water management strategies" from the end of the first sentence of §357.5(e)(1). The board adopts changes to the rules based on this comment. The phrase "water management strategies" at the end of the first sentence of §357.7(e)(1) is removed because it is a typographical error that causes confusion in the section. However, the board does not adopt any other revisions based on this comment. The language used in the rule is from §16.053, Texas Water Code. To adopt the language recommended by the commentor would be beyond the scope of the law.

The Texas Parks and Wildlife Department submitted a comment supporting the changes to §357.5(e)(1) and also recommended removing the phrase "water management strategies" from the end of the first sentence. The board adopts changes to the rules based on this comment. The phrase "water management strategies" at the end of the first sentence of §357.7(e)(1) is removed because it is a typographical error that causes confusion in the section.

The Texas Parks and Wildlife Department also commented on the proposed amendments to §357.5(e)(4). It supports the proposed changes because they should increase public involvement. The commentor has requested no change but supports the rule as published.

The South Central Texas Regional Water Planning Group commented that the proposed revisions to §357.5(e)(4) appear to require the regional water planning groups to justify each water management strategy not selected. It says it is more appropriate to justify the selection instead of justifying all non-selections. The board adopts no changes to the rules based on this comment. The rule does not require the regional water planning groups to justify each water management strategy not selected, but only those strategies that were not selected if they were more environmentally sensitive or cost effective than the strategy selected.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that the revisions to §357.5(e)(4) should help to establish a better planning process but should include an explicit explanation of how cost-effectiveness and environmental sensitivity will be determined. The board adopts changes to §357.5(e)(4) based on this comment. The board revises the section to require the regional water planning groups

to use the criteria described in §357.7(a)(8)(i) and (ii) for determining cost-effectiveness and environmental sensitivity.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that the role of drought contingency planning in §357.5(e)(5) should be further developed. They suggest that strategies like paying users not to use water in times of drought may be less than the costs associated with providing that water. The board adopts no changes to the rules based on this comment. The proposed revisions to §357.7(a)(11) require the regional water planning groups to have a separate chapter in the regional water plans to consolidate the water conservation and drought management recommendations of the regional water plans. This will emphasize conservation and drought contingency in the regional water plans and make it much easier for the board and the public to identify the water conservation and drought management strategies of the regional water plans, which will facilitate the board and the public making effective, timely comments on initially prepared plans.

The South Central Texas Regional Water Planning Group recommends deleting §357.5(e)(7)(B) because regional water planning groups do not have implementation authority and must defer to the Drought Contingency Plans adopted by local public and private water suppliers and water districts. It suggests that the Texas Natural Resource Conservation Commission could summarize the Drought Contingency Plans in each region and submit the summaries for inclusion in the regional water plans. The board adopts no changes to the rules based on this comment. The language objected to by the South Central Texas Regional Water Planning Group is required by §16.053(e)(3)(C), Texas Water Code.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that clear direction is needed regarding the treatment of environmental flow needs. They recommend that §357.5(l) be revised to require regional water planning groups to assess environmental water needs, develop recommendations for meeting them, and the board, Texas Parks and Wildlife Department, and the Texas Natural Resource Conservation Commission provide planning criteria to guide the development of the assessments and recommendations. The board adopts no changes to the rules based on this comment. The requirements the commentor wishes to add have already been included in §357.5(e)(1) and do not need to be repeated.

The South Central Texas Regional Water Planning Group commented that the revisions to §357.6(6) are confusing and recommended changing the section to make it clear that a request to form an information subarea must come from a regional water planning group and the scopes of work will include how descriptions of how information will be exchanged if a subarea is formed. The board adopts changes to §357.6(6) based on this comment. The board added language to the provision to make it clear the request to form an information subarea must come from a regional water planning group and undeleted the language that had been deleted in the proposed rules regarding developing the scope of work to describe how information will be exchanged by the regional water planning groups in the information subarea.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that §357.7(a)(1) needs to emphasize the requirement to consider the effect of water management strategies on springs, including springs that do not provide a significant source of water for human demands. They stated that the term "natural water resources" causes ambiguity and should be defined as a subset of natural resource that includes water-in-place within a spring, stream, river, impoundment, bay, or the Gulf of Mexico and aquatic species and water-dependent wildlife that rely on that water. In the alternative, they suggested excluding power plants from the businesses that are dependent on natural water resources. The board adopts no changes to the rules based on this comment. An analysis of the effect of water management strategies on springs is already required by §357.7(a)(8)(A). The term "natural water resources" relates to liveries, marinas, fishing guide services, ecotourism, and similar businesses that could be drastically affected by water management strategies. The board sees no reason to limit this term with a narrow definition but instead leaves it to the regional water planning groups to include those businesses within their regions that qualify as the region determines.

The Texas Parks and Wildlife Department submitted a comment strongly supporting the amendments to §357.7(a)(1) because they will ensure that liveries, marinas, fishing guide services, ecotourism, and similar businesses that could be drastically affected by water management strategies will be considered. The commentor has requested no change but supports the rule as published.

Freese & Nichols commented that the term "utilities" in §357.7(a)(2)(A)(ii) excludes municipal corporations, water supply corporations, and political subdivisions of the state. It recommends using the term "retail public utility" instead to include these entities. The board adopts changes to §357.7 based on this comment. The term "utility" is replaced with "retail public utility" and the term is defined at §357.2(8), in accordance with the definition of Chapter 13 of the Texas Water Code. The phrase "for municipal use" has been added to the language regarding providing more than 280 acre-feet per year to further clarify the intent of the section and to prevent the entities identified by the commentor from being excluded from the analysis.

Freese & Nichols submitted a comment that the term "retail public utilities" should be used in §357.7(a)(2)(A)(iii) in place of "utilities." It also commented that it may not be possible to determine if a city and some other retail public utility service the same area because cities are not required to obtain certificates of convenience and necessity. The board adopts changes to §357.7 based on this comment. The term "utility" has been replace with "retail public utility" throughout the section. The board adopts no change based on the commentor's remark about the difficulty in determining if a municipality and another retail public utility service the same area because this is not a matter to be addressed in the rules but by the regions as they develop their regional water plans.

The South Central Texas Regional Water Planning Group commented that it supports the extension of planning to smaller cities and water supply entities in §357.7(a)(2)(A)(iii) but objects to the requirement that regional water planning groups designate up front which counties will be reported by individual utility and which will be reported by wholesale water provider or other unit

because not all necessary information will be available to them to make this designation. The board adopts changes to §357.7 based on this comment. The requirement for the regional water planning groups to designate in their contracts with the board which counties will be reported by individual utilities and which will be reported by wholesale water provider or other reporting unit has been removed everywhere it appeared in the proposed rules.

The Texas Parks and Wildlife Department commented that §357.7(a)(2)(A)(iv) should include instream flows and freshwater inflows to estuaries as categories of water demands. The board makes no changes to the rules based on this comment. State law provides that water for environmental purposes will be provided for by conditioning surface water rights to provide appropriate amounts for environmental purposes. This concept is included in the board rules to maintain consistency and avoid confusion.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that §357.7(a)(2)(A)(iv) should include environmental water needs as a category of water demand to ensure a comprehensive approach to planning. The board makes no changes to the rules based on this comment. State law provides that water for environmental purposes will be provided for by conditioning surface water rights to provide appropriate amounts for environmental purposes. This concept is included in the board rules to maintain consistency and avoid confusion.

The TeXas Economist commented that the effect of price on demand for water should be included and non-price conservation effects should be excluded from demand projections. The board adopts no changes to the rules based on this comment. The number of variables involved in such an analysis makes any conclusions ambiguous at best. Further, the regional water planning groups have the discretion to include the effect of the price of water in the analysis of water management strategies where the price of the water provided from the strategy could impact the water use.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that §357.7(a)(3) should require regional water planning groups to assume compliance with Chapter 372 of the Texas Health and Safety Code. They state that any region-specific determinations on this should be limited to issues like the rate at which existing structures are likely to be renovated or replaced and the rules should clearly state that this determination does not constitute the implementation of a water conservation component of water planning. Water conservation strategies can only be met through consideration of proactive measures that would realize conservation savings not otherwise reasonably expected to occur. They further state that water availability from reservoirs must be evaluated using a consistent state-wide approach. The option of using values higher than the firm yield should be limited to those instances when adequate documentation exists to demonstrate that the higher amount will be reasonably available. The board adopts changes to §357.7(a)(3) based on this comment as it relates to limiting the use of values other than firm yield. The rule is revised to state that a higher value can only be used as long as the amount of water available due to the operational procedures does not exceed the amount of water that would be available using system firm yield. The board makes no rule changes based on the comment related to plumbing fixtures because the time frames for retrofitting are different throughout the regional water planning areas and the state. Site-specific, local knowledge is needed to determine how much water will be conserved due to the switch to new plumbing fixtures. Using this amount of water conserved in the supply category instead of demand does not alter the determination of need, since need is the amount of demand minus the amount of supply.

The Texas Parks and Wildlife Department supports the amendments to §357.7(a)(3) because the water availability models are capable of representing environmental flow needs and the groundwater availability models will be able to provide information about the effect of groundwater pumping on surface water features like springs. The commentor has requested no change but supports the rule as published.

The South Central Texas Regional Water Planning Group comments that §357.7(a)(3) should be revised to include water management strategies in progress as part of the supply available as of the projected date of implementation. It also comments that the water savings from using plumbing fixtures identified in Chapter 372 of the Texas Health and Safety Code should not be included in supply but instead as a water management strategy to be evaluated and possibly included in the plan. It recommends the regional water planning groups have the discretion to choose which version of the water availability model they use and that groundwater conservation district management plan projections be used until the groundwater availability models are ready. Once the models are ready, the regions should use those subject to groundwater district management plans. Lastly, it suggest that water supply contracts always be considered part of existing water supply available. The board adopts a change to §357.7(a)(3) based on this comment as it relates to the water supply available to the region during the planning process. The board revises the rule to make it clear that only that water which is legally and physically available to the region at the time the regional water planning group begins this task may be counted as available water. Water should not be considered available from projects under way because, even though it is unlikely, it is possible the project will not be completed and the regional water plan will need to be revised to adjust the supply and water management strategies relying on this supply. The board makes no changes to the rules based on the comment relating to consideration of the water savings from plumbing fixtures as water supply. It is inappropriate to leave this water savings out of the analysis of needs and instead include it as a water management strategy because the determination of surpluses and shortages will be inaccurate, can lead to the false identification of need, and cause the regional water planning group to develop strategies for a need that does not exist. The board does not make any changes based on the comment related to water availability models, either. The run 3 version of the water availability model is the one that regional water planning groups will use because it provides the worse case scenario for drought of record analysis of current rights. Therefore, the regional water planning groups will not need to choose between runs of the models. The board also does not adopt a rule change based on the comment related to the groundwater availability model being subject to groundwater district management plans. This goes beyond the scope of the law. Section 16.053(e)(5)(B) requires regional water planning groups to consider certified groundwater conservation district management plans but does not subject the regional water

plans or the groundwater availability models to these management plans. Lastly, the board adopts no changes to the rules based on the comment that water supply contracts should always be assumed to be a continuous supply of water. While it is unusual for such contracts not to be renewed, planning efforts should include a verification that the contracts include the ability to renew or extend to ensure appropriate consideration of water supply, needs, and water management strategies.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that §357.7(a)(4) should ensure that social and economic impacts of not meeting environmental needs should be evaluated and reported. The board makes no changes to the rules based on this comment. State law provides that water for environmental purposes will be provided for by conditioning surface water rights to provide appropriate amounts for environmental purposes. This concept is included in the board rules to maintain consistency and avoid confusion.

The South Central Texas Regional Water Planning Group commented that the term "needs" used in §357.7(a)(4) is confusing because it is synonymous with "shortage" in the section and it confuses the public when they hear they have no need (shortage) for water for a particular area. The board adopts no changes to the rules based on this comment. The term "needs" comes from §16.053, Texas Water Code. The board uses the term to be consistent with the statute and believes switching to "shortages" now would cause more confusion than the commentor identifies because the 16 regional water planning groups have finished the first round of regional water planning using the term "needs" and are accustomed to it.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that §357.7(a)(5)(C) should make clear that the use of drought management as a means of limiting demand is one method of meeting water needs, such as purchasing dry-year options. The board makes no changes to the rules based on this comment. The rules do acknowledge the validity of drought-related demand management and allow the regional water planning groups to select drought-related demand management strategies.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that water conservation and drought response should be more carefully separated in §357.7(a)(7)(A) to make clear that these are separate and distinct concepts and mere adherence to existing legal requirements for water-efficient plumbing fixtures does not constitute a water conservation strategy within the meaning of the rules. The board adopts a change to the rule based on this comment. The board splits §357.7(a)(7)(A) into §357.7(a)(7)(A) and (B) to separate water conservation and drought response as recommended and uses the terms "water conservation practices" and "drought management measures" to further delineate the concepts as separate and distinct. As for the comment related to mere adherence to existing legal requirements for water-efficient plumbing fixtures not constituting a water conservation strategy, the board adopts no changes to the rules because it believes that mere adherence by purchasing the proper plumbing fixtures is not a water conservation strategy but retrofitting existing fixtures and accelerating the conversion process can constitute conservation practices.

The TeXas Economist recommends that the regional water planning groups be required to examine the benefits and costs of meeting 80%, 90%, and 100% of demand during the drought of record and if it is determined the net benefits of meeting less than 100% of demand are greater than the benefits from meeting all demand then the regional water planning group need not develop a strategy to meet 100% of demand. The commentor states that the regional water planning groups should be provided with the probabilities of experiencing droughts of record. The board adopts no changes to the rules based on this comment. The selection of water management strategies under §16.053, Texas Water Code, is not based on a cost-benefit analysis. The law requires the regional water planning groups to consider all potentially feasible strategies. Only if there is no feasible strategy can the regional water planning group decide to not meet a need. The rules do allow for funding for the regional water planning groups to perform cost-benefit analysis at §355.93(b)(5) of this title if the water management strategy must receive a state or federal permit, the regional water planning group has completed the analysis required by §357.7(a)(6), and the regional water planning group has demonstrated that a cost-benefit analysis is necessary to determine which water management strategy to select. Lastly, §16.053, Texas Water Code, requires the regional water plans to have specific provisions for water management strategies to be used during a drought of record. Therefore, the probability of experiencing the drought of record is not part of the analysis and conflicts with statutory requirements.

The South Central Texas Regional Water Planning Group opposes the revisions to projecting water demands in §357.7(a)(7)(A) because they will give a significantly different result than the procedures used in the first round of regional water planning. It predicts the water demand projections under the revisions will be higher, giving the impression that demand reduction is not working, which will be hard to explain to the public due to the complexity of the process. It recommends that water demand projections continue to reflect the potentials for demand reduction and remove drought response from the section. The board makes changes to §357.7(a)(2) and (3) based on this comment. The municipal water savings from the use of water-efficient plumbing fixtures is removed from the supply analysis and placed back in the demand analysis to avoid confusion. However, the amount of the water savings must be clearly identified in the regional water plan and cannot include aggressive measures taken to retrofit or accelerate conversion, which will still be considered a water conservation strategy. Drought response is required by §16.053, Texas Water Code.

The Texas Parks and Wildlife Department supports the changes to §357.7(a)(7) and recommends requiring the inclusion of water conservation savings from plumbing fixtures required by law. The board makes changes to §357.7(a)(2) and (3) based on this comment. The water savings from the use of water-efficient plumbing fixtures is removed from the supply analysis and placed back in the demand analysis to avoid confusion. The water savings from plumbing fixtures has been moved to §357.7(a)(2) due to the comment from the South Central Texas Regional Water Planning Group.

The South Central Texas Regional Water Planning Group recommended that aquifer storage and recovery be added to §357.7(a)(7)(C). The board adopts changes to §357.7(a)(7)(E) to add aquifer storage and recovery to the list of new supply

development water management strategies. The board believes this is the appropriate place to list aquifer storage and recovery because the strategy involves digging new wells and installing new equipment.

An individual commented that cost-benefit studies should be performed for all proposed reservoirs prior to any other efforts. The board makes no changes to the rules based on this comment. The rules include appropriate processes for cost-benefit analyses. For new reservoir analysis, the costs and benefits are more appropriately addressed at the stage where the regional water planning groups determine feasibility of the strategy.

Individuals using a form letter commented that regional water plans should include an economically sound assessment of the relative costs and benefits of water supply options. The board makes no changes to the rules based on this comment. The rules include appropriate processes for cost-benefit analyses. To require more will incur high expenses and only yield a small benefit to the planning process.

The TeXas Economist recommends the water management strategy tables include a field showing the discounted present value of capital and overhead and maintenance costs as a component of the cost evaluation. The board adopts no changes to the rules based on this comment. The rules correctly allow this and the board intends to specify the inclusion of this data in the contracts with the political subdivisions that represent the regional water planning groups.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment supporting the revisions to §357.7(a)(8)(A) because they will help ensure better informed decisions. The commentor has requested no change but supports the rule as published.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment stating that it is not clear what is meant by "threats to agricultural and natural resources of the regional planning area" in §357.7(a)(8)(C) and recommend changing the text to "for each threat to agricultural and natural resources identified pursuant to §357.7(a)(1), a discussion of how that threat would be addressed or affected by the water management strategies evaluated." The board adopts changes to §357.7(a)(8)(C) as recommended by the commentors.

The Canadian River Management Water Authority commented that the board should clarify that §357.7(a)(8)(F) only relates to surface water-based water management strategies. The board made changes to §357.7(a)(8)(F) based on this comment. The provision was modified to clarify that it only applied to surface water.

The Texas Parks and Wildlife Department support the amendments to §357.7(a)(8) because they will greatly improve the regional water plans and ensure a more seamless transition from planning to permitting. The commentor has requested no change but supports the rule as published.

Numerous individuals submitted a form letter stating that the rules should ensure the regional water plans include flows needed to maintain healthy fish and wildlife in streams, rivers, and coastal bays and aggressive water conservation measures beyond the use of efficient plumbing fixtures. The board makes no changes to the rules based on this comment. State law provides that water for environmental purposes will be provided for by conditioning surface water rights to provide appropriate amounts for environmental purposes. This concept is included in the board rules to maintain consistency and avoid confusion. As for aggressive water conservation measures, each region must determine how aggressive it will pursue conservation beyond basic law on plumbing fixtures.

An individual commented that conservation measures should include maximum management and use of grey water for outdoor watering and new projects that have significant adverse environmental impacts should be accepted only if less-damaging options have been shown insufficient for meeting water needs. The board makes no changes to the rules based on this comment. State law provides that water for environmental purposes will be provided for by conditioning surface water rights to provide appropriate amounts for environmental purposes. This concept is included in the board rules to maintain consistency and avoid confusion. The regional water planning groups must develop water management strategies, pursuant to §357.5(e)(4), that are cost effective and environmentally sensitive unless they can demonstrate that a particular strategy is inappropriate.

An individual commented that new projects that have significant adverse environmental impacts should be accepted only if less-damaging options have been shown, after consultation with Texas environmental study groups and thorough public consideration, to be unworkable. The rules must protect water resources for both human and wildlife needs. The board adopts no changes to the rules based on this comment. The regional water planning groups must develop water management strategies, pursuant to §357.5(e)(4), that are cost effective and environmentally sensitive unless they can demonstrate that a particular strategy is inappropriate.

Numerous individuals submitted form letters stating that regional water plans should include an assessment of the environmental water needs, including an assessment of the extent to which the full exercise of existing water rights would impair environmental flows and options for addressing that. Regional water plans should include a preliminary, quantitative analysis of the impacts from proposed projects on fish and wildlife habitat, spring flows, endangered species, and required minimum instream flows and freshwater flows to bays and estuaries. Conservation measures should be mandatory unless the regional water planning group can demonstrate special circumstances that make particular measures inappropriate. Lastly, regional water planning groups should consider methods for temporarily reducing demand during dry periods. The board makes no changes to the rules based on this comment. State law provides that water for environmental purposes will be provided for by conditioning surface water rights to provide appropriate amounts for environmental purposes. This concept is included in the board rules to maintain consistency and avoid confusion. As for conservation measures being mandatory, §357.7(a)(7)(A) does require the regional water planning groups to consider water conservation practices for each need identified and document the reason if such a practice is not adopted. Lastly, drought management measures are also part of the rules, at §357.7(a)(7)(B) and regional water planning groups are required to consider drought management measures and document their reasons if they do not adopt such measures.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas

Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that the revisions to §357.7(a)(11) are a significant improvement to the planning process and will ensure better consideration of these critical management strategies and improve the opportunity for public participation. The commentor has requested no change but supports the rule as published.

The South Central Texas Regional Water Planning Group comments that water conservation and drought management strategies should also be discussed in other chapters of the regional water plans and recommends that §357.7(a)(11) be revised to require water conservation and drought management to be in separate chapters of the regional water plans, not the same chapter, in order to avoid confusing the ideas. The board makes no changes to the rules based on this comment. The board does not see an increased benefit from separating conservation and drought management into separate chapters of the regional water plans but it would increase the cost of the plans.

The Texas Parks and Wildlife Department supports the revisions to §357.7(a)(11) because they will emphasize the importance of conservation and drought management within the context of the regional water plans. The commentor has requested no change but supports the rule as published.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that the changes to §357.10(a)(3) are an improvement because they will help build confidence in the plans and encourage interested members of the public to participate in the public comment process. The commentor has requested no change but supports the rule as published.

The Texas Parks and Wildlife Department supports the amendments to §357.10. The commentor has requested no change but supports the rule as published.

The Texas Parks and Wildlife Department strongly supports the amendments to §357.11. The commentor has requested no change but supports the rule as published.

The South Central Texas Regional Water Planning Group commented that the board and other state and federal agencies do not need 120 days to review the initially prepared plans. Regional water planning groups will need at least 6 months and as much as 25 percent of the budget to respond to reviews and complete the plans for final delivery. Instead, it recommends that the board should review and comment within 45 days of completion of each task. If the review of the initially prepared plans shows a need for major revisions, the board should require a second review prior to the release of the approved plan. Time for review should be 60 days and the regional water planning groups would deliver final plans 60 to 90 days after that. This would reduce the review process from 10 to 12 months down to 5 to 6 months. It also recommends that only oral comments should be accepted at official public hearings. The board makes no changes to the rules based on this comment. The board disagrees with this assessment of the impact of the rule revision. In the first round of planning, the regional water planning groups made significant revisions to their plans after the board commented on the completed tasks and some tasks were submitted before completion. As a result, the initially prepared plans were significantly changed from the chapters reviewed previously, which makes a 60-day comment period insufficient. Also, other state and federal agencies reviewing the initially prepared plans do not have the resources to review all of the plans simultaneously and could not complete their reviews of all 16 plans within 60 days.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that the revised time frames should also apply to amendments to regional water plans and that there is no justification for the disparity between review times for reviews by the public and reviews by governmental agencies. They stated that 30 days is not adequate for reviewing the initially prepared plans. They recommend at least 90 days. The board makes changes to §357.11 based on this comment. Section 357.11(b)(3) is amended to change the time period for public comment to the initially prepared plans after the public hearing is held by the regional water planning group from 30 days to 60 days. This provides the public with a minimum of 90 days to submit comment because the regional water planning groups will also be required to accept public comment at least 30 days before the public hearing, as well. The regional water planning groups can exceed the 90-day period if they choose. Also, §357.11(f) is amended to add a 30-day public comment period to the regional water planning amendment process. Because amendments are not nearly as involved as adopting entire regional water plans, 30 days is a sufficient time for all persons and entities to submit comments to the regional water planning groups.

The National Wildlife Federation, the Texas Committee on Natural Resources, the Environmental Defense Fund, the Texas Center for Policy Studies, and the Lone Star Chapter of the Sierra Club submitted a joint comment that it is unclear whether §357.12(b) retains the requirements that a copy of the plan be available in a public library in each county within the regional water planning area and recommends revising the language to make it clear this is required. They also recommend that at least one copy of each report, planning document, and other work product be made available for review and copying at the board's offices. The board does make changes to §357.12(b) to include the phrase "in each county" after the term "public library" to make it clear the regional water plans have to be available in at least one public library in each county that is within the regional water planning area. Also, the board does make copies of reports, planning documents, and other work products available for review and copying at its offices in Austin, Texas.

The Texas Parks and Wildlife Department supports the changes to §357.12(d). The commentor has requested no change but supports the rule as published.

Several individuals sent form letters stating that the rules should protect the state's abundant wildlife resources and natural heritage. An individual commented that conservation and protection are the only means of ensuring the rivers stay flowing and the board should work for nature, not industry and blood money. Another individual stated that the rules should protect the state's wildlife resources and provide a balance between human life and wildlife needs. The board makes no changes to the rules based on these comments. The commentors do not request a specific rule change and the board's rules are consistent with state law that requires water for environmental purposes to be provided for by conditioning surface water rights to provide appropriate amounts for environmental purposes.

An individual commented that she was concerned about the transfer of water from the Ogalalla Aquifer to San Antonio or other places. The board makes no changes to the rules based on this comment. The comment is not within the scope of the rules.

An individual commented that the board should carefully plan water usage and projects in order to not jeopardize the state's fish and wildlife resources. She stated that shipment of water to San Antonio could leave Matagorda Bay with only 20% of the freshwater inflow amount considered critical for species to survive times of drought and the Marvin-Nichols dam would flood over 62,000 acres of east Texas forest, including thousands of acres of rich bottomland hardwoods. The Dallas-Fort Worth area should curtail wasteful water usage rather than construct the dam. Lastly, the water plan for the Rio Grande Valley does not consider river flows necessary for fish and wildlife and the river has stopped flowing to the Gulf of Mexico in recent times. The board makes no changes to the rules based on these comments. The comments are not within the scope of the rules.

An individual commented that stricter usage guidelines and quotas should be used and stricter regulations put in place in times of water shortages. Limits on golf course and residential lawn watering can decrease the demand for water. The board makes no changes to the rules based on this comment. The commentor does not request a specific rule change and the board rules already require drought management measures and conservation practices unless the regional water planning groups find such measures and practices inappropriate for a particular water management strategy and document the reason.

An individual commented that the board should consider a state policy to stabilize population since that will greatly help on water and other issues. The board makes no changes to the rules based on this comment. The comment is not within the scope of the rules.

An individual commented that the panhandle should not be required to export water to down-state cities. The board makes no changes to the rules based on this comment. The comment is not within the scope of the rules.

An individual commented that the consequences of planning, especially the potential destruction of the environment, should be considered before making decision. The board makes no changes to the rules based on these comments. The commentors do not request a specific rule change and the board's rules are consistent with state law that requires water for environmental purposes to be provided for by conditioning surface water rights to provide appropriate amounts for environmental purposes.

The National Marine Fisheries Service commented that it would like notification of all future meetings of regional water planning groups and river authorities in response to Senate Bill 1. The Service is particularly concerned with any proposed reduction of current fresh water inflows from the development of regional water plans and any other proposed alterations or reductions of river inflows into Texas bays and estuaries. Lastly, the Service asked for copies of any draft water management plans that have been developed, especially in regions G, H, I, K, L, M, N, and P. The board makes no changes to the rules based on this comment as it is not within the scope of the rules.

The amendments are adopted under the authority granted in Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas, and under the authority of Texas Water Code, §16.053, which requires the board to develop rules to provide procedures for adoption of regional water plans by regional water planning groups and approval of regional water plans by the board, and to govern procedures to be followed in carrying out the responsibilities under §16.053, Water Code.

§357.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the applicable provisions of the Texas Water Code, Chapter 16, and not defined here shall have the meanings provided in Chapter 16.

(1) Board--The Texas Water Development Board.

(2) Drought of record--The period of time when natural hydrological conditions provided the least amount of water supply.

(3) Executive administrator--The executive administrator of the board or a designated representative.

(4) Long-term water needs--Those needs which must be met by implementation of water management strategies within the next 30 to 50 years based on federal census years (2040, 2050, etc).

(5) Near-term water needs--Those needs which must be met by implementation of water management strategies within the next 30 years based on federal census years (2000, 2010, 2020, 2030, etc).

(6) Political subdivision--City, county, district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Acts of the 43rd Legislature, 1933, 1st Called Session, Chapter 76, (Vernon's Texas Civil Statutes, Article 1434a).

(7) Regional water plan--Plan or amendment to an adopted or approved regional water plan developed by a regional water planning group for a regional water planning area pursuant to the Texas Water Code, §16.053 and this chapter.

(8) Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operation, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(9) State water plan--The most recent state water plan adopted by the board under the Texas Water Code, Chapter 16.

(10) Wholesale water provider--Any person or entity, including river authorities and irrigation districts, that has contracts to sell more than 1000 acre-feet of water wholesale in any one year during the five years immediately preceding the adoption of the last regional water plan. The regional water planning groups shall include as wholesale water providers other persons and entities that enter or that the regional water planning group expects or recommends to enter contracts to sell more than 1000 acre-feet of water wholesale during the planning period.

§357.5. Guidelines for Development of Regional Water Plans.

(a) Goals of plan. The regional water plan shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure

public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the regional water planning area.

(b) Submittal of plan. The regional water planning group shall prepare, adopt, and submit a regional water plan to the executive administrator on or before January 5, 2001, and at least as frequently as every five years thereafter, for board approval and inclusion in the state water plan.

(c) Relation to state and local plans. Regional water plans shall be consistent with Chapter 358 of this title (relating to State Water Planning Guidelines) and this chapter. Regional water planning groups shall consider and use as a guide the state water plan and local water plans provided for in the Texas Water Code, §16.054.

(d) Use of population and water demands. In developing regional water plans, regional water planning groups shall use:

(1) state population and water demand projections contained in the state water plan or adopted by the board after consultation with the Texas Natural Resource Conservation Commission, Texas Department of Agriculture, Texas Parks and Wildlife Department, and regional water planning groups in preparation for revision of the state water plan; or

(2) in lieu of paragraph (1) of this subsection, population or water demand projection revisions that have been adopted by the board, after coordination with Texas Natural Resource Conservation Commission, Texas Department of Agriculture, Texas Parks and Wildlife Department, and regional water planning groups when the requesting regional water planning group demonstrates that the population and water demand projections developed pursuant to paragraph (1) of this subsection no longer represent a reasonable projection of anticipated conditions based on changed conditions and availability of new information. Before requesting a revision to the population and water demand projections, the regional water planning group shall discuss the issue at a public meeting for which notice has been posted pursuant to the Open Meetings Act in addition to being published on the internet and mailed at least 14 days before the meeting to every person or entity that has requested notice of regional water planning group activities. The public will be able to submit oral or written comment at the meeting and written comments for 14 days following the meeting. The regional water planning group will summarize the public comments received in its request for projection revisions. Within 45 days of receipt of a request from a regional water planning group for revision of population or water demand projections, the executive administrator shall consult with the requesting regional water planning group and respond to their request.

(e) Plan development. In developing regional water plans, regional water planning groups shall:

(1) ensure that water management strategies are adjusted to provide for appropriate environmental water needs, including instream flows and bays and estuaries inflows. Evaluation shall use environmental information resulting from existing site-specific studies, or, in the absence of such information, shall use state environmental planning criteria adopted by the board for inclusion in the state water plan after coordinating with staff of Texas Natural Resource Conservation Commission and Texas Parks and Wildlife Department;

(2) provide water management strategies to be used during a drought of record;

(3) protect existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements. Any amendments will require the eventual consent of the owner;

(4) provide specific recommendations of water management strategies based upon identification, analysis, and comparison of all water management strategies the regional water planning group determines to be potentially feasible so that the cost effective water management strategies which are environmentally sensitive are considered and adopted unless the regional water planning group demonstrates that adoption of such strategies is not appropriate. To determine cost-effectiveness, the regional water planning groups will use the process described in §357.7(a)(8)(A)(i) of this title (relating to Regional Water Plan Development) and, to determine environmental sensitivity, the regional water planning groups shall use the process described in §357.7(a)(8)(A)(ii) of this title. Before a regional water planning group begins the process of identifying potentially feasible water management strategies, it shall document the process by which it will list all possible water management strategies and identify the water management strategies that are potentially feasible for meeting a need in the region. Once this process is identified, the regional water planning group shall present it to the public for comment at the public meeting required by §357.12(a)(1) of this title (relating to Notice and Public Participation);

(5) incorporate water conservation planning and drought contingency planning;

(6) conduct their planning to achieve efficient use of existing water supplies, explore opportunities for and the benefits of developing regional water supply facilities or providing regional management of water facilities, coordinate the actions of local and regional water resource management agencies, provide substantial involvement by the public in the decision-making process, and provide full dissemination of planning results;

(7) for each source of water supply in the regional water planning area designated in accordance with §357.7(a)(3) of this title, identify:

(A) factors specific to each source of water supply to be considered in determining whether to initiate a drought response, and

(B) actions to be taken as part of the response; and

(8) consider the effect of the regional water plan on navigation.

(f) Existing law. Each regional water planning group shall prepare its regional water plan to be consistent with all laws applicable to water use in the regional water planning area.

(g) Special water resources. The board may, on its own initiative or upon recommendation of the executive administrator, identify as part of its designation of regional water planning areas or amendment of such designation, surface water resources as special water resources to facilitate planning for surface water supplies currently obligated to meet demands outside the regional water planning area which contains the special water resource. The board shall consider the following characteristics when designating these special water resources:

(1) the water rights to the surface water resource are owned in whole or in part by an entity headquartered in a regional water planning area different from the one containing the surface water resource;

(2) a water supply contract commits water from the surface water resource to an entity headquartered in a regional water planning area different from the one containing the surface water resource; or

(3) an existing water supply option agreement may result in water from the surface water resource being supplied to an entity headquartered in a regional water planning area different from the one containing the surface water resource.

(h) Protecting rights to special water resources. When developing a water plan that involves a special water resource, defined in subsection (g) of this section, the regional water planning group for the regional water planning area which contains the special water resource shall protect the water rights, water supply contracts, and water supply option agreements associated with the special water resource so that supplies obligated to meet demands outside the regional water planning areas shall not be impacted. Any plans that could impact the water rights, water supply contracts, or water supply option agreements associated with the special water resource shall be based only on potential adjustments to the water rights, water supply contracts or option agreements by those entities holding interests in such water rights, water supply contract, or water supply option agreements. Any amendments will require the eventual consent of the owner. Each regional water planning group and subgroup shall provide an initial notice to all holders of interests in water rights, water supply contracts, or option agreements in the special water resource in which such holders are provided the option of notifying the regional water planning group or subgroup of whether the holder wishes to receive all future notices of regional water planning group or subgroup meetings. The regional water planning group or subgroup may provide options for such holders to choose that delivery of future notice may be made by regular mail, electronic mail, or facsimile transmission. All holders of interests in water rights, water supply contracts, or option agreements in the special water resource shall be provided notice of and an opportunity to comment on the scope of work affecting the special water resource, and on the proposed regional water plan, with such comments being submitted to the executive administrator with submittal of the adopted regional water plan.

(i) Emergency transfers. Regional water plans shall consider emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the regional water planning area that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code, §11.139.

(j) Simplified planning. If a regional water planning group determines in its analysis of water needs that it has sufficient supplies in the regional water planning area to meet the needs for the 50-year planning period in accordance with this chapter, regional water planning groups may perform simplified regional water planning as follows:

(1) the identification of water supplies that are available for voluntary redistribution within a regional water planning area or to other regional water planning areas;

(2) adoption of the state water plan information as the regional water plan; or

(3) other activities upon approval of the executive administrator.

(k) Existing regional water planning efforts. In developing a regional water plan, the regional water planning group shall consider the following:

(1) existing plans and information, including:

(A) water conservation plans;

(B) drought contingency plans;

(C) certified groundwater conservation district management plans;

(D) publicly available plans of major agricultural, municipal, manufacturing and commercial water users;

(E) water management plans;

(F) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code, §35.019; and

(G) any other information available from existing local or regional water planning studies; and

(2) existing programs and goals, including:

(A) the state Clean Rivers Program;

(B) the federal Clean Water Act; and

(C) other planning goals including, but not limited to, regionalization of water and wastewater services, where appropriate.

(l) Instream and bay and estuary flows. In developing a regional water plan, a regional water planning group shall consider environmental water needs including instream flows and bay and estuary inflows.

§357.6. Preplanning.

Prior to the preparation of the regional water plans the regional water planning group shall perform the following tasks:

(1) after 30 day notice to the public as described in §357.12(a)(5) and (6) of this title (relating to Notice and Public Participation), hold at least one public meeting to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the regional or state water plan;

(2) determine terms of participation as used in §357.7(a)(5)(C)(ii) of this title (relating to Regional Water Plan Development);

(3) prepare a scope of work that includes a detailed description of tasks to be performed, identification of responsible parties for task execution, a task schedule, task and expense budgets, and description of any interim products, draft reports, and final reports that are to be developed as part of the planning process;

(4) approve any amendments to the scope of work only in an open meeting of the regional water planning group where notice of the proposed action was provided;

(5) designate a political subdivision or political subdivisions as a representative(s) of the regional water planning group eligible to apply for financial assistance for scope of work and regional water plan development pursuant to Chapter 355, Subchapter C of this title (relating to Regional Water Planning Grants); and

(6) a regional water planning group may ask any other regional water planning group to designate a geographical region as an informational subarea so that water planning information may be readily exchanged for such informational subareas. Forming informational subareas facilitates the exchange of information specified in §357.7(a)(2)-(4) of this title on population and water demand data, on water supplies available, on water supply and demand analysis results, and available information on environmental water needs, in addition to any other information the regional water planning groups choose to exchange. If a regional water planning group is asked by another regional water planning group to form an informational subarea, the regional water planning group must agree. The regional water planning group shall develop its scope of work so that information can be exchanged with the responding regional water planning group if the geographic region comprising the informational subarea meets one or more of the following criteria:

(A) is currently being provided wholesale or retail water service by an entity whose headquarters is in the responding regional

water planning area or from sources of water or facilities within the responding regional water planning area;

(B) is within an area designated by the Texas Legislature as an area, either in whole or in part, that may or shall be served by an entity whose headquarters is in the responding regional water planning area or from sources of water or facilities in the responding regional water planning area;

(C) is an area identified in current or existing studies as an area likely to be served in the future from entities whose headquarters are in the responding regional water planning area or from sources of water or facilities within the responding regional water planning area;

(D) is an area where environmental water needs are impacted or are potentially impacted by water management strategies that might be considered by the regional water planning group; or

(E) is designated by the executive administrator as an informational subarea.

§357.7. Regional Water Plan Development.

(a) Regional water plan development shall include the following:

(1) description of the regional water planning area including wholesale water providers, current water use, identified water quality problems, sources of groundwater and surface water including major springs, major demand centers, agricultural and natural resources, social and economic aspects of the regional water planning area including information on current population and primary economic activities including businesses dependent on natural water resources, initial assessment of current preparations for drought within the regional water planning area, summary of existing regional water plans, summary of recommendations in state water plan, summary of local water plans, and any identified threats to the agricultural and natural resources of the regional water planning area due to water quantity problems or water quality problems related to water supply;

(2) presentation of current and projected population and water demands. Results shall be reported:

(A) by

(i) city for cities with populations greater than 500 people,

(ii) retail public utility for counties that have less than five retail public utilities which provide more than 280 acre-feet per year for municipal use,

(iii) individual retail public utility or collective data for all such retail public utilities that form a logical reporting unit, such as being served by a common wholesale water provider or having a common source or other association appropriate for the area, in the judgment of the regional water planning group, for counties with more than five retail public utilities which provide more than 280 acre-feet per year for municipal use, and

(iv) categories of water use (including municipal not otherwise reported, manufacturing, irrigation, steam electric power generation, mining, and livestock watering) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin;

(B) for each wholesale water provider by category of water use (municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin. The wholesale water provider's current contractual obligations to supply water must be reported in addition to any demands projected for the wholesale water provider;

(C) to include an adjustment to each municipal demand due to water savings from using plumbing fixtures identified in Chapter 372 of the Texas Health and Safety Code. The regional water planning group shall determine and report the extent to which such plumbing fixtures impact projected municipal water use using parameters approved by the executive administrator.

(3) evaluation of adequacy of current water supplies legally and physically available to the regional water planning area for use during drought of record. The term "current" means water supply available at the beginning of this task. This evaluation shall consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements, other planning and water supply studies, and analysis of water supplies currently available to the regional water planning area. Firm yields for reservoirs shall be presented. Analysis of surface water available during drought of record may be based on operational procedures other than firm yield from reservoirs upon the documented decision of the regional water planning group as long as the amount of water available due to the operational procedure does not exceed the amount of water that would be available using system firm yield. Firm yield is defined as the supply the reservoir can provide during a drought of record using reasonable sedimentation rates and the assumption that all senior water rights will be totally utilized. Until information is provided by the Texas Natural Resource Conservation Commission, regional water planning groups may use estimates of the projected amount of surface water that would be available from existing water rights during a drought of record. Once this information is available from the Texas Natural Resource Conservation Commission, the regional water planning group shall incorporate it in its next planning cycle unless better site-specific information is available. Until information is available from the board regarding groundwater availability from modeling, the regional water planning groups may use estimates of the projected amounts as long as they describe the method used to arrive at those estimates. Once the groundwater availability modeling information is available for an area within a region, that regional water planning group shall incorporate such information in its next planning cycle unless better site-specific information is available. The executive administrator, after coordination with staff of the Texas Natural Resource Conservation Commission and the Texas Parks and Wildlife Department, shall identify the methodology, in consultation with representatives of regional water planning groups, to be used by regional water planning groups to calculate water availability during drought of record. The executive administrator shall provide available technical assistance to the regional water planning groups upon request to assist them in selecting appropriate methods and data to be used to determine water supply availability. Water supplies based on contracted agreements shall be based on the terms of the contract, which may be assumed to renew at the contract termination date if the contract contemplates renewal or extensions. Results of evaluations shall be reported:

(A) by

(i) city for cities with populations greater than 500 people,

(ii) retail public utility for counties that have less than five retail public utilities which provide more than 280 acre-feet per year for municipal use,

(iii) individual utility or collective data for all such retail public utilities that form a logical reporting unit, such as being

served by a common wholesale water provider or having a common source or other association appropriate for the area, in the judgment of the regional water planning group, for counties with more than five retail public utilities which provide more than 280 acre-feet per year for municipal use, and

(iv) categories of water use (including municipal not otherwise reported, manufacturing, irrigation, steam electric power generation, mining, and livestock watering) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin;

(B) for each wholesale water provider by category of water use (municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin. The wholesale water provider's current contractual obligations to supply water must be reported in addition to any demands projected for the wholesale water provider;

(4) water supply and demand analysis comparing:

(A) water demands as developed in paragraph (2)(A) of this subsection with current water supplies available to the regional water planning area as developed in paragraph (3)(A) of this subsection to determine if the water users identified in paragraph (2)(A) of this subsection in the regional water planning area will experience a surplus of supply or a need for additional supplies. The social and economic impact of not meeting these needs shall be evaluated by the regional water planning groups and reported by regional water planning area and river basin. The executive administrator shall provide available technical assistance to the regional water planning groups, upon request, on water supply and demand analysis, including methods to evaluate the social and economic impacts of not meeting needs. Other results shall be reported by

(i) city for cities with populations greater than 500 people,

(ii) retail public utility for counties that have less than five retail public utilities which provide more than 280 acre-feet per year for municipal use,

(iii) individual utility or collective data for all such retail public utilities that form a logical reporting unit, such as being served by a common wholesale water provider or having a common source or other association appropriate for the area, in the judgment of the regional water planning group, for counties with more than five retail public utilities which provide more than 280 acre-feet per year for municipal use, and

(iv) categories of water use (including municipal not otherwise reported, manufacturing, irrigation, steam electric power generation, mining, and livestock watering) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin;

(B) water demands as developed in paragraph (2)(B) of this subsection with current water supplies available to the wholesale water provider as developed in paragraph (3) of this subsection to determine if the wholesale water providers in the regional water planning area will experience a surplus of supply or a need for additional supplies. Results shall be reported for each wholesale water provider by categories of water use (including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock watering) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin. The executive administrator shall provide available technical assistance to the regional water planning groups, upon request, on water supply and demand analysis;

(5) using the water supply needs identified in paragraph (4) of this subsection, plans to be used during the drought of record to provide sufficient water supply to meet the needs identified in paragraph (4) of this subsection and in accordance with water management strategies and scenarios described in paragraph (9) of this subsection as follows:

(A) Water management strategies shall be developed for:

(i) city for cities with populations greater than 500 people,

(ii) retail public utility for counties that have less than five retail public utilities which provide more than 280 acre-feet per year for municipal use,

(iii) individual utility or collective data for all such retail public utilities that form a logical reporting unit, such as being served by a common wholesale water provider or having a common source or other association appropriate for the area, in the judgment of the regional water planning group, for counties with more than five retail public utilities which provide more than 280 acre-feet per year for municipal use, and

(iv) categories of water use (including municipal not otherwise reported, manufacturing, irrigation, steam electric power generation, mining, and livestock watering) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin;

(B) water management strategies shall be developed for wholesale water providers. The water management strategies shall also meet the new water supply obligations necessary to implement recommended water management strategies of other wholesale water providers and water users for which plans are developed under of this paragraph. Results shall be reported for each wholesale water provider by category of water use (municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin;

(C) The plan to be used for water supply during drought of record shall meet all needs for the water use categories of municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock watering except:

(i) plans may identify those needs for which no water management strategy is feasible. Full evaluation of water management strategies must be presented and reasons given for why no water management strategies are feasible; or

(ii) where a political subdivision that provides water supply (other than water supply corporations, counties, or river authorities) does not participate in the regional water planning effort for needs located within its boundaries or extraterritorial jurisdiction. The regional water planning group shall establish terms of participation that shall be equitable and shall not unduly hinder participation;

(6) presentations of the data required in paragraphs (2) - (5) of this subsection in subdivisions of the reporting units required such as reporting irrigation for a county by splitting it into two or more reporting units, if the regional planning group desires;

(7) evaluation of all water management strategies the regional water planning group determines to be potentially feasible, including:

(A) water conservation practices. The executive administrator shall provide technical assistance to the regional water planning groups on water conservation practices. The regional water planning group must consider water conservation practices for each need identified in paragraph (4) of this subsection. If the regional water planning group does not adopt a water conservation strategy for a need, it must document the reason;

(B) drought management measures including water demand management. The executive administrator shall provide technical assistance to the regional water planning groups on drought management measures. The regional water planning group must consider drought management measures for each need identified in paragraph (4) of this subsection. If the regional water planning group does not adopt a drought management strategy for a need, it must document the reason;

(C) reuse of wastewater;

(D) expanded use of existing supplies including systems optimization and conjunctive use of resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides;

(E) new supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, desalination, water supply that could be made available by cancellation of water rights based on data provided by the Texas Natural Resource Conservation Commission, aquifer storage and recovery;

(F) interbasin transfers; and

(G) other measures;

(8) evaluations of water management strategies by including:

(A) a quantitative reporting of:

(i) the quantity, reliability, and cost of water delivered and treated for the end user's requirements, incorporating factors to be used in the calculation of infrastructure debt payments, present costs, and discounted present value costs provided by the executive administrator;

(ii) environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico;

(B) impacts on other water resources of the state including other water management strategies and groundwater surface water interrelationships;

(C) for each threat to agricultural and natural resources identified pursuant to paragraph (1) of this subsection, a discussion of how that threat will be addressed or affected by the water management strategies evaluated;

(D) any other factors as deemed relevant by the regional water planning group including recreational impacts;

(E) equitable comparison and consistent application of all water management strategies the regional water planning groups determines to be potentially feasible for each water supply need;

(F) consideration of the provisions in Texas Water Code, §11.085(k)(1) for interbasin transfers of surface water. At a minimum, this consideration shall include a summation of water needs in the basin of origin and in the receiving basin, based on needs presented in the applicable approved regional water plan; and

(G) consideration of third party social and economic impacts resulting from voluntary redistributions of water;

(9) plans to meet needs, which shall include:

(A) specific recommendations of water management strategies to meet the near-term needs in sufficient detail to allow state agencies to make financial or regulatory decisions to determine the consistency of the proposed action before the state agency with an approved regional water plan; and

(B) specific recommendations of water management strategies or long-term scenarios that meet the long-term needs. A long-term scenario is a combination of various water management strategies;

(10) regulatory, administrative, or legislative recommendations that the regional water planning group believes are needed and desirable to: facilitate the orderly development, management, and conservation of water resources and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the state and regional water planning area. The regional water planning group may develop information as to the potential impact once proposed changes in law are enacted; and

(11) a chapter consolidating the water conservation and drought management recommendations of the regional water plan.

(b) Specific recommendations of water management strategies to meet an identified need will not be shown as meeting the need for a political subdivision if the political subdivision to supply or to be provided water supplies objects to inclusion of the strategy for such political subdivision and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.

(c) The executive administrator shall provide technical assistance within available resources to the regional water planning groups requesting such assistance in performing regional water planning activities and if requested, may facilitate resolution of conflicts within regional water planning areas.

§357.11. Adoption of Regional Water Plans by Regional Water Planning Groups.

(a) Regional water planning groups shall concurrently submit to the executive administrator and release to the public an initially prepared regional water plan prior to adoption of the regional water plan. The initially prepared plan submitted to the executive administrator must be in the electronic and paper format specified by the executive administrator. The regional water planning groups must certify that the initially prepared regional water plan is complete and adopted by the regional water planning group.

(b) The regional water planning groups shall receive and consider the following comments when adopting a regional water plan:

(1) the executive administrator's written comments, which shall be provided to the regional water planning group within 120 days of receipt of the initially prepared plan;

(2) written comments received from any federal agency or Texas state agency, which the regional water planning groups shall accept for at least 120 days after the first public hearing notice is published pursuant to §357.12(a)(3) and (5) of this title (relating to Notice and Public Participation); and

(3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.12(a)(3) and (5) of this title until at least 60 days after the public hearing is held pursuant to §357.12(a)(3) and (4) of this title.

(c) The regional water planning group shall submit in a timely manner to the executive administrator information on any known interregional conflict between regional water plans.

(d) The regional water planning group shall modify the regional water plan to incorporate board resolutions of interregional conflicts.

(e) The regional water planning group shall seek to resolve conflicts with other regional water planning groups and shall participate in any board sponsored efforts to resolve interregional conflicts.

(f) A regional water planning group may amend an adopted regional water plan at any meeting, after giving notice according to §357.12 of this title and providing the public, the board, and other governmental entities 30 days to submit written or oral comments on the proposed amendment. A political subdivision in the regional water planning area may request a regional water planning group to consider specific changes to an adopted regional water plan. A regional water planning group must formally consider such request within 180 days after its submittal and shall amend its adopted regional water plan if it determines an amendment is warranted. A regional water planning group may propose amendments to an approved regional water plan by submitting proposed amendments to the board for its consideration and possible approval under the standards and procedures of this chapter.

§357.12. Notice and Public Participation.

(a) Regional water planning groups and any subregional water planning groups shall provide for public participation which shall include the following:

(1) at least one public meeting prior to the preparation of the regional water plan pursuant to §357.6(a)(1) of this title (relating to Preplanning) held in some central location within the regional water planning area;

(2) ongoing opportunities for public input during preparation of the regional water plan;

(3) a public hearing following adoption of an initially prepared regional water plan, to be held in a central location within the regional water planning area;

(4) a public hearing before adoption of an amendment to an adopted regional water plan, including amendments required by the board's resolution of interregional conflicts, to be held in a central location;

(5) notice of the public meetings and public hearings required by paragraphs (1), (3), and (4) of this subsection shall be published in a newspaper of general circulation in each county located in whole or in part in the regional water planning area before the 30th day preceding the date of the public meeting or hearing and mailed to, at a minimum, the following:

(A) each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the regional water planning area;

(B) each county judge of a county located in whole or in part in the regional water planning area;

(C) each special or general law district or river authority with responsibility to manage or supply water in the regional water planning area based upon lists of such water districts and river authorities obtained from Texas Natural Resource Conservation Commission;

(D) each retail public utility, defined as a community water system, that serves any part of the regional water planning area or receives water from the regional water planning area based upon lists of such entities obtained from Texas Natural Resource Conservation Commission; and

(E) each holder of record of a water right for the use of surface water the diversion of which occurs in the regional water planning area based upon lists of such water rights holders obtained from Texas Natural Resource Conservation Commission; and

(6) notice of the public meetings and public hearings shall include:

(A) a date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the regional water planning group will accept written and oral comments at the hearings required by paragraphs (3) and (4) of this subsection, and information on how the public may submit written comments separate from such hearings. The regional water planning group shall specify a deadline for submission of public written comments of not earlier than 30 days after the hearings required by paragraphs (3) and (4) of this subsection.

(b) Regional water planning groups shall make copies of the regional water plan available for public inspection at least one month before a public hearing required or held in accordance with subsection (a)(3) and (4) of this section by providing a copy of the regional water plan in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the regional water planning area and include locations of such copies in the notice for public hearing.

(c) Regional water planning groups and regional water planning subgroups shall:

(1) conduct all business in a meeting posted and held in accordance with the Texas Open Meetings Act with a copy of all materials presented or discussed available for public inspection prior to and following the meeting; and

(2) provide notice of regional water planning group and subregional water planning meetings to persons who requested in writing receipt of such notice.

(d) Regional water planning groups shall publish agendas, meeting notices, and current adopted initially prepared plans and adopted final regional water plans on the Internet. This requirement can be met by submitting the information, in the format specified by the executive administrator, to the board to be posted on the board's web site.

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 June 21, 2001.

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Suzanne Schwartz
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.300

The Comptroller of Public Accounts adopts an amendment to §3.300, concerning manufacturing; custom manufacturing; fabricating; processing, with changes to the proposed text as published in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1109).

The amendment reflects changes made to Tax Code, §151.318, by the legislature. The amended section limits, with certain exceptions, the exemption for tangible personal property used in the manufacturing process to property that makes or causes a chemical or physical change in the product being manufactured or in an intermediate or preliminary product that becomes a part of the product manufactured for sale. These new limitations do not apply to semiconductor fabrication cleanrooms, pollution control equipment, and a stipulated list of equipment used to power, supply, support or control qualifying manufacturing equipment or pollution control equipment (such as actuators, steam production equipment, cooling towers, transformers, pumps, compressors, computerized control units, etc.). The amendment exempts water conservation equipment used by manufacturers and clarifies that computer software manufacturing begins with the design and writing of the program and includes testing or demonstration.

Comments on the proposal were received from the Texas Taxpayers and Research Association, Clark, Thomas and Winters, and the SALT Group expressing concerns that subsection (i) disallowed exemptions for otherwise qualifying manufacturing equipment that is incorporated into realty as part of a lump-sum nonresidential repair, remodeling, or restoration contract. This subsection has been modified to state that such equipment is presumed taxable. The presumption can be rebutted with proper documentation and a credit allowed at a later date.

Comments concerning subsection (c)(5) were received from the Texas Cotton Ginners' Association and the SALT Group. The SALT Group felt that subsection (c)(5) should be limited to piping. However, the statutory exclusion from exemption for transportation equipment is not limited to pipe. The Cotton Ginner's Association is concerned that the subsection taxes transportation equipment even if manufacturing or processing activities occur during the transportation. The association asserts that cotton gin drying and loading systems have evolved over the years to incorporate processing activities into equipment that also transports. House Bill 1855, 75th Legislature, 1997, was in part a response to a court case that involved piping in which manufacturing activities (mixing and pollution control) also took place. For this reason, the subsection was not changed. However, the comptroller will review additional information to determine if the equipment is qualifying manufacturing equipment as opposed to transportation equipment.

Comments concerning subsection (d)(10) were received from the SALT Group. The writer wanted frocks used in meat packing plants to be used as an example of qualifying work clothing. Modifications were made to include specialized clothing in the list of examples of exempt items required by law. However, the specific example cited by the writer was not added because the statutory requirement for the clothing could not be substantiated.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Senate Bills 1 and 862, and House Bill 1855, 75th Legislature, 1997, and House Bill 3211, 76th Legislature, 1999.

§3.300. Manufacturing; Custom Manufacturing; Fabricating; Processing.

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

(1) Accessory--A machine fixture that causes the machinery to operate in a specialized way.

(2) Custom manufacturing--Producing tangible personal property to the special order of the customer, e.g., tailor-made clothing, custom-made draperies or slip-covers, or furniture made-to-order. Custom manufacturers are manufacturers for the purpose of this section.

(3) Display item--A manufactured item that is identical in size and function to other items held for sale which it represents and that is ultimately sold at retail. For example, manufacturer's apparel lines, furniture showroom pieces, light fixture displays.

(4) Equipment--Any apparatus, work clothing, device, or simple machines used directly in production.

(5) Fabrication--To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(6) Hand tool--An instrument that is to be used, managed, and powered by the hand (e.g., paint brush, trowel, hammer, screwdriver, files). Equipment that is controlled or operated by the hand, but is moved or powered by electricity, gas, steam, or other fuel, is not a hand tool (e.g., electric drill, chain saw, jack hammer).

(7) Machinery--All power-operated machines.

(8) Manufacturer--A person who is engaged in manufacturing. The definition includes processors, fabricators, submanufacturers, and custom manufacturers.

(9) Manufacturing--Each operation beginning with the first stage in the production of tangible personal property and ending with the completion of tangible personal property. The first production stage means the first act of production, and it shall not include those acts in preparation for production. For example, a lumber company that cuts trees or a manufacturer that gathers, arranges, or sorts raw materials

or inventory is preparing for production. The first production stage for the manufacturing of software is the design and writing of the code or program, and manufacturing includes the testing or demonstration of the software. Manufacturing includes the repair or rebuilding of tangible personal property that the manufacturer owns for the purpose of being sold, but does not include the repair or rebuilding of property that belongs to another.

(A) Completion of production means the tangible personal property has all the physical properties, including packaging, if any, that it has when transferred by the manufacturer to another. For example, a manufacturer of raw rubber has completed production when the raw rubber is ready to be transferred to a manufacturer of rubber goods.

(B) Processing and fabrication are two activities that are performed during manufacturing. For example, the person who takes raw steel and makes pipe is engaged in fabrication. The workers who coat or thread the pipe are engaged in processing.

(10) Processing--The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The repair of tangible personal property, belonging to another, by restoring it to its original condition is not considered processing of that property. The mere packing, unpacking, or shelving of a product to be sold will not be considered to be processing of that property. Processing does not include remodeling.

(11) Remodeling--To make tangible personal property belonging to another over again, in a similar but different way, or to change the style, shape, or form, without causing a loss of its identity, or without causing the property to work in a new or different manner.

(12) Replacement part--Any repair part attached to the machinery, equipment, or accessory.

(13) Sample--A scale model or representative piece of a manufactured product held for sale. For example, cloth swatches and wallpaper books.

(14) Semiconductor fabrication cleanrooms and equipment--All tangible personal property, without regard to whether the property is affixed to or incorporated into realty, that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually contained in the cleanroom environment. The term includes integrated systems, fixtures, and piping; moveable cleanroom partitions and cleanroom lighting; all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances; production equipment and machinery; all tangible personal property that moves the product or other materials that are necessary and essential to the process, including piping that is used to move gas, liquids, deionized water, and hazardous waste material; silicon wafer moving, handling, and tracking systems; and electrical supply and control equipment, such as switches, wiring, and monitoring equipment that is incorporated into the realty. The term does not include the building or any permanent, nonremovable structural component part of the building, such as vibration-isolation platforms and vibration columns.

(15) Submanufacturer--A person who performs one or more of the manufacturing operations described in paragraph (9) of this subsection upon a product, or upon an intermediate or preliminary product, for a manufacturer.

(b) Manufacturer's responsibilities.

(1) Collection of tax. Persons who are engaged in the business of fabricating, manufacturing, processing, or custom manufacturing must collect sales tax on the total sales price of the manufactured item or accept a resale or exemption certificate in lieu of the tax. The sales price includes the cost of materials, labor or service costs, and all expenses that are connected with production. Persons who fabricate, custom manufacture, or process tangible personal property that the customer furnishes, either directly or indirectly, must collect tax on such fabricating, custom manufacturing, or processing charge. Manufacturers shall pay or accrue sales or use tax on all items used in the manufacturing process that do not qualify for exemption from tax. A manufacturer who purchases tangible personal property tax free by means of an exemption certificate or resale certificate and subsequently uses the item for a nonexempt purpose must remit the tax to the comptroller based on the purchase price of the item or the fair market rental value of the equipment for the period of time during which the equipment is used for purposes other than manufacturing. Reference should be made to §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), and §3.346 of this title (relating to Use Tax).

(2) Installed items. Generally, the charge for labor to install an item sold is taxable when the item sold is taxable. Persons who manufacture and install items that become improvements to residential realty or are incorporated into new real property structures are contractors and are subject to the provisions of §3.291 of this title (relating to Contractors). Example: cabinetmakers who also affix the cabinets as a part of a new-construction contract. Persons who manufacture and install items that become improvements to existing nonresidential realty are subject to the provisions of §3.357 of this title (relating to Labor Relating to Nonresidential Real Property Repair, Remodeling, Restoration, Maintenance, New Construction, and Residential Property). Persons who manufacture and install items as a part of a contract to repair tangible personal property are subject to the provisions of §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property). Example: fabricating a propeller shaft for a customer as a part of an outboard motor repair. Persons who manufacture and install items that do not become improvements to realty or that are not part of a repair must collect sales tax on the total charge. Example: a retailer who makes and installs draperies for a home owner.

(3) Molds, dies, patterns. The manufacturer's purchase of molds, dies, patterns, jigs, tooling, photo engraving, and other manufacturing aids, and their raw materials or component parts, may qualify for exemption under subsection (d) of this section.

(A) Written agreement--sale. A separate charge by the manufacturer for the aid will be considered a sale of the aid to the customer only if a written agreement exists between parties that clearly makes the customer the owner of the aid. As owner of the aid, the customer will owe tax on the amount that the manufacturer charged, unless the customer is also manufacturing a product for sale.

(B) No written agreement--no sale. When no written agreement exists between the manufacturer and the customer, and the manufacturer separates the charge for the aid from the charge for the items produced by means of the aid, a sale will not be considered to have occurred. The combined charges constitute the sales price of the manufactured item. (Charge for aid plus charge for items produced equals sales price of items.) The total charge shall be taxable or nontaxable depending on the taxability of the items produced.

(4) Samples. Since the sole use of such samples is to demonstrate not the sample but the other items that the sample represents, the purchase of the raw materials that are used to make the sample is subject to sales or use tax, regardless of the fact that the sample itself may be ultimately sold.

(c) Nonexempt manufacturing items. Certain items are specifically subject to tax:

(1) taxable items that are not otherwise exempted by this section;

(2) machinery, equipment, replacement parts, and accessories that are rented or leased for a term of less than one year;

(3) items that are merely useful or incidental to the operation, such as office machines, office supplies, transportation equipment, maintenance supplies, cleaning supplies, lubricants, and other items that are incidental to the manufacturing process and are not otherwise exempted by this section;

(4) hand tools;

(5) intraplant transportation equipment, unless exempted in subsection (d)(17) and (18) of this section, including equipment that is used to move a product or raw material in connection with the manufacturing process, and specifically including all piping, conveyor systems, and related pumps (unless otherwise exempted), meters, valves, or rollers. Intraplant transportation equipment is taxable even if manufacturing or processing activities (such as cooling, mixing, or pollution containment) occur during the transportation of product or component parts of the product;

(6) machinery and equipment or supplies that are not otherwise exempted in this section, but that are used to maintain or store tangible personal property (for example, refrigeration equipment that a restaurant uses);

(7) tangible personal property that is used in the transmission or distribution of electricity, including transformers, cable, switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are not otherwise exempted under this section, and lines, conduit, towers, and poles.

(d) The following items are exempted from the taxes imposed by Tax Code, Chapter 151, if purchased, leased, or rented by a manufacturer for storage, use, or consumption:

(1) tangible personal property that will become an ingredient or component part of tangible personal property that is manufactured, processed, or fabricated for ultimate sale;

(2) tangible personal property that is directly used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation and directly makes or causes a chemical or physical change to:

(A) the product that is being manufactured, processed, or fabricated for ultimate sale; or

(B) any intermediate or preliminary product that will become an ingredient or component part of the product that is being manufactured, processed, or fabricated for ultimate sale.

(3) services that are performed directly on the product that is being manufactured prior to the product's distribution for sale, and for the purpose of making the product more marketable;

(4) actuators, steam production equipment and its fuel, in-process flow through tanks, cooling towers, generators, heat exchangers, transformers and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the transformers, electronic control room equipment, computerized control units, pumps, compressors, hydraulic units, and related accessories that are used to power, supply, support, or control equipment that qualifies for exemption under paragraph (2) or (6) of this subsection or to generate electricity, chilled water, or steam for ultimate sale;

(5) transformers located at an electric generating facility that increase the voltage of electricity generated for ultimate sale, the electrical cable that carries the electricity from the electric generating equipment to the step-up transformers, and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, telemetry units, and related accessories that are associated with the step-up transformers; and transformers that decrease the voltage of electricity generated for ultimate sale and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, telemetry units, and related accessories that are associated with the step-down transformers;

(6) tangible personal property that is used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to a pollution control process;

(7) lubricants, chemicals, chemical compounds, gases, or liquids that are used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if their use or consumption is necessary and essential to prevent the decline, failure, lapse, or deterioration of equipment that is exempted by this section;

(8) gases that are used on the premises of a manufacturing plant to prevent contamination of raw material or product, or to prevent a fire, explosion, or other hazardous or environmentally damaging situation at any stage in the manufacturing process or in loading or storage of the product or raw material on premises;

(9) tangible personal property that is used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to a quality control process. For example, equipment that is used to test the product after the item is produced, but prior to wrapping and packaging. Equipment that is used to test raw materials prior to processing does not qualify for this exemption;

(10) safety apparel or work clothing that is used during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the manufacturing process would not be possible without the use of the apparel or clothing and the apparel or clothing is not resold to the employee. Examples are specialized clothing, safety goggles, gloves, ear plugs, or hairnets that the law requires employees to wear during processing, or static wrist guards that manufacturing personnel wear in a manufacturing process that must be free of static electricity. A regulation that requires employees to wear clean clothing is not sufficient to qualify uniforms for exemption;

(11) tangible personal property that is used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to comply with federal, state, or local laws or rules that establish requirements for public health purposes. For example, disinfectants that are used in a meat packing operation to sanitize work areas are exempt. Tangible personal property that is required to be on site, but used only in emergency situations, is not considered consumed in the actual manufacturing process (for example, fire extinguishers, eye baths, and safety signs are not exempt under this provision);

(12) tangible personal property that is specifically installed to:

(A) reduce water use and wastewater flow volumes from the manufacturing, processing, fabrication, or repair operation;

(B) reuse and recycle wastewater streams that are generated within the manufacturing, processing, fabrication, or repair operation; or

(C) treat wastewater from another industrial or municipal source for the purpose of replacing existing freshwater sources in the manufacturing, processing, fabrication, or repair operation.

(13) gas and electricity when used directly in manufacturing. See §3.295 of this title (relating to Natural Gas and Electricity).

(14) labor charges for repair, maintenance, remodeling, or restoration services to pollution control equipment or machinery that a law or regulation requires, and other tangible personal property that is exempt under this section.

(15) wrapping, packing, and packaging supplies that are used to further the sale of a product. See §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, and Export Packers).

(16) display items and the raw materials that are used to make display items, so long as the item is used only to demonstrate itself and the same or similar items prior to its sale to an ultimate consumer. The item may not be used for any purpose other than demonstration or display. Any other use by the manufacturer is taxable as a divergent use.

(17) piping or conveyor systems that are a component part of a single item of manufacturing equipment or pollution control equipment that is eligible for the exemption. For example, a printing press contains rollers and pipes to transport or feed paper or ink during the manufacturing process. The purchase of the press would continue to qualify for exemption, and rollers, pipe, or other press repair parts would remain as qualifying accessories or repair parts, even when purchased separately. An integrated group of manufacturing and processing machines and ancillary equipment that operate together to create or produce the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is not a single item of manufacturing equipment.

(18) piping through which the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is recycled or circulated in a loop between the single item of manufacturing equipment and the ancillary equipment that supports only that single item of manufacturing equipment, if the single item of manufacturing equipment and the ancillary equipment operate together to perform a specific step in the manufacturing process; and piping through which the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is recycled back to another single item of manufacturing equipment and its ancillary equipment in the same manufacturing process.

(e) Rented or leased taxable items. The exemptions provided in this section do not apply to any taxable item rented or leased before October 1, 1995, under an operating lease to a person engaged in manufacturing. Taxable items used in a manner exempted under this section and leased on or after October 1, 1995, for a term of one year or more qualify for exemption.

(f) Semiconductor fabrication cleanrooms and equipment. Semiconductor fabrication cleanrooms and equipment as defined in subsection (a)(14) of this section and associated materials and other items that are necessary and essential to maintain the cleanroom environment are exempt. Semiconductor fabrication cleanrooms and equipment are not intraplant transportation equipment or used incidentally in a manufacturing process or fabrication operation as those terms are used in subsection (c)(3) and (5) of this section.

(g) Overhaul, retrofit, or repair of jet turbine engines. A person who is engaged in the overhaul, retrofit, or repair of jet turbine aircraft engines and their component parts may claim an exemption from tax on the purchase of machinery, equipment, or replacement parts or accessories with a useful life in excess of six months, or supplies, including aluminum oxide, nitric acid, and sodium cyanide, used in electrochemical plating or a similar process, that are used or consumed in the overhauling, retrofitting, or repairing of jet turbine aircraft engines or their component parts.

(h) Persons engaged in printing tangible personal property. A person who is engaged in printing or imprinting tangible personal property for sale or production of a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public daily, weekly, or at some other short interval, free of charge, may purchase tax free, in addition to other items that are exempted under this section, the following items that are necessary and essential to and used in connection with the printing process: pre-press machinery, equipment, and supplies, including computers, cameras, film, film developing chemicals, veloxes, plate-making machinery, plate metal, litho negatives, color separation negatives, proofs of color negatives, production art work, and typesetting or composition proofs.

(i) Separated and lump-sum contracts to improve realty. A contractor who incorporates into realty any equipment or materials that qualify for exemption under subsection (d) of this section may accept an exemption certificate in lieu of tax from the manufacturer for the separately stated exempt materials sold under a separated contract. Taxable materials, such as foundation materials and items that are noted under subsection (c) of this section must be separately stated from qualifying equipment, or a single charge for qualifying and nonqualifying materials will be presumed taxable. When nonresidential repair, remodeling, or restoration of realty is performed, qualifying equipment should be separately stated from both nonqualifying materials and taxable labor. A lump-sum charge to repair, remodel, or restore nonresidential realty is presumed taxable. The presumption may be overcome by the service provider at the time the transaction occurs by separately stating to the customer a reasonable charge for the taxable services. However, if the charge for the qualifying manufacturing equipment is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to exempt qualifying manufacturing equipment. Examples of acceptable documentation include purchase invoices, bid sheets, or schedules of values. See §3.357 of this title (relating to Labor Relating to Nonresidential Real Property Repair, Remodeling, Restoration, Maintenance, New Construction, and Residential Property). A lump-sum charge to perform new construction as covered in §3.291 of this title (relating to Contractors) is not taxable. The contractor is the consumer of all the goods that the contractor uses in the performance of a lump sum new construction contract, and neither the contractor nor the manufacturer may claim an exemption on otherwise qualifying manufacturing equipment.

(j) A taxpayer who claims an exemption under this section must prove that the exemption applies and that no exclusion under subsection (c) of this section applies.

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 June 20, 2001.

TRD-200103492
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: July 10, 2001
Proposal publication date: February 2, 2001
For further information, please call: (512) 463-3699

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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

The State Pension Review Board (hereafter referred to as the Board) adopts new §604.1, concerning Historically Underutilized Businesses without changes to the text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3205) and will not be republished. The new rule will incorporate by reference the rules adopted by the General Services Commission (GSC) for historically underutilized businesses. The new rule conforms with Texas Government Code, §2161.003 which directed state agencies to adopt the GSC rules regarding historically underutilized businesses (HUB) as the agencies' own rules. The GSC rules appear in 1 Texas Administrative Code §§111.11-111.27. The Board's proposed rule adopts by reference GSC's rules.

The GSC rules being adopted by reference provide for a policy and a purpose for the rules, definitions applicable to the HUB rules, annual procurement HUB utilization goals, subcontracting requirements, agency planning responsibilities, state agency reporting requirements, a HUB certification process, protests from denial of HUB applications, a HUB recertification process, revocation provisions, certification and compliance reviews, compilation of a HUB directory, HUB graduation procedures, review and revisions of GSC's HUB program, a memorandum of understanding between GSC and the Texas Department of Economic Development concerning technical assistance and budgeting for the HUB program, HUB Coordinator responsibilities, HUB forum programs for state agencies, and a mentor-protégé program.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Government Code Title 8, Subtitle A, §801.201, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable for the conducting business and performing its duties.

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

Filed with the Office of the Secretary of State on June 25, 2001.

TRD-200103609
Lynda Baker
Administrative Assistant
State Pension Review Board
Effective date: July 15, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 463-1736

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PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Texas Department of Protective and Regulatory Services (TDPRS) adopts the repeal of §§700.337-700.344 and 700.346-700.348; and adopts new §§700.801-700.805, 700.820-700.824, 700.840-700.850, 700.860-700.863, 700.880, and 700.881, concerning the adoption assistance program, in its Child Protective Services chapter. New §§700.803, 700.821, 700.822, 700.846, 700.880, and 700.881 are adopted with changes to the proposed text published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2647). The repeal of §§700.337-700.344 and 700.346-700.348, and new §§700.801, 700.802, 700.804, 700.805, 700.820, 700.823, 700.824, 700.840-700.845, 700.847-700.850, and 700.860-700.863 are adopted without changes to the proposed text and will not be republished. The new sections are adopted in new Subchapter H, Adoption Assistance Program.

The justification for the repeals and new sections is to simplify the language of the adoption assistance rules so they are clearer to the public and private child-placing agencies. The new sections are intended to facilitate understanding of the law, eligibility requirements and application procedures, and enable private child-placing agencies to better fulfill their obligation to inform adoptive parents of the assistance benefits which may be available if they adopt a special needs child. The new sections are part of TDPRS's strategic plan initiative to review and revise rules to eliminate redundancy and conflict; maximize uniformity across program lines; and promote efficiency, effectiveness and accountability. In drafting the new rules, staff used the question and answer style as well as other plain language techniques.

The repeals and new sections will function by being better organized and easier to understand.

No comments were received regarding adoption of the repeals and new sections. TDPRS, however, is adopting the following sections with non-substantive changes to enhance clarity, consistency, and understanding of the rules. In §700.803(a), TDPRS revised the last sentence to clarify who is eligible for the state paid adoption assistance program. In §700.821(2)(A), TDPRS inserted the word "order" to make it clear that a court order is required for a "removal." In §700.822(a), TDPRS changed the word "whom" to "which" in the first sentence so that proper English is used. In §700.846(a), TDPRS replaced the word "is" in the first sentence with the phrase "cannot be before" to enhance clarity and consistency within the subsection. In §700.880(b), the first sentence was reworded to enhance clarity and to track more closely the language in the federal regulation on hearings. In §700.881(a)(2), the sentence was reworded to enhance clarity

and understanding. Also, in the title of Division 5, TDPRS eliminated the word "Fair" in referring to hearings, which makes the title consistent with the rules in that division.

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §§700.337 - 700.344, 700.346 - 700.348

The repeals are adopted under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The repeals implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

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 June 22, 2001.

TRD-200103568
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: July 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §§700.801 - 700.805

The new sections are adopted under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.803. Do all children placed for adoption by PRS get adoption assistance?

(a) No. Only a special needs child, in an approved adoptive placement, can qualify for adoption assistance. When we place a child for adoption, we first determine whether the child is eligible under Title IV-E. If the child is not eligible under Title IV-E but the income and resource limitations are met, then we qualify the child for the state adoption assistance program.

(b) To receive any adoption assistance benefits, you must sign an agreement before the adoption is final. Exceptions can be made to this requirement only in certain circumstances, as described in §700.881 of this title (relating to Can my child still get benefits if I did not sign an agreement before the adoption?).

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3437

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DIVISION 2. TITLE IV-E ELIGIBILITY REQUIREMENTS

40 TAC §§700.820 - 700.824

The new sections are adopted under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.821. What are the additional Title IV-E eligibility requirements?

A special needs child must be in an adoptive placement and meet one of the following conditions to be eligible for Medicaid and possible monthly payments under an agreement:

(1) The child is eligible for Supplemental Security Income (SSI) benefits, as determined by the Social Security Administration (SSA) during the adoptive placement;

(2) We determine that the child is AFDC eligible both:

(A) in the month that court proceedings began which resulted in the order removing the child from the home; and

(B) in the month the adoption petition is filed;

(3) We already determined that the child was eligible for Title IV-E foster care assistance; or

(4) The child lives with a minor parent in foster care, and the child's costs are included in the Title IV-E foster care payments being made on behalf of the minor parent.

§700.822. How do you determine whether the child was AFDC eligible?

(a) To determine whether the child was AFDC eligible, we must consider the detailed circumstances of the home of the parent or relative from which the court ordered the child to be removed. If the child was no longer living in the home when the court ordered removal,

(1) the child must have been living there at some point during the six months before the court removal proceedings began; and

(2) we must determine that the child would have been eligible for AFDC assistance had the child still been living in that home during the month the court proceedings began.

(b) We must also determine whether the child is still AFDC eligible at the time the adoption petition is filed.

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: July 12, 2001
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For further information, please call: (512) 438-3437

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DIVISION 3. APPLICATION PROCESS, AGREEMENTS, AND BENEFITS

40 TAC §§700.840 - 700.850

The new sections are adopted under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.846. How is the effective date of the agreement determined?

(a) The effective date of the agreement cannot be before the month in which the child meets all eligibility requirements. If the child already meets all eligibility requirements when you apply, the effective date of the agreement cannot be more than 12 months before we receive your complete application. Benefits are not available for any period of time before the effective date of the agreement.

(b) The effective date of the agreement is always the first day of the month. A child cannot receive Medicaid and monetary payments from both the foster care and adoption assistance programs in the same month. If we are making foster care maintenance payments for the child, adoption assistance benefits begin the month after the foster care payments stop.

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 June 22, 2001.

TRD-200103571
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: July 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 438-3437

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DIVISION 4. CHANGES IN CIRCUMSTANCES

40 TAC §§700.860 - 700.863

The new sections are adopted under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3437

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DIVISION 5. APPEALS AND HEARINGS

40 TAC §700.880, §700.881

The new sections are adopted under Human Resources Code (HRC), §40.029, which provides the department with the authority to propose and adopt rules in compliance with state law and to implement departmental programs.

The new sections implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.880. What are my rights to appeal a PRS decision regarding adoption assistance benefits?

(a) You have the right to request a hearing whenever adoption assistance benefits are denied, delayed, suspended, reduced, or terminated. A hearing is also available when the processing of your application is unreasonably delayed. The hearing, as described in §730.1102 of this title (relating to Definitions), provides you the opportunity to appeal a decision made in a local PRS office to a higher authority within PRS.

(b) We must receive your written request for a hearing no later than 90 days after our action that you are appealing. At the hearing, you can represent yourself or have another person, including an attorney, represent you.

(c) There is no right to appeal our decision to provide you all the benefits available, including the maximum monthly payment allowed, as described in §700.844 of this title (relating to What is the maximum amount for monthly payments?).

§700.881. Can my child still get benefits if I did not sign an agreement before the adoption?

(a) Yes, but only after you request a hearing and show that there is good reason to excuse your failure to have a signed agreement. Some good reasons that provide for a hearing are:

(1) We placed your child for adoption but did not inform you of the adoption assistance program before the adoption was final.

(2) We or the LCPA, whichever placed the child, knew facts relevant to the child's eligibility for adoption assistance but did not disclose them to you before the adoption.

(3) The child's physical, mental, or emotional handicapping condition could not be diagnosed before the adoption, but was later diagnosed by an appropriately qualified professional as having existed at the time of the adoptive placement.

(4) We made an error in determining that your child was not eligible before the adoption was final.

(5) We denied you assistance because of a means test.

(b) In the hearing, you have the burden to prove both:

(1) your reason for not having a signed agreement before the adoption; and

(2) that your child met all eligibility requirements before the adoption.

(c) If we agree that your child was eligible before the adoption and your failure to have a signed agreement should be excused, we can sign an agreed order with you and avoid having a hearing. The hearing officer must approve the agreed order, and you must sign an agreement consistent with its provisions, before you can receive benefits.

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: July 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

The Texas Department of Protective and Regulatory Services (TDPRS) adopts the repeal of §700.516, new §700.516, and an amendment to §700.605, without changes to the proposed text published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2653).

The justification for the sections is to revise the rules concerning administrative review of investigation findings (ARIF) to address recent changes in the program. The adoption also reorganizes and simplifies the rules to provide persons designated as perpetrators of child abuse or neglect and the general public with an up-to-date, clear, succinct and legally sufficient statement of the person's rights and the agency's obligations and responsibilities in conducting administrative reviews of investigation findings.

The adoption will function by ensuring that the sections are clearer and easier to understand. This will allow persons found to have abused or neglected children to better understand the process by which they can seek to challenge the findings of the investigation involving them.

No comments were received regarding adoption of the sections.

40 TAC §700.516

The repeal is adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The repeal implements the Texas Family Code, §261.309, which requires that TDPRS by rule establish policies and procedures to resolve complaints relating to and conduct reviews of child abuse or neglect investigations conducted by TDPRS.

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3437

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40 TAC §700.516

The new section is adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The new section implements the Texas Family Code, §261.309, which requires that TDPRS by rule establish policies and procedures to resolve complaints relating to and conduct reviews of child abuse or neglect investigations conducted by TDPRS.

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER F. RELEASE HEARINGS

40 TAC §700.605

The amendment is adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The amendment implements the Texas Family Code, §261.309, which requires that TDPRS by rule establish policies and procedures to resolve complaints relating to and conduct reviews of child abuse or neglect investigations conducted by TDPRS.

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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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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For further information, please call: (512) 438-3437

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CHAPTER 701. COMMUNITY INITIATIVES
SUBCHAPTER B. COMMUNITIES IN SCHOOLS

40 TAC §701.271

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §701.271, without changes to the proposed text published in the May 11, 2001, issue of the *Texas Register* (26 TexReg 3475).

The justification for the amendment is to allow TDPRS some flexibility in implementing Communities In Schools (CIS) funding allocation methodology. This flexibility may be used to limit the amount of money a local CIS program might lose due to a new biennial allocation calculation. Failure to limit such losses could significantly impact service delivery by many local CIS programs.

The amendment will function by limiting disruption to local CIS programs because of a reduction of state funding.

During the public comment period, TDPRS received comments from 26 CIS board members, nine CIS executive directors, one CIS program director, two school district superintendents, a school principal, Senator Troy Fraser, a pastor, and a police chief in support of the rule.

The amendment is adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs, and the Texas Family Code, §264.746, which authorizes the Texas Department of Protective and Regulatory Services to develop and implement an equitable funding formula for the funding of local Communities In Schools programs.

The amendment implements the Texas Family Code, §264.746.

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

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TRD-200103564

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: September 1, 2001

Proposal publication date: May 11, 2001

For further information, please call: (512) 438-3437

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CHAPTER 720. 24-HOUR CARE LICENSING

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§720.31, 720.120, 720.131, 720.133, 720.135, 720.137, 720.201, 720.203, 720.205, 720.207, 720.243, 720.305, 720.326, 720.361, 720.363, 720.365, 720.367, 720.368, 720.370, 720.372, 720.374, 720.420, 720.423, 720.440, 720.501, 720.506, 720.508, 720.520, 720.523, 720.530, 720.540, 720.550, 720.570, 720.916, 720.923, and 720.1503- 720.1506; and adopts the repeal of §§720.424, 720.425, 720.447, 720.509-720.511, 720.531-720.534, 720.547, 720.557, and 720.1507, in its 24-Hour Care Licensing chapter. Section 720.31 is adopted with changes to the proposed text published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2655). The amendments to §§720.120, 720.131, 720.133, 720.135, 720.137, 720.201, 720.203, 720.205, 720.207, 720.243, 720.305, 720.326, 720.361, 720.363, 720.365, 720.367, 720.368, 720.370, 720.372, 720.374, 720.420, 720.423, 720.440, 720.501, 720.506, 720.508, 720.520, 720.523, 720.530, 720.540, 720.550, 720.570, 720.916, 720.923, and 720.1503-720.1506, and the repeal of §§720.424, 720.425, 720.447, 720.509-720.511, 720.531-720.534, 720.547, 720.557, and 720.1507 are adopted without changes to the proposed text and will not be republished.

The justification for the sections is to delete obsolete information concerning behavior intervention. TDPRS adopted new §§720.1001-720.1013 to govern the use of behavior intervention effective September 1, 2000. Those rules established precedence over all the other behavior intervention information in Chapter 720. However, the obsolete rules create confusion and TDPRS is deleting them. The sections also change obsolete definitions in the residential child care minimum standards to bring the rules up to date.

The adopted sections will function by deleting obsolete information.

No comments were received regarding adoption of the sections. TDPRS, however, is adopting §720.31 with a change. Instead of deleting subsection (a), it has been added back and revised to clarify that the section refers to discipline policies and not behavior intervention policies. The words "management of problem behavior" have been changed to "methods used for discipline," and the remaining subsections have been renumbered.

SUBCHAPTER A. STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §720.31

The amendment is adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose

and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendment implements the Human Resources Code, §42.029 and §42.042.

§720.31. Problem Management.

(a) The child-placing agency must have written policies to guide caregivers in methods used for discipline of children in substitute care or adoptive placement prior to consummation. The policies must also include measures for positive responses to appropriate behavior. The agency must give copies of the policies to staff, foster parents, adoptive parents, and to birth parents or managing conservators.

(b) Disciplinary measures used by caregivers must:

(1) be consistent with the agency's policies;

(2) not be physically or emotionally damaging to the child; and

(3) be individualized to meet each child's needs.

(c) Only adult caregivers may discipline a child.

(d) Children must not be subjected to any harsh, cruel, unusual, unnecessary, demeaning, or humiliating punishment.

(e) Children must not be denied food, mail, or visits with their families as punishment.

(f) Children must not be threatened with the loss of placement.

(g) The reasons for any punishment or restriction must be explained to the child when the measures are imposed.

(h) Physical punishment must not be used with any child placed in substitute care or in an adoptive placement prior to consummation of the adoption.

(i) If a child is restricted to a foster or adoptive home for more than 24 hours, the restrictions must be recorded in the child's record.

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER B. STANDARDS FOR AGENCY HOMES

40 TAC §720.120

The amendment is adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendment implements the Human Resources Code, §42.029 and §42.042.

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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C. Ed Davis
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For further information, please call: (512) 438-3437

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SUBCHAPTER C. STANDARDS FOR HABILITATIVE AND THERAPEUTIC AGENCY HOMES

40 TAC §§720.131, 720.133, 720.135, 720.137

The amendments are adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendments implement the Human Resources Code, §42.029 and §42.042.

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. STANDARDS FOR HABILITATIVE AND THERAPEUTIC FAMILY HOMES

40 TAC §§720.201, 720.203, 720.205, 720.207

The amendments are adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department

programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendments implement the Human Resources Code, §42.029 and §42.042.

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. STANDARDS FOR FOSTER FAMILY HOMES

40 TAC §720.243

The amendment is adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendment implements the Human Resources Code, §42.029 and §42.042.

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. STANDARDS FOR FOSTER GROUP HOMES

40 TAC §720.305, §720.326

The amendments are adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendments implement the Human Resources Code, §42.029 and §42.042.

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. STANDARDS FOR HABILITATIVE AND THERAPEUTIC GROUP HOMES RESPONSIBLE TO A CHILD-PLACING AGENCY AND FOR INDEPENDENT HABILITATIVE AND THERAPEUTIC GROUP HOMES

40 TAC §§720.361, 720.363, 720.365, 720.367, 720.368, 720.370, 720.372, 720.374

The amendments are adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendments implement the Human Resources Code, §42.029 and §42.042.

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. CONSOLIDATED STANDARDS FOR 24-HOUR CARE FACILITIES

40 TAC §§720.420, 720.423, 720.440, 720.501, 720.506, 720.508, 720.520, 720.523, 720.530, 720.540, 720.550, 720.570

The amendments are adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendments implement the Human Resources Code, §42.029 and §42.042.

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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40 TAC §§720.424, 720.425, 720.447, 720.509 - 720.511, 720.531 - 720.534, 720.547, 720.557

The repeals are adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The repeals implement the Human Resources Code, §42.029 and §42.042.

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 M. STANDARDS FOR EMERGENCY SHELTERS

40 TAC §720.916, §720.923

The amendments are adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendments implement the Human Resources Code, §42.029 and §42.042.

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 S. STANDARDS FOR CHILD-CARE FACILITIES SERVING CHILDREN WITH AUTISTIC-LIKE BEHAVIOR

40 TAC §§720.1503 - 720.1506

The amendments are adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendments implement the Human Resources Code, §42.029 and §42.042.

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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40 TAC §720.1507

The repeal is adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The repeal implements the Human Resources Code, §42.029 and §42.042.

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 725. GENERAL LICENSING PROCEDURES

SUBCHAPTER OO. APPEALS OF LICENSING STAFF DECISIONS

40 TAC §725.4003

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §725.4003, with changes to the proposed text published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2669).

The justification for the amendment is to update the references to violations of standards that pose a risk to the health and safety of children to incorporate the behavior intervention rules that were effective September 1, 2000.

The amendment will function by deleting obsolete references, and adding correct references.

No comments were received regarding adoption of the amendment. TDPRS, however, is adopting the section with two changes. Subsection (c)(7)(C) is adopted with a change to correct the rule reference. Subsection (c)(12)(C) is adopted with a change to correct the title of §720.305.

The amendment is adopted under the Human Resources Code (HRC), §42.029, which authorizes the department to propose and adopt rules to facilitate implementation of department programs; and HRC, §42.042, which gives the department the authority to promulgate rules to carry out the statute and to promulgate minimum standards for licensed child-care facilities and registered family homes.

The amendment implements the Human Resources Code, §42.029 and §42.042.

§725.4003. Operations During Appeal of Denial or Revocation.

(a) The department's decision to deny or revoke a license, certification, registration, or listing is final and appealable to SOAH on the date the facility or listed family home receives a letter from the department indicating the denial or revocation. However, the facility or listed family home may continue to operate during the appeal to SOAH unless the denial or revocation is based on a violation that poses a risk to the health and safety of children. The department will notify the facility or family home if it cannot operate because of a violation that poses a risk to the health and safety of children.

(b) The facility or listed family home may seek injunctive relief to allow continued operation during an appeal from a district court in Travis County or in the county where the facility or family home is located.

(c) Violations of the following standards pose a risk to the health and safety of children:

(1) Registered Family Homes.

(A) §715.102(e) and (g) of this title (relating to Caregiver Qualifications);

(B) §715.103(a)-(c) of this title (relating to People in the Home);

(C) §715.104 of this title (relating to the Number of Children in Care);

(D) §715.106(a) and (d)(1), (3), and (4) of this title (relating to Health and Safety);

(E) §715.107(a), (b), and (d) of this title (relating to Child Care).

(2) Kindergartens and Nursery Schools.

(A) §715.202(e) of this title (relating to General Administration);

(B) §715.205(f) of this title (relating to Director Qualifications);

(C) §715.206 of this title (relating to Director Responsibilities);

(D) §715.207(e), (g)-(l), (n), and (o) of this title (relating to Staff Qualifications and Responsibilities);

(E) §715.209 of this title (relating to Staff-Child Ratio);

(F) §715.210(c) of this title (relating to Space);

(G) §715.215 of this title (relating to Fire);

(H) §715.216 of this title (relating to Sanitation);

(I) §715.217 of this title (relating to Safety);

(J) §715.219 of this title (relating to Illness or Injury);

(K) §715.220 of this title (relating to Medications);

(L) §715.223(b) and (e) of this title (relating to Food Service);

(M) §715.224(a) and (b)(2) and (5)-(7) of this title (relating to Operation);

(N) §715.225 of this title (relating to Discipline and Guidance);

(O) §715.226 of this title (relating to Children with Need for Special Care);

(P) §715.227 of this title (relating to Water Activities);

(Q) §715.228 of this title (relating to Transportation).

(3) Schools: Grades Kindergarten and Above.

(A) §715.302(e) of this title (relating to General Administration);

(B) §715.305(c) of this title (relating to Director Qualifications);

(C) §715.306 of this title (relating to Director Responsibilities);

(D) §715.307(d), (f)-(k), (m), and (o) of this title (relating to Staff Qualifications and Responsibilities);

(E) §715.309 of this title (relating to Staff-Child Ratio);

(F) §715.310(c) of this title (relating to Space);

(G) §715.315 of this title (relating to Fire);

(H) §715.316 of this title (relating to Sanitation);

(I) §715.317 of this title (relating to Safety);

(J) §715.319 of this title (relating to Illness or Injury);

(K) §715.320 of this title (relating to Medications);

(L) §715.323(b) and (e) of this title (relating to Food Service);

(M) §715.324(a) and (b)(2) and (5)-(7) of this title (relating to Operation);

(N) §715.325 of this title (relating to Discipline and Guidance);

(O) §715.326 of this title (relating to Children with Need for Special Care);

(P) §715.327 of this title (relating to Water Activities);

(Q) §715.328 of this title (relating to Transportation).

(4) Day Care Centers.

(A) §715.406(c) and (d) of this title (relating to Parental Communication);

(B) §715.407 of this title (relating to Personnel Restrictions for Criminal History and Central Registry Background);

(C) §715.408(b)(2)(A) of this title (relating to Director Qualifications and Responsibilities);

(D) §715.409(c)(1)(A)-(D) and (c)(3)-(5) of this title (relating to Staff Qualifications and Responsibilities);

(E) §715.415 of this title (relating to Discipline and Guidance);

(F) §715.417 of this title (relating to Child/Staff Ratios and Groupings);

(G) §715.418 of this title (relating to Night Care);

(H) §715.419 of this title (relating to Additional Requirements for Children under 18 Months Old);

(I) §715.420(a), (b), (d), and (g) of this title (relating to Field Trips);

(J) §715.421 of this title (relating to Water Activities);

(K) §715.422 of this title (relating to Transporting Children);

(L) §715.423 of this title (relating to Safety);

(M) §715.424 of this title (relating to Sanitation);

(N) §715.425 of this title (relating to Fire, Fire Safety, and Emergency Precautions);

(O) §715.426(a), (e), and (f) of this title (relating to Illness and Injury);

(P) §715.427 of this title (relating to Medications).

(5) Group Day Care Homes.

(A) §715.605(b) of this title (relating to Director Qualifications);

(B) §715.606 of this title (relating to Director Responsibilities);

(C) §715.607(c) and (f)-(m) of this title (relating to Staff Qualifications and Responsibilities);

(D) §715.609 of this title (relating to Staff-Child Ratio);

(E) §715.614 of this title (relating to Fire);

(F) §715.615 of this title (relating to Sanitation);

(G) §715.616 of this title (relating to Safety);

(H) §715.618 of this title (relating to Illness or Injury);

(I) §715.622(a) and (b) of this title (relating to Food Service);

(J) §715.624(a) and (b)(2) and (5)-(7) of this title (relating to Operation);

(K) §715.625 of this title (relating to Discipline and Guidance);

(L) §715.626 of this title (relating to Infant and Toddler Care);

(M) §715.627 of this title (relating to Children with Need for Special Care);

(N) §715.628 of this title (relating to Night Care);

(O) §715.629 of this title (relating to Water Activities);

(P) §715.630 of this title (relating to Transportation).

(6) Drop-In Care Centers.

(A) §715.702(d) and (e) of this title (relating to General Administration);

(B) §715.705(f) of this title (relating to Director Qualifications);

(C) §715.706 of this title (relating to Director Responsibilities);

(D) §715.707(c), (e)-(j), (l), and (m) of this title (relating to Staff Qualifications and Responsibilities);

(E) §715.709 of this title (relating to Staff-Child Ratio);

(F) §715.710(c) of this title (relating to Space);

(G) §715.715 of this title (relating to Fire);

(H) §715.716 of this title (relating to Sanitation);

(I) §715.717 of this title (relating to Safety);

(J) §715.719 of this title (relating to Illness or Injury);

(K) §715.720 of this title (relating to Medications);

(L) §715.723(a), (b), and (e) of this title (relating to Food Service and Nutrition);

(M) §715.724(a) and (c)(2) and (5)-(7) of this title (relating to Operation);

(N) §715.725 of this title (relating to Discipline and Guidance);

(O) §715.726(a) of this title (relating to Infant Care);

(P) §715.727 of this title (relating to Children with Need for Special Care);

(Q) §715.728 of this title (relating to Night Care);

(R) §715.729 of this title (relating to Transportation).

(7) Child-Placing Agencies.

(A) §720.29(a)(1)-(3) of this title (relating to Children's Rights);

(B) §720.30(a)(1) and (3)-(7) and (b)(3)-(5) of this title (relating to Medical and Dental Care);

(C) §720.31(b)(2)-(3), (c)-(f), and (h) of this title (relating to Problem Management);

(D) §720.32(2) and (4) of this title (relating to Serious Incident Reports);

(E) §720.33(5) of this title (relating to Client Records);

(F) §720.35(1)-(6) of this title (relating to General Personnel Requirements);

(G) §720.38(b) of this title (relating to Foster Parent and Agency Home Child-Care Staff);

(H) §720.39(b)(3) and (c)(3)(A) of this title (relating to Training Requirements);

(I) §720.41(c)(1), (d), (e), and (g) of this title (relating to Substitute Care Intake);

(J) §720.42(b)-(d) of this title (relating to Substitute Care Placement);

(K) §720.43(e) of this title (relating to Initial Service Plan);

(L) §720.45(b)(4) of this title (relating to Subsequent Placement);

(M) §720.47(b)(4)-(5), (c), and (d)(2)-(3) of this title (relating to Foster Care Study);

(N) §720.48(a)-(d) of this title (relating to Foster Home Verification);

(O) §720.49(a), (b), and (d) of this title (relating to Foster Home Management);

(P) §720.52(b), (c), and (d) of this title (relating to Birth Parent Preparation);

(Q) §720.53(b) of this title (relating to Adoptive Child Preparation);

(R) §720.55(b)(1) and (4) and (c)(2), (4), and (5) of this title (relating to Required Information);

(S) §720.56(d) of this title (relating to Pre-Placement Requirements);

(T) §720.57(c)-(e) and (g) of this title (relating to Adoptive Placement Requirements);

(U) §720.58(a)(2), (b), and (e) of this title (relating to Pre-Adoption Consummation Activities);

(V) §720.66 of this title (relating to Serious Incident Reporting Requirements);

(W) §720.67(1), (2), (5)(A)-(C), (H), and (I) of this title (relating to Requirements: Health, Social, Educational, and Genetic History Report).

(8) Agency Homes.

(A) §720.117(a), (c), (e), and (f) of this title (relating to Foster Family Qualifications);

(B) §720.118(a) and (c) of this title (relating to Admission);

(C) §720.120(c) of this title (relating to Children's Rights);

(D) §720.121 of this title (relating to Nutrition);

(E) §720.122(a)-(b) of this title (relating to Environment);

(F) §720.123(1) and (3) of this title (relating to Medical);

(G) §720.125(a)-(b) of this title (relating to Emergency Reports);

(H) §720.126(a)-(b) of this title (relating to Other Requirements).

(9) Habilitative and Therapeutic Agency Homes.

(A) §720.131(a) of this title (relating to Personnel Staffing Standards for Habilitative Agency Homes);

(B) §720.133(c)(1), (d)(1)-(6), and (e)(2) of this title (relating to Child Care, Development, and Training Standards for Habilitative Agency Homes);

(C) §720.134(a) of this title (relating to Buildings, Grounds, and Equipment Standards for Habilitative Agency Homes);

(D) §720.135(a) of this title (relating to Personnel Standards for Therapeutic Agency Homes);

(E) §720.137(c)(1)-(5) and (7), and (d) of this title (relating to Child Care, Development, and Training Standards for Therapeutic Agency Homes).

(10) Habilitative and Therapeutic Family Homes.

(A) §720.201(a) of this title (relating to Personnel - Staffing for Habilitative Family Homes);

(B) §720.203(c)(1), (d)(1)-(2), (4)-(6), and (8), and (e)(2) of this title (relating to Child Care, Development, and Training Standards for Habilitative Family Homes);

(C) §720.204 of this title (relating to Buildings, Grounds, and Equipment Standards for Habilitative Family Homes);

(D) §720.205(a) of this title (relating to Personnel Standards for Therapeutic Family Homes);

(E) §720.207(c)(1)-(2), (4)-(6), and (8), and (d) of this title (relating to Child Care, Development, and Training Standards for Therapeutic Family Homes).

(11) Foster Family Homes.

(A) §720.231(a), (c), (d) of this title (relating to Qualifications);

(B) §720.233(a), (c), and (d) of this title (relating to Reports and Records);

(C) §720.234(d) and (e) of this title (relating to Other Requirements);

(D) §720.235(e) of this title (relating to Admission Policies);

(E) §720.243(h)(1), (2), (4), (5), and (8)-(10) of this title (relating to Children's Rights and Privileges);

(F) §720.244(b)(1) and (3), and (c)-(e) of this title (relating to Medical and Dental Care);

(G) §720.245 of this title (relating to Nutrition);

(H) §720.246 of this title (relating to Health and Safety);

(I) §720.247(a) of this title (relating to Environment).

(12) Foster Group Homes.

(A) §720.302(a), (c), and (e)-(g) of this title (relating to Requirements for Home Responsible to Child-Placing Agency);

(B) §720.303(a), (c)(3), (d)-(f), and (h) of this title (relating to Staffing and Training);

(C) §720.305 (f)-(g) of this title (relating to Children's Rights and Privileges in Homes Responsible to a Child-Placing Agency);

(D) §720.306(a)(1), (3), and (6) of this title (relating to Medical and Dental Care);

(E) §720.307(2)-(3) of this title (relating to Nutrition);

(F) §720.308(a), (c), and (d) of this title (relating to Health and Safety);

(G) §720.309(a) of this title (relating to Environment);

(H) §720.310 of this title (relating to Food Preparation, Storage, and Equipment);

(I) §720.311(a)-(b) of this title (relating to Reports and Records);

(J) §720.312(a) of this title (relating to Other Requirements);

(K) §720.316(a) and (c)-(f) of this title (relating to Personnel Requirements for Independent Foster Group Homes);

(L) §720.317(a), (c), and (d) of this title (relating to Staffing of Independent Foster Group Homes);

(M) §720.318(c) of this title (relating to Training of Staff in Independent Foster Group Homes);

(N) §720.319(a), (b), (f), and (g) of this title (relating to Admission Policies of Independent Foster Group Homes);

(O) §720.326(l)(1)-(2), (4)-(5) and (7)-(9) of this title (relating to Children's Rights and Privileges in an Independent Foster Group Home);

(P) §720.327(d), (e), and (f)(1), (3), and (6) of this title (relating to Medical and Dental Care in the Independent Foster Group Home);

(Q) §720.328(3) of this title (relating to Nutrition);

(R) §720.330(a), (c), and (d) of this title (relating to Health and Safety in the Independent Foster Group Home);

(S) §720.331(a) of this title (relating to Environment of the Independent Foster Group Home);

(T) §720.332 of this title (relating to Food Preparation, Storage, and Equipment in the Independent Foster Group Home);

(U) §720.335(a), (c), (d), (g), and (h) of this title (relating to Emergency Reports and Records in the Independent Foster Group Home).

(13) Habilitative and Therapeutic Group Homes Responsible to a Child-Placing Agency and for Independent Habilitative and Therapeutic Group Homes.

(A) §720.368(a) of this title (relating to Personnel Staffing Standards for Independent Habilitative Group Homes);

(B) §720.370(c)(1), (d)(1)-(6), and (8), and (e)(2) of this title (relating to Child Care, Development, and Training Standards for Independent Habilitative Group Homes);

(C) §720.371 of this title (relating to Buildings, Grounds, and Equipment Standards for Independent Habilitative Group Homes);

(D) §720.372(a) of this title (relating to Personnel Standards for Independent Therapeutic Group Homes);

(E) §720.374(c)(1)-(2), (4)-(6), and (8) of this title (relating to Child Care, Development, and Training Standards for Independent Therapeutic Group Homes).

(14) 24-Hour Care Facilities.

(A) §720.402(c) of this title (relating to Governing Body);

(B) §720.403(a) of this title (relating to General Administration);

(C) §720.406(b), (d), and (e) of this title (relating to Administrative Reports and Records);

(D) §720.408(c), (d), and (f) of this title (relating to Personnel Policies and Practices);

(E) §720.410(d) and (e) of this title (relating to Volunteers);

(F) §720.411(a)(1) and (b) of this title (relating to General Staffing);

(G) §720.414(a)-(c) of this title (relating to Staff-Child Ratio);

(H) §720.415(a)(2), (b), and (c) of this title (relating to Training and Orientation);

(I) §720.417(d) and (e) of this title (relating to Admission Procedures);

(J) §720.423(b)-(f) of this title (relating to Problem Management);

(K) §720.426(a) of this title (relating to Child Care);

(L) §720.427(a)-(d), (f), (h), (k), (l)(1), (p), (q), and (r)(2) of this title (relating to Medical and Dental Care);

(M) §720.428(a) and (e) of this title (relating to Nutrition);

(N) §720.429(a) and (c)-(f) of this title (relating to Health and Safety);

(O) §720.430(b)-(d) of this title (relating to Environment);

(P) §720.431 of this title (relating to Transportation);

(Q) §720.432(b) of this title (relating to Food Preparation, Storage, and Equipment);

(R) §720.441 of this title (relating to Staff-Child Ratio-Institutions Providing Basic Child Care);

(S) §720.446(a), (d), and (e) of this title (relating to Problem Management: Institutions Providing Basic Child Care);

(T) §720.449 of this title (relating to Environment - Institutions Providing Basic Child Care);

(U) §720.502 of this title (relating to Staff-Child Ratio - Institutions Serving Mentally Retarded Children);

(V) §720.508 of this title (relating to Problem Management - Institutions Serving Mentally Retarded Children);

(W) §720.514 of this title (relating to Health and Safety - Institutions Serving Mentally Retarded Children);

(X) §720.515(c) of this title (relating to Environment - Institutions Serving Mentally Retarded Children);

(Y) §720.522 of this title (relating to Staff Child Ratio - Residential Treatment Centers);

(Z) §720.523(a) and (c) of this title (relating to Training - Residential Treatment Centers);

(AA) §720.530 of this title (relating to Problem Management - Residential Treatment Centers);

(BB) §720.536 of this title (relating to Health and Safety - Residential Treatment Centers);

(CC) §720.537 of this title (relating to Environment - Residential Treatment Centers);

(DD) §720.541 of this title (relating to Staff-Child Ratio - Halfway Houses);

(EE) §720.546 of this title (relating to Problem Management - Halfway Houses);

(FF) §720.549(b) of this title (relating to Environment - Halfway Houses);

(GG) §720.551 of this title (relating to Staff-Child Ratio - Therapeutic Camps);

(HH) §720.556 of this title (relating to Problem Management - Therapeutic Camps);

(II) §720.559(a)-(b) of this title (relating to Medical and Dental Care -Therapeutic Camps);

(JJ) §720.560 of this title (relating to Environment - Therapeutic Camps);

(KK) §720.571(a), (f), and (g) of this title (relating to Facilities Providing Care for Children and Adults);

(LL) §720.572 of this title (relating to Texas Department of Health - Minimum Standards of Environmental Health for Texas Department of Protective and Regulatory Services Licensed Therapeutic Camps - Permanent Camps);

(MM) §720.573 of this title (relating to Texas Department of Health - Minimum Standards of Environmental Health for Texas Department of Protective and Regulatory Services Licensed Therapeutic Camps - Primitive or Wilderness Camps);

(NN) §720.574 of this title (relating to Additional Minimum Standards for Institutions Serving Mentally Retarded Children with Primary Medical Needs).

(15) Emergency Shelters.

(A) §720.902(d) and (e) of this title (relating to Governing Body Responsibilities);

(B) §720.905(a), (c), (e), (f), (i), and (j) of this title (relating to Reports and Records);

(C) §720.907(a), (e), and (f) of this title (relating to Administrator Qualifications and Responsibilities);

(D) §720.908(b) and (c) of this title (relating to Staffing);

(E) §720.909(a), (b), and (c) of this title (relating to Qualifications and Responsibilities);

(F) §720.910(c)(3) of this title (relating to Training);

(G) §720.912(a)-(c) and (i)-(k) of this title (relating to Admission Policies);

(H) §720.914(b)(2) of this title (relating to Children's Records);

(I) §720.915(c) and (d) of this title (relating to Daily Care);

(J) §720.916(l)(1)-(3) and (5)-(9) of this title (relating to Children's Rights);

(K) §720.917(b)-(g) of this title (relating to Medical and Dental Care);

(L) §720.918(4) of this title (relating to Nutrition);

(M) §720.920(a), (c), and (d) of this title (relating to Health and Safety);

(N) §720.921(a), (c), and (g) of this title (relating to Environment);

(O) §720.922 of this title (relating to Food Preparation, Storage, and Equipment).

(16) Residential Child-Care Facilities, Child-Placing Agencies, and Agency Homes.

(A) §720.1004(b) of this title (relating to Less Restrictive Behavior Interventions);

(B) §720.1005 of this title (relating to Restraint and Seclusion: General Requirements);

(C) §720.1006 of this title (relating to Emergency Medication);

(D) §720.1007 of this title (relating to Personal Restraint);

(E) §720.1008 of this title (relating to Mechanical Restraint);

(F) §720.1009 of this title (relating to Protective Devices);

(G) §720.1010 of this title (relating to Supportive Devices);

(H) §720.1011 of this title (relating to Seclusion);

(I) §720.1012(b)-(d) if this title (relating to Behavior Intervention Training);

(J) §720.1013 of this title (relating to Evaluation of Behavior Interventions).

(17) Child-Care Facilities Serving Children with Autistic-like Behavior.

(A) §720.1501(a) and (c) of this title (relating to Staffing);

(B) §720.1502(b) of this title (relating to Training);

(C) §720.1504(c)(2) of this title (relating to Treatment Plan);

(D) §720.1505(a)-(c), (d)(1)-(2), and (f)-(k) of this title (relating to Behavior Therapy);

(E) §720.1506 of this title (relating to Medical Therapy).

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 June 22, 2001.

TRD-200103546
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: August 1, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 438-3437

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SUBCHAPTER KKK. ADOPTIVE HOME SCREENING

40 TAC §725.6070

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §725.6070, without changes to the proposed text published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2671).

The justification for the amendment is to delete the paragraph of the rule that conflicts with the Multi-Ethnic Placement Act of 1994 (MEPA), as amended (42 USC 622), and with the Removal of Barriers to Interethnic Adoption provisions of 1996 (IEP) (§1808, PL 104- 188).This federal legislation prohibits a child-placing agency, when making a foster or adoptive placement, from considering the race, color or national origin of the child or of the foster or adoptive parents, in almost all circumstances. Child-placing agencies are also prohibited from considering the capacity of prospective foster or adoptive parents to meet the needs of a child relating to race, color or national origin, in almost all circumstances.

The amendment will function by ensuring the rule complies with federal laws.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of department programs.

The amendment implements the Human Resources Code, §40.029, the Multi-Ethnic Placement Act of 1994 (MEPA), as amended (42 USC 622) and the Removal of Barriers to Interethnic Adoption provisions of 1996 (§1808, PL 104-188) (IEP).

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 June 22, 2001.

TRD-200103559
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: August 1, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 438-3437

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CHAPTER 732. CONTRACTED SERVICES
SUBCHAPTER A. GENERAL PROCEDURES

40 TAC §§732.101, 732.103, 732.105, 732.107, 732.109, 732.111, 732.113, 732.115

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§732.101, 732.103, 732.105, 732.107, 732.109, 732.111, 732.113, and 732.115, without changes to the proposed text published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2672).

The justification for the new sections is to incorporate new Health and Human Services Commission (HHSC) contracting rules into this chapter. The new sections are adopted in new Subchapter A, General Procedures.

The new sections will function by ensuring compliance with the HHSC rules.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The new sections facilitate the implementation of all programs of the department. Child Protective Services, Adult Protective Services, Child Care Licensing, and Prevention and Early Intervention all use contracted goods and services to serve the needs of the agency and of the clients of the agency.

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 June 22, 2001.

TRD-200103563
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: July 12, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 438-3437

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 5, concerning Fuel Quality, pursuant to the Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999 (Section 9-10.13). Section 9-10.13 and §2001.039 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 original justification for the rules continues to exist.

As part of the review of Chapter 5, the department is proposing the repeal of §5.2, the expiration provision for Chapter 5. The proposed repeal may be found in the proposed rule section of this issue of the *Texas Register*. The assessment of Title 4, Part 1, Chapter 5, by the department at this time indicates that with the exception of the section proposed for repeal, the reason for readopting without changes all remaining sections in Chapter 5 continues to exist.

The department is accepting comment on the review of Chapter 5. Comments on the review may be submitted within 30 days following the publication of this notice in the *Texas Register* to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711.

TRD-200103602
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 25, 2001

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Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Part 5, Chapter 82 (§§82.1-82.2), relating to Custody of Criminal History Record Information; Open Records Requests; and Charges pertaining to Administration, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 20 days following publication of this notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of the rules review of this chapter is scheduled for the Commission's meeting on August 17, 2001.

The Office of Consumer Credit Commissioner which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Leslie L. Pettijohn, Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to leslie.pettijohn@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200103608
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 25, 2001

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Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners proposes to review Chapter 187 (§§187.1-187.41), concerning Procedure, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The Texas State Board of Medical Examiners will consider, among other things, whether the reasons for adoption of these rules continue to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-200103645

Jerry T. Walker
Interim Executive Director
Texas State Board of Medical Examiners
Filed: June 27, 2001

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas ("Commission") proposes, pursuant to Tex. Gov't Code, §2001.039) the review of §3.83, regarding tax exemption for two-year inactive wells and three- year inactive wells. As part of this review process but in a separate rulemaking, the Commission proposes amendments to §3.83. The proposal regarding the amendments was filed with the *Texas Register* concurrently with this notice of review. The Commission proposes the review and readoption of this section, as amended.

The Commission has determined that the reasons for adopting this rule, with the proposed changes, continue to exist.

Comments may be submitted to Scott Petry, Hearings Examiner, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967, or via electronic mail to scott.petry@rrc.state.tx.us. Comments will be accepted until 5:00 p.m. on the fifteenth day following publication of this notice in the *Texas Register*. For more information, call Scott Petry at (512) 463-6768.

Issued in Austin, Texas on June 21, 2001.

TRD-200103521
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: June 21, 2001

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Adopted Rule Reviews

State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners adopts the review of the rules contained in Title 22, Texas Administrative Code, Part 5, Examining Board, Chapter 115, Extension of Duties of Auxiliary Personnel--Dental Hygiene, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. The proposed review was published in the February 16, 2001, issue of the *Texas Register* (26 TexReg1576).

No comments were received regarding this rule review.

As a result of the agency's review process the State Board of Dental Examiners adopts the amendments to §115.1 and §115.2 and readopts §§115.3, 115.4, 115.10 and 115.20. The adopted amendments can be found in the Adopted Rules section of this issue of the *Texas Register*.

The agency finds that the reasons for originally adopting the rules continue to exist.

This concludes the review of Chapter 115, Extension of Duties of Auxiliary Personnel--Dental Hygiene.

TRD-200103495
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: June 20, 2001

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Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners adopts the review of Chapter 177 (§§177.1-177.16), concerning, Certification of Non-Profit Organizations, pursuant to the Appropriations Act of 1997, House Bill, Article IX, §167. The proposed review was published in the September 15, 2000, issue of the *Texas Register* (25 TexReg 9239).

No comments were received regarding the rule review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 177, Certification of Non-Profit Organizations.

TRD-200103646
Jerry T. Walker
Interim Executive Director
Texas State Board of Medical Examiners
Filed: June 27, 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 315, Pretreatment Regulations for Existing and New Sources of Pollution, which pertains to publicly owned wastewater treatment facilities, in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9- 10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the April 13, 2001 issue of the *Texas Register* (26 TexReg 2855).

CHAPTER SUMMARY

Chapter 315 incorporates rules that the United States Environmental Protection Agency (EPA) adopted in accordance with the National Pollutant Discharge Elimination System (NPDES), Clean Water Act (CWA), §402, to implement national pretreatment standards to control pollutants which pass through or interfere with wastewater treatment processes in publicly owned treatment works (POTWs). The EPA rules describe the objectives of the pretreatment program regulations and provide for requirements no less stringent than those found in the CWA and Texas Water Code (TWC). The EPA rules also set forth the requirements for development of pretreatment programs by POTWs implemented by the Texas Pollutant Discharge Elimination System (TPDES) program, which include the POTWs' legal authority, enforcement response plan, standard operating procedures, and technically based local limits.

Chapter 315 contains one subchapter and has not been revised since its initial effective date. It adopts by reference pretreatment regulations from 40 Code of Federal Regulations (CFR) Part 403 and Appendices A - E which were in effect on the date of TPDES program authorization, as amended, except §403.16. In addition, the rule provides that

where 40 CFR §403.11(b)(2) and §403.11(c) provide procedures for requesting and holding a public hearing, the commission shall instead require notice of and hold a public meeting. The Texas Water Commission adopted the rule, without changes to the federal pretreatment regulations, and notice of the adoption was published in the September 21, 1990 issue of the *Texas Register* (15 TexReg 5501).

ASSESSMENT OF WHETHER THE REASONS FOR THE RULE CONTINUE TO EXIST

The commission determined that the reasons for the rule in Chapter 315 continue to exist. This chapter is necessary to maintain TPDES authorization, which the commission assumed on September 14, 1998. Chapter 315 implements provisions of TWC, §26.047 (Permit Conditions and Pretreatment Standards Concerning Publicly Owned Treatment Works) and §26.1211 (Pretreatment Effluent Standards). Further, this rule was promulgated under authority granted to the commission by TWC, §5.102 and §5.105.

The commission's review of Chapter 315 has revealed the need to make certain revisions to update and clarify the chapter, which the commission intends to address in future rulemaking.

PUBLIC COMMENT

The public comment period closed May 14, 2001, and no comments were received.

TRD-200103625
Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
Filed: June 26, 2001

♦ ♦ ♦

The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 319, General Regulations Incorporated into Permits, 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 April 13, 2001, issue of the *Texas Register* (26 TexReg 2856).

CHAPTER SUMMARY

Chapter 319 provides general requirements for wastewater discharge permits under the Texas Pollutant Discharge Elimination System (TPDES) and commission wastewater permitting programs. This chapter consists of three subchapters: Subchapter A, Monitoring and Reporting System; Subchapter B, Hazardous Metals; and Subchapter C, Public Notice of Spills or Accidental Discharges from Wastewater Facilities Owned or Operated by Local Governments. Subchapter A sets out monitoring and reporting requirements for wastewater discharge permits under the TPDES and commission wastewater permitting programs. Subchapter B sets effluent quality levels for allowable concentrations of hazardous metals that are discharged into or adjacent to surface water in the state. Subchapter C specifies conditions under which notification of a spill must be given to appropriate local government officials and local media, procedures for giving the required notice, content of the notice, and the method of giving notice.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 319 continue to exist. Chapter 319 is authorized under Texas Water Code (TWC), §5.103 which allows the commission to adopt any rules necessary to carry out its powers and duties under the TWC, and under TWC, §26.011, which provides the commission the authority to adopt rules consistent with provisions in the TWC relating to waste discharges. Further, Subchapter A is authorized under TWC, §26.042, which allows the commission to adopt rules relating to monitoring and reporting requirements for those discharging pollutants into or adjacent to water in the state. Subchapter B sets effluent quality levels for hazardous metals as authorized under TWC, §26.011. Lastly, Subchapter C is authorized under TWC, §26.039, which requires the commission to adopt rules specifying the conditions under which notification of a spill must be given to appropriate local government officials and local media, the procedures for giving the required notice, the content of the notice, and the manner of giving notice.

The commission's review of Chapter 319 also revealed that the chapter needs updating to replace references to this agency's predecessor, the Texas Water Commission; to revise citations; to delete an obsolete section; and to reflect changes in authorized analytical test methods for effluent monitoring. The commission intends to propose a future rulemaking to make these and any other needed changes.

PUBLIC COMMENT

The public comment period closed May 14, 2001, and no comments were received.

TRD-200103580
Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
Filed: June 22, 2001

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The Texas Natural Resource Conservation Commission (commission) adopts the rules review and concurrently adopts the repeal of Chapter 343, Oil and Hazardous Substances, in the Adopted Rules section of this issue of the *Texas Register*. The review was conducted 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 notice of intention to review was published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2412).

CHAPTER SUMMARY

Chapter 343 was adopted by the Texas Department of Water Resources (predecessor agency of the commission) with an effective date of February 17, 1978, to implement the Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977, codified as Texas Water Code, Chapter 26, Subchapter G. Chapter 343 provided procedures for immediate and necessary control, containment, removal, and disposal of oil or hazardous substances spills or discharges occurring within coastal lands or waters in the state. In 1983, the 68th Legislature amended the provisions of the Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977, and redesignated the act as the Texas Hazardous Substances Spill Prevention and Control Act. No changes were made to Chapter 343 as a result of the amendments.

Chapter 327, Spill Prevention and Control, was adopted by the commission on April 24, 1996, to implement applicable provisions of the Texas Hazardous Substances Spill Prevention and Control Act. At the time of its adoption, Chapter 327 incorporated the rules in Chapter 343 and updated them to conform with the Texas Hazardous Substances

Spill Prevention and Control Act which superseded the Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 343 no longer exist. The 1983 amendment of the Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977 and its redesignation as the Texas Hazardous Substances Spill Prevention and Control Act made the original 1977 act and the implementing rules in Chapter 343 obsolete. Therefore, the reasons for the rules in Chapter 343 do not continue to exist. The rules in Chapter 327 now implement applicable provisions of the Texas Hazardous Substances Spill Prevention and Control Act and include the rules in Chapter 343, updated to conform with the amended act. Therefore, the commission is concurrently adopting the repeal of Chapter 343.

PUBLIC COMMENT

The public comment period closed on April 23, 2001. No comments on whether the reasons for the rules continue to exist were received.

TRD-200103535
Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
Filed: June 22, 2001

♦ ♦ ♦

The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 351, Regionalization, 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 April 13, 2001, issue of the *Texas Register* (26 TexReg 2857).

CHAPTER SUMMARY

Chapter 351 is based on Texas Water Code (TWC), Subchapter C, Regional and Area-Wide Systems, which encourages and promotes the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state. Within any standard metropolitan statistical area in the state, the commission is authorized to implement this policy by defining areas of regional or area-wide systems and designating system to serve the area defined. In accordance with this authority and TWC, §§26.003, 26.011, and 5.103, the commission adopted rules for the following eight regional areas: Northbelt, Rosillo Creek, East Fork Trinity River, Lower Rio Grande Valley, Harris County Fresh Water Supply District Number 63, Cibolo Creek, Blackhawk, and Vidor Metropolitan Area.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 351 continue to exist. The rules are needed as part of the commission's efforts to promote the development and use of regional and area-wide waste collection, treatment, and disposal systems under TWC, §§26.003 and 26.081 - 26.087.

PUBLIC COMMENT

The public comment period closed on May 14, 2001. No comments on whether the reasons for the rules continue to exist were received.

TRD-200103541
Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
Filed: June 22, 2001

♦ ♦ ♦

Texas Savings and Loan Department

Title 7, Part 4

The Finance Commission of Texas (the "commission") has completed the review of Texas Administrative Code, Title 7, Chapter 61, consisting of §§61.1 - 61.3, relating to Savings and Loan Associations.

Notice of the review was published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2764). No comments were received with respect to these rules. The commission believes that the reasons for adopting these rules continue to exist.

The commission readopts these sections, pursuant to the requirements of the Government Code, §2001.039, and finds that the reasons for adopting these rules continue to exist.

TRD-200103578
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: June 22, 2001

♦ ♦ ♦

The Finance Commission of Texas (the "commission") has completed the review of Texas Administrative Code, Title 7, Chapter 63, comprised of §§63.1 - 63.15, relating to Fees and Charges Pertaining to Savings and Loan Associations.

Notice of the review was published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2764). No comments were received with respect to these rules. The commission believes that the reasons for adopting these rules continue to exist.

The commission readopts these sections, pursuant to the requirements of the Government Code, §2001.039, and finds that the reasons for adopting these rules continue to exist.

TRD-200103577
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: June 22, 2001

♦ ♦ ♦

The Finance Commission of Texas (the "commission") has completed the review of Texas Administrative Code, Title 7, Chapter 64, comprised of §§64.1 - 64.9, relating to Books, Records, Accounting Practices, Financial Statements, Reserves, and Net Worth Pertaining to Savings and Loan Associations.

Notice of the review was published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2764). No comments were received with respect to these rules. The commission believes that the reasons for adopting these rules continue to exist.

The commission readopts these sections, pursuant to the requirements of the Government Code, §2001.039, and finds that the reasons for adopting these rules continue to exist.

TRD-200103576
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: June 22, 2001

♦ ♦ ♦

The Finance Commission of Texas (the "commission") has completed the review of Texas Administrative Code, Title 7, Chapter 79, consisting of §§79.1 - 79.121, relating to Miscellaneous Matters (Books, Records, Accounting Practices, Financial Statements and Reserves; Corporate Activities; Capital and Capital Obligations; Holding Companies; Foreign Savings Banks; Hearings; Fees and Charges; and Statements of Policy) pertaining to Savings Banks.

Notice of the review was published in the April 6, 2001, issue of the *Texas Register* (26 TexReg 2764). No comments were received with respect to these rules. The commission believes that the reasons for adopting these rules continue to exist.

The commission readopts these sections, pursuant to the requirements of the Government Code, §2001.039, and finds that the reasons for adopting these rules continue to exist.

TRD-200103579
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: June 22, 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: 7 TAC §5.1(b)(1)

IMPORTANT

OFFICIAL NOTICE CONCERNING HIGH COST HOME LOANS

YOUR LOAN MAY BE A "HIGH COST LOAN." You are receiving this notice because you have applied for a home loan and the interest rate is expected to be 12 percent or more. The home loan may qualify as a high cost loan.

GET INFORMATION. Before taking out a home loan, it is a good idea to obtain counseling, particularly for high cost home loans. Housing counseling agencies near you provide valuable services for individuals and families, including advice on buying a home, choosing a lender, avoiding foreclosure, and other credit issues.

APPROVED COUNSELORS. Your lender has provided a list of HUD-approved housing counseling agencies in Texas. The list is available from HUD at 888-466-3487 or www.hud.gov.

ADDITIONAL RESOURCES. Find additional information about choosing a home loan at : Texas Department of Banking: www.banking.state.tx.us; Texas Office of Consumer Credit Commissioner: www.occc.state.tx.us; Texas Savings & Loan Department: www.tsld.state.tx.us; U.S. Consumer Gateway: www.consumer.gov; HUD: www.hud.gov; Fannie Mae: www.homepath.com; Federal Reserve: www.federalreserve.gov/consumers.htm

COMPLAINTS OR QUESTIONS CAN BE DIRECTED TO:

TEXAS FINANCE COMMISSION HOME LOAN HOTLINE 8XX-XXX-XXXX
www.fc.state.tx.us email: homeloaninfo@fc.state.tx.us

SHOP AROUND. Be sure to obtain all cost information about your home loan so you can compare terms. Shop with several lenders to compare and obtain the best rates and terms for your loan. Depending on your financial situation, you may qualify for a lower cost loan.

CAN YOU AFFORD IT? Ask yourself if you can afford this loan. If not, you may lose your home. Do not sign any documents until you have read and understand them. You are entitled to have your own attorney review any documents. If you have any questions about the meaning of a document, consult an attorney.

Loan applicant's signature Date

This form is required by Texas Law (Sec. 343.102 Finance Code) and a rule of the Finance Commission of Texas (Sep 2001)

Figure 7 TAC §97.113(b)

For Credit Unions with Total Assets Of:	The Operating Fee is:
Less than $200,000	<etb>$200<et> [$0]
$200,000 but less than $500,000	$450 + $2.21 per $1,000 of the amount over $200,000
$500,000 but less than $1M	$1,113 + $.85 per $1,000 of the amount over $500,000
$1M but less than $2.5M	$1,538 + $.37 per $1,000 of the amount over $1M
$2.5M but less than $5M	$2,093 + .35 per $1,000 of the amount over $2.5M
$5M but less than $10M	$2,968 + $.32 per $1,000 of the amount over $5M
$10M but less than $25M	$4,568 + $.14 per $1,000 of the amount over $10M
$25M but less than $50M	$6,668 + $.17 per $1,000 of the amount over $25M
$50M but less than $100M	$10,918 + $.19 per $1,000 of the amount over $50M
$100M but less than $250M	$20,418 + $.082 per $1,000 of the amount over $100M
$250M but less than $500M	$32,718 + $.076 per $1,000 of the amount over $250M
$500M but less than $750M	$51,718 + $.074 per $1,000 of the amount over $500M
$750M but less than $1,000M	$69,468 + $.071 per $1,000 of the amount over $750M
$1,000M and over	$87,218 + $.069 per $1,000 of the amount over $1,000M

Figure: 16 TAC §9.26(a)

§9.26. INSURANCE REQUIREMENTS.

TABLE 1

Category of License	Type of Coverage	Insurance Policy Endorsement Required	Form Required	Statement in Lieu of Required Insurance Filing
All Except P	Workers' Compensation, including Employer's Liability or Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least $150,000; accidental death benefits in the principal amount of at least $100,000; loss of limb or sight on a scale based on principal amount of at least $100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	WC42 06 01, Texas Notice of Material Change	LPG Form 996A	LPG Form 996B
A, B, C, E, O, H, J	General liability coverage including: premises and operations in an amount of at least $300,000 per occurrence and $300,000 aggregate	CG 02 05, Texas Changes Amendment, Cancellation Provisions, or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
A, B, C, E, O	Completed operations or products liability insurance, or both, in an amount of at least $300,000 aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
D, F, G, I, K, L, M, N, P	General liability coverage including: premises and operations in an amount of at least $25,000 per occurrence with a $50,000 policy aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
C, E, H, J, Ultimate Consumer	Motor vehicle coverage: minimum $500,000 ($300,000 for state agencies) combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	TE2326A, Liquefied Petroleum Gas Licensed Motor Vehicle Endorsement Texas Railroad Commission Form Endorsement	LPG Form 997A	LPG Form 997B

Figure: 16 TAC §9.403(a)

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
1-3	additional requirement	See Commission rule §9.114, Odorizing and Reports.
1-4.1	not adopted	See Commission rules §9.27, Application for an Exception to a Safety Rule, and §9.101, Filings Required for Stationary LP-Gas Installations.
1-4.2	not adopted	See Commission rules §9.101, Filings Required for Stationary LP-Gas installations, and §9.102(c), Notice of Stationary LP-Gas Installations.
1-5	additional requirement	See Commission rules in Chapter 9, Subchapter A.
1-6	additional requirement	In addition to definition for "Authority Having Jurisdiction," see Commission rule §9.402(a), Clarification of Certain Terms Used in NFPA 58.
1-6	with changes	Bulk Plant. A facility, the primary purpose of which is the distribution of gas, that receives LP-Gas by tank car, tank truck, or piping, distributing this gas to the end user by portable container (package) delivery, by tank truck, or through gas piping. Such plants have bulk storage [4,001-gallon water capacity or more] ~~[2000 gal (7.6m³) water capacity or more]~~ and usually have container-filling and truck-loading facilities on the premises. Normally, no persons other than the plant management or plant employees have access to these facilities. A facility that transfers LP-Gas from tank cars on a private track directly into cargo tanks is also in this category.
1-6	not adopted	The Commission does not adopted the definition of Low Emission Transfer.
2-2.1.4	additional requirement	See Commission rule §9.135, Unsafe or Unapproved Containers, Cylinders, or Piping.
2-2.1.5	with changes	Cylinders ~~subject to the jurisdiction of DOT regulations~~ shall be filled, continued in service, and transported in accordance with DOT ~~those~~ regulations. Any cylinder with an LP-gas capacity of less than 101 pounds which is beyond the qualification date shall not be filled until requalified by methods prescribed in DOT regulations.
2-2.2.2	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2-2.3.2	with changes	ASME containers of more than 30 gal (0.1m³) through 2000 gal (7.6 m³) water capacity designed to be filled volumetrically ~~and manufactured after December 1, 1963,~~ shall be equipped for filling into the vapor space.
2-2.3.3	with changes	ASME containers of 125 gal (0.5 m³) through 2000 gal (7.6 m³) water capacity ~~manufactured after July 1, 1961,~~ shall be provided with an opening for an actuated liquid withdrawal excess-flow valve with a connection not smaller than 3/4-in. national pipe thread.
2-2.3.6	with changes	ASME containers to be filled on a volumetric basis ~~and manufactured after December 31, 1965,~~ shall be fabricated so that they can be equipped with a fixed maximum liquid level gauge(s) that is capable of indicating the maximum permitted filling level(s) in accordance with 4-4.2.2.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
2-2.6.1	additional requirement	See Commission rules §9.140 table, Uniform Protection Standards, and §9.141, Uniform Safety Requirements.
2-2.6.3	not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.
2-2.6.4	with changes	A warning label shall be applied to all cylinders of 4.2 lb (1.9 kg) to 100 lb (45.4 kg) LP-Gas capacity ~~or less~~ not filled on site. The label shall include information on the potential hazards of LP-Gas.
2-2.6.5	not adopted	See Commission rule §9.140 table, Uniform Protection Standards.
2-3.1.5(a)	with changes	Cylinders with 4.2 lb (1.9 kg) ~~4 lb (1.8 kg)~~ through 40 lb (18 kg) propane capacity for vapor service shall comply with the following: (a)* Cylinders ~~fabricated after September 30, 1998,~~ shall be equipped or fitted with a listed overfilling prevention device and a fixed maximum liquid level gauge. These devices shall be part of the container assembly. The length of the fixed maximum liquid level gauge dip tube shall be in accordance with 4-4.3.3(a).
2-3.1.5(b)	with changes	(b) Cylinders requalified ~~after September 30, 1996,~~ shall be equipped with a listed ~~an~~ overfilling prevention device and a fixed maximum liquid level gauge prior to being filled.
2-3.1.5(c)	errata	Effective April 1, 2002, no cylinder shall be filled unless it is equipped with an overfilling prevention device and a fixed maximum liquid level gauge. The length of the fixed maximum liquid level gauge dip tube shall be in accordance with 4-4.3(a) ~~4-4.3.4.3(a)~~.
2-3.1.5(d)	with changes	*Exception: All cylinders used in industrial truck service (including forklift truck cylinders) and cylinders identified and used for industrial welding and cutting gases, and cylinders designed for use in the horizontal orientation, shall be exempt from these requirements.*
2-3.1.6	errata	~~Container appurtenances shall be maintained in operating condition.~~
2-3.2.2(c)	not adopted	See Commission rule §9.1, Application of Rules, Severability, and Retroactivity.
2-3.2.3	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2-3.2.5	with changes	All cylinders used in industrial truck service (including forklift truck cylinders) shall have the cylinder's pressure relief valve replaced by a new or unused valve within 12 years of the date of manufacture of the cylinders and every 10 years thereafter. In addition, any cylinder constructed prior to February 1, 1988, whose pressure relief valve has not been replaced in accordance with this section shall have the pressure relief valve replaced by February 1, 2002, and every 10 years thereafter.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
2-3.3.2	with changes	Container appurtenances shall be required as follows: (a) For containers 4000 gal (15.2 m^3) ~~2000 gal (7.6 m^3)~~ water capacity or less, see Table 2-3.3.2(a). Containers over 4000 gal water capacity used in bulk plant, industrial plant, or commercial installation service shall comply with Section 3-3.3.7. [items 1 through 5 -- no changes] *(b) Containers over 4000 gal (15.2 m^3) water capacity shall be equipped as follows: ~~For containers over 2000 gal (7.6 m^3) water capacity.~~ 1. For vapor and liquid withdrawal openings less than 1 1/4 inch (3.2-cm) in size, a. A positive shutoff valve that is located as close to the container ~~tank~~ as practical in combination with an excess-flow valve installed in the container ~~tank~~, or b. An internal valve with an integral excess-flow valve or excess-flow protection. 2. For vapor and liquid withdrawal openings 1 1/4 inch (3.2-cm) or larger in size, a. A pneumatically-operated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet of the internal valve. This shall be effective on February 1, 2001, for new installations. b. An internal valve installed in containers prior to February 1, 2001, shall be equipped for pneumatically-operated remote closure and automatic shutoff using thermal (fire) actuation as described above by February 1, 2003. c. Containers equipped with a positive shutoff valve that is located as close to the container as is practical in combination with an excess flow valve prior to February 1, 2001, shall be retrofitted by February 1, 2006, with a pneumatically-operated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation. 3. ~~2.~~ For vapor and liquid inlet openings less than 1 1/4 inch (3.2-cm) in size, a. A positive shutoff valve that is located as close to the container as practical, in combination with ~~either~~ a back-flow check valve ~~or excess-flow valve~~ installed in the container, or b. An internal valve with an integral excess-flow check valve or excess-flow protection. 4. For vapor and liquid inlet openings 1 1/4 inch (3.2-cm) in size or larger, a. A pneumatically-operated internal valve equipped for remote closure (*see 3-2.11.4*) and automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet of the internal valve. This shall be effective on February 1, 2001, for new installations, or b. Internal valves installed in containers prior to February 1, 2001, shall be equipped for pneumatically-operated remote closure and automatic shutoff using thermal (fire) actuation as described above by February 1, 2003. c. Containers equipped with a positive shutoff valve that is located as close to the container as is practical in combination with an excess flow valve or backflow check valve prior to February 1, 2001, shall be retrofitted by February 1, 2006, with a pneumatically-operated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation. 5. ~~3.~~ [No change.]

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
Table 2-3.3.2(a)	with changes	Column 1 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4-kg) ~~2-lb--100-lb (0.9-kg--45.4-kg)~~ propane capacity for vapor service Column 2 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4-kg) ~~2-lb--100-lb (0.9-kg--45.4-kg)~~ propane capacity for liquid service Column 3 - Cylinders, 4.2-lb--100-lb (1.9-kg--45.4kg) ~~2-lb--100-lb (0.9-kg--45.4-kg)~~ propane capacity for liquid and vapor service Change title of column 5 to: Stationary ASME containers through 4000 gal (15.2 m^3) water capacity
2-3.4.2, 2-3.4.2(a) and 2-3.4.2(c)	with changes	Every container constructed ~~after December 31, 1965, and~~ designed to be filled on a volumetric basis shall be equipped with a fixed maximum liquid level gauge(s) to indicate the maximum filling level(s) for the service(s) in which the container is to be used (*see 4-4.3.3*). this shall be permitted to be accomplished either by using a dip tube of appropriate length or by the position of the gauging device in the container. The following shall also apply to fixed maximum liquid level gauges: (a) ASME containers ~~manufactured after December 31, 1969,~~ shall have permanently attached to the container adjacent to the fixed maximum liquid level gauge, or on the container nameplate, markings showing the percentage full that is indicated by that gauge. (c) Each cylinder ~~manufactured after December 31, 1972,~~ that is equipped with a fixed maximum liquid level gauge for which the tube is not welded in place shall be permanently marked adjacent to such gauge as follows:
2-3.7(a)	with changes	(a) All container openings except those used for pressure relief devices ~~(*see 2-3.2*)~~, liquid level gauging devices ~~(*see 2-3.4*)~~, pressure gauges ~~(*see 2-3.5*)~~, those equipped with double check valves, backflow check and excess flow valves ~~as allowed in Table 2-3.3.2(a)~~, and plugged openings shall be equipped with internal valves [*see 2-3.3.2(b)* ~~*2-3.3.3(d)*~~] or with positive shutoff valves and either excess-flow or backflow check valves *(see also 2-3.3 for specific application)* as follows:
2-3.7(a)4	with changes	The connections, or line, leading to or from an individual opening shall have greater capacity than the rated flow of the excess-flow valve or excess flow feature of an internal valve protecting the opening.
2-4.2	errata	Pipe shall be wrought iron or steel (black or galvanized), brass, copper, or polyethylene (*see 3-2.10.8* ~~*3-2.10.7*~~) and shall comply with the following:
2-4.3	errata	Tubing shall be steel, brass, copper, or polyethylene (*see 3-2.10.8* ~~*3-2.10.7*~~) and shall comply with the following:
2-4.4	additional requirement	See Commission rule §9.311, Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
2-4.4.1(a)2	errata	*Exception: Fittings used at higher pressure as specified in 2-4.4.1(a)(2)* ~~*2-4.4(a)1*~~.
2-4.4.1(b)2	errata	*Exception: Fittings used at higher pressure as specified in 2-4.4.1(a)(2)* ~~*2-4.4(a)1*~~.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
2-4.4.1(c)3.b	errata	Field-assembled anodeless risers with service head adapters shall be equipped with moisture seals and shall be recommended for LP-Gas use by the manufacturer and shall be design certified to meet the requirements of Category 1 of ASTM D2513, *Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings*, and U.S. Department of Transportation, *ode of Federal Regulations*, Title 49, Part 192.281(e), and the requirements of 3-2.10.8 ~~3-2.8.7~~. The manufacturer shall provide the user with qualified installation instructions a prescribed by U.S. Department of Transportation, *Code of Federal Regulations*, Title 49, Part 192.283(b).
2-4.4.1(c)(4)	additional requirement	See Commission rule §9.312(b), Certification Requirements for Joining Methods.
2-4.5.4	errata	Emergency shutoff valves shall be approved and shall incorporate all of the following means of closing (*see 3-2.10.11, ~~3-2.10.12,~~ 3-3.3.7, and 3-3.3.8*):
2-4.6	additional requirement	See Commission rule §9.143(b) and (g), Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
2-4.6.4	errata	Hoses or flexible connectors used to supply LP-Gas to utilization equipment or appliances shall be installed in accordance with the provisions of 3-2.10.10 and 3-2.10.12 ~~3-2.9.11 and 3-2.9.12~~.
2-6.2.1	with changes	Any appliance originally manufactured for operation with a gaseous fuel other than LP-Gas and in good condition shall be permitted to be used with LP-Gas provided it is properly converted, adapted, and tested for performance with LP-Gas before being placed into use. In addition, such appliances shall also be used in accordance with the manufacturer's instructions and shall be identified according to §9.307 of this title (relating to identification of converted appliances).
3-2.4.1(c)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3-2.2.1	with changes	LP-Gas containers shall be located outside of buildings. *Exception No. 1* [no change] *Exception No. 2: Containers from 1 gal (3.785 l) to ~~of less than~~ 125 gal (0.5 m^3) water capacity for the purposes of being filled in buildings or structures complying with Chapter 7.* [remainder: no changes]
3-2.2.2	additional requirement	In addition to Table 1, see Commission rule §9.142, LP-Gas Container Storage and Installation Requirements.
Table 3-2.2.2	with changes	Change first line of table: 1 to ~~Less than~~ 125 (0.5) *[see 3-2.2.2(a)]*
3-2.2.3	additional requirement	See Commission rule §9.101(c)(2), Filings Required for Stationary LP-gas Installations.
3-2.2.7	with changes	The following provisions shall also apply. See also the entry for 5-4.1 which is adopted with changes regarding cylinder exchange racks.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
3-2.2.9	additional requirement	See Commission rule §9.141(f), Uniform Safety Requirements.
3-2.3.1(b)	with changes	(b) Structures housing transfer operations or converted for such use ~~after December 31, 1972,~~ shall comply with Chapter 7.
3-2.3.1(c)	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
3-2.4.1(a)	with changes	(a) Cylinders shall be installed only aboveground, and shall be set upon a firm foundation of concrete or masonry or be otherwise firmly secured. Flexibility shall be provided in the connecting piping. (*See 3-2.10.6 and 3-2.10.10.*)
3-2.4.1(c)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3-2.4.1(f)	additional requirement	See Commission rule §9.141(a), Uniform Safety Requirements.
3-2.4.2(c)	with changes	Means of preventing corrosion shall be provided on that part of the container in contact with the saddles or foundations or on that part of the container in contact with masonry. In addition, LP-gas stationary storage tanks constructed on or after February 1, 2001, having a water capacity of 6,000 gallons or more, shall be equipped with a corrosion wear pad where the tank will be supported by a cradle or the steel support cradles shall be continuously welded to the shell of the container.
3-2.4.3(a)	with changes	Steel supports shall be protected against fire exposure with a material that has a fire resistance rating of at least 2 hours based on the temperature of hydrocarbons. Continuous steel skirts that have only one opening that is 18 in. (457 mm) or less in diameter shall be permitted to have such fire protection applied only to the outside of the skirts.
3-2.4.7(d)	with changes	Mounded containers shall be protected against corrosion in accordance with one or more of the pamphlets in Appendix A-3.2.4.7(d) ~~good engineering practice~~.
3-2.4.8(a), (b) and (d)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3-2.4.8(h)(3)	with changes	Where only vapor LP-Gas at atmospheric pressure remains in the container, the container shall be filled with water, sand, or foamed plastic or shall be purged with an inert gas. The displaced vapor shall be permitted to be burned or vented to the open air at a safe location. In addition, where only vapor LP-gas at atmospheric pressure remains in the container, the container shall be filled or disposed of in accordance with the applicable rules and regulations of the Texas Natural Resource Conservation Commission.
3-2.4.9(d)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3-2.5	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
3-2.7.1	with changes	A two-stage regulator system or an integral two-stage regulator shall be required on all fixed piping systems that serve 1/2 psi (3.4 kPa) appliance systems [nominally operated at 11 in. w.c. (2.7 kPa) pressure]. The regulators utilized in these systems shall meet the requirements of 2-5.7. this requirement includes fixed piping systems for appliances on RVs (recreational vehicles), mobile home installations, manufactured home installations, catering vehicles, and food service vehicle installations. ~~Single-stage regulators shall not be installed in fixed piping systems after June 30, 1997.~~
3-2.9.2	with changes	The size of gas piping shall be in accordance with ~~acceptable engineering practices or~~ the tables in Chapter 11.
3-2.10.2(c)	errata	*Exception: Safety relief discharge piping (see 3-2.6.3 ~~3-2.5.3~~).*
3-2.10.6	errata	Provision shall be made in piping including interconnecting of permanently installed containers, to compensate for expansion, contraction, jarring and vibration, and for settling. Where necessary, flexible connectors complying with 2-4.6 shall be permitted to be used (*see 3-2.10.10 ~~3-2.10.11~~*). The use of nonmetallic pipe, tubing, or hose for permanently interconnecting such containers shall be prohibited.
3-2.10.8(j)	with changes	A valve installed ~~Valve installation~~ in polyethylene pipe shall ~~be designed so as to~~ protect the pipe against excessive torsional or shearing loads when the valve is being operated. Valve boxes shall be installed so as to avoid transmitting external loads to the valve or pipe. Valves shall be manufactured from thermoplastic materials fabricated from materials listed in ASTM D2513, *Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings*, that have been shown to be resistant to the action of LP-Gas and comply with ASTM D2513, or from metals protected to minimize corrosion in accordance with 3-2.10.9. Valves shall be recommended for LP-Gas service by the manufacturer.
3-2.10.9	with changes	Underground metallic piping shall be protected against corrosion ~~as warranted by soil conditions~~ (*see 3-2.14*). LP-Gas piping shall not be used as a grounding electrode.
3-2.10.10	with changes	Flexible components used in piping systems shall comply with 2-4.6 for the service for which they are to be used, shall be installed in accordance with the manufacturer's instructions, shall comply with the Commission's rule §9.143 (relating to bulkhead, internal valve, and ESV protection for stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, and shall also comply with the following: [No other changes to remaining text of 3-2.10.10]
3-2.10.11	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
3-2.2.9	additional requirement	See Commission rule §9.141(f), Uniform Safety Requirements.
3-2.3.1(b)	with changes	(b) Structures housing transfer operations or converted for such use ~~after December 31, 1972,~~ shall comply with Chapter 7.
3-2.3.1(c)	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
3-2.4.1(a)	with changes	(a) Cylinders shall be installed only aboveground, and shall be set upon a firm foundation of concrete or masonry or be otherwise firmly secured. Flexibility shall be provided in the connecting piping. (*See 3-2.10.6 and 3-2.10.10.*)
3-2.4.1(c)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3-2.4.1(f)	additional requirement	See Commission rule §9.141(a), Uniform Safety Requirements.
3-2.4.2(c)	with changes	Means of preventing corrosion shall be provided on that part of the container in contact with the saddles or foundations or on that part of the container in contact with masonry. In addition, LP-gas stationary storage tanks constructed on or after February 1, 2001, having a water capacity of 6,000 gallons or more, shall be equipped with a corrosion wear pad where the tank will be supported by a cradle or the steel support cradles shall be continuously welded to the shell of the container.
3-2.4.3(a)	with changes	Steel supports shall be protected against fire exposure with a material that has a fire resistance rating of at least 2 hours based on the temperature of hydrocarbons. Continuous steel skirts that have only one opening that is 18 in. (457 mm) or less in diameter shall be permitted to have such fire protection applied only to the outside of the skirts.
3-2.4.7(d)	with changes	Mounded containers shall be protected against corrosion in accordance with one or more of the pamphlets in Appendix A-3.2.4.7(d) ~~good engineering practice~~.
3-2.4.8(a), (b) and (d)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3-2.4.8(h)(3)	with changes	Where only vapor LP-Gas at atmospheric pressure remains in the container, the container shall be filled with water, sand, or foamed plastic or shall be purged with an inert gas. The displaced vapor shall be permitted to be burned or vented to the open air at a safe location. In addition, where only vapor LP-gas at atmospheric pressure remains in the container, the container shall be filled or disposed of in accordance with the applicable rules and regulations of the Texas Natural Resource Conservation Commission.
3-2.4.9(d)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3-2.5	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
3-3.3.7	with changes	Safeguards shall be provided to prevent the uncontrolled discharge of LP-gas in the event of failure of the hose or swivel-type piping. The provisions of §9.143 shall apply. For containers at bulk plants, industrial plants, and commercial installations that have connections or connecting piping up to 1/2-in. (12-mm) internal diameter, see 2-3.3.2. For containers at bulk plants, industrial plants, and commercial installations that exceed 4000 gal (7.6 m^3) water capacity and have connections or connecting piping larger than 1/2-in. (12-mm) internal diameter, the following shall apply: ~~For all other LP-Gas systems, the following shall apply:~~ (a) The connection or connecting piping through ~~larger than 1/2 inch (12-mm) internal diameter into~~ which ~~the~~ liquid or vapor is being transferred into a container shall be equipped with one of the following: For containers exceeding 4000 gal (15.2 m^3) water capacity with an opening of less than 1 1/4 inch (3.2-cm) in size: 1. A positive shutoff valve that is installed as close to the container as practical in combination with a back-flow check valve installed in the container, or ~~backflow check valve.~~ 2. An internal valve with an excess-flow feature properly sized in accordance with 2-3.7(a)4. ~~2. An emergency shutoff valve complying with 2-4.5.4.~~ ~~3. An excess flow valve properly sized in accordance with 2-3.7(a)4.~~ (b) The connection or connecting piping through ~~larger than 1/2 in. (12-mm) internal diameter from~~ which liquid or vapor is being withdrawn from a container shall be equipped with one of the following: For containers over 4000 gal (15.2-m^3) with an opening of less than 1 1/4 inch (3.2-cm) in size. 1. A positive shutoff valve that is installed as close to the container as practical in combination with an excess flow valve properly sized in accordance with 2-3.7(a)4 installed in the container. ~~An emergency shutoff valve complying with 2-4.5.4.~~ 2. An internal valve with an excess-flow feature properly sized in accordance with 2-3.7(a)4. ~~An excess flow valve properly sized in accordance with 2-3.7(a)4.~~ (c) For containers over 4000 gal (15.2-m^3) water capacity with an opening of 1 1/4 inch or more in size. 1. A pneumatically operated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation. See retrofit requirements in 2-3.3.2(b), 2, c and 2-3.3.2(b)4, c. 2. Existing containers are required to be retrofitted in accordance with 2-3.3.2.
3-4.2.1(b)	with changes	Cylinders with propane capacities greater than 4.2 lb (1.9 kg) ~~2 lb (0.9 kg)~~ shall be equipped as provided in Table 2-3.3.2(a). Excess-flow valve protection shall be provided for vapor service.
3-4.2.1(d)	with changes	Cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ and connected for use shall stand on a firm and substantially level surface. If necessary, they shall be secured in an upright position.
3-4.2.4	additional requirement	See Commission rule §9.140(b), Uniform Protection Standards.
3-4.2.7(a)	with changes	Containers having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ within a building shall be restricted to movement directly associated with the uses covered by 3-4.3 through 3-4.9 and shall be conducted in accordance with these provisions and 3-4.2.7(b) through (d).
3-4.2.7(b)	with changes	Valve outlets on cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall be tightly plugged or capped and shall comply with the provisions of 2-2.4.1.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
3-4.4(b)	with changes	During the hours the building is not open to the public, cylinders shall be permitted to be used and transported within the building for repair or minor renovation in accordance with 3-4.2 and 3-4.3, provided that cylinders with a greater water capacity than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall not be left unattended.
3-4.5.1	with changes	Cylinders shall be permitted to be used in buildings housing industrial occupancies for processing, welding/cutting, research, or experimental purposes as follows: [(a) - (c) No change.] (d) Systems comprising a single cylinder of oxygen, a single cylinder of LP-gas attached to regulators, hoses, and torch, may be used in a building for welding/cutting purposes. Each LP-gas cylinder shall not exceed nominal 239 pound water capacity. All other appropriate sections of NFPA 58 and the *LP-Gas Safety Rules* shall apply.
3-4.8.3	with changes	Cylinders complying with . . . having a maximum water capacity of 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall be permitted . . .
3-4.8.4	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3-4.9.2	with changes	Cylinders having water capacities greater than 4.2 lb (1.9 kg) ~~2 1/2 lb (1 kg) [nominal 1 lb (0.5 kg)]~~ LP-Gas capacity shall not be located on balconies . . .
3-6.8.1	errata	Gas-air mixing equipment shall comply with 2-5.4.8 and shall be installed in accordance with this section. Piping and equipment installed with gas-air mixers shall comply with 3-2.6, 3-2.7, and 3-2.12 ~~3-2.7, 3-2.8, and 3-2.13~~.
3-8.2.7(d)	with changes	The piping system shall be ~~designed,~~ installed, supported, and secured in such a manner as to minimize the possibility of damage due to vibration, strains, or wear, and to preclude any loosening while in transit.
3-8.5.1	errata	Containers on vehicles shall be filled or refilled as provided by 4-2.2. Requalification requirements for continued use and reinstallation of containers shall be in accordance with 2-2.1.5 ~~2-2.1.4~~.
3-9.3.8	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3-9.3.10	with changes	A clearly identified and an easily accessible switch(es) or circuit breaker(s) shall be provided at a location not less than 20 ft (6.1 m) nor more than 100 ft (30.5 m) from the dispensing device(s) to shut off the power in the event of a fire, accident, or other emergency. The marking for the switch(es) or breaker(s) shall be visible at the point of liquid transfer. Signs at installations shall comply with Commission rule §9.140, Table 1 (relating to uniform protection standards).
3-10.2.3	with changes	[first paragraph -- no change.] The first consideration in any such analysis shall be an evaluation of the total product control system including emergency shutoff valves and internal valves equipped for ~~having~~ remote closure and automatic shutoff using thermal (fire) actuation, ~~thermal shutoff capability and~~ pullaway protection, and the optional requirements of Section 3-11, if used.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
3-11.3	with changes	The following provisions shall be required for ASME containers of 4001 ~~2001~~ through 30,000 gal (15.2m^3 ~~7.6m^3~~ through 114m^3) water capacity referenced in this section. (a) All liquid withdrawal openings and all vapor withdrawal openings that are 1 1/4 in. (3.2-cm) or larger shall be equipped with pneumatically-operated ~~an~~ internal valve ~~with an integral excess flow valve or excess flow protection~~. The internal valves shall remain closed except during periods of operation. As required, the internal valves shall be equipped for remote closure and automatic shutoff through thermal (fire) actuation. (b) [No change.] (c) All liquid and vapor inlet openings shall be equipped in accordance with (a) and (b) ~~on shall be equipped with a backflow check valve and a positive manual shutoff installed as close as practical to the backflow check valve.~~
3-11.4(c)(3)	with changes	Emergency remote shutdown stations shall be identified as such by a sign incorporating the words "Propane" or "LP-Gas" and "Emergency Shutoff" in block letters of not less than 2 in. (5.1 cm) in height on a background of contrasting color to the letters. The sign shall be visible from the point of transfer. Signs at installations shall comply with Commission rule §9.140, Table 1 (relating to uniform protection standards).
3-11.5	not adopted	No applicable Commission language.
4-2.1.1	with changes	~~Transfer operations shall be conducted by qualified personnel meeting the provisions of Section 1-5.~~ At least one qualified person shall remain in attendance at the transfer operation from the time connections are made until the transfer is completed, shutoff valves are closed, and lines are disconnected.
4-2.1.2	not adopted	See Commission rules in Chapter 9, Subchapter A.
4-2.2.3	with changes	Valve outlets on cylinders with a water capacity of 4.2 lb (1.9 kg) to ~~of~~ 108 lb (49 kg) water capacity [nominal 45 lb (20 kg) propane capacity] or less shall be equipped . . . is not connected for use. *Exception: New ~~Nonrefillable (disposable) and new~~ unused cylinders shall not be required to comply.*
4-2.3.8	additional requirement	See Commission rule §9.140(b), Uniform Protection Standards.
4-4.3.1	additional requirement	See Commission rule §9.136, Filling of DOT Containers.
4-4.3.3	with changes	~~Exception: Containers fabricated on or before December 31, 1965, shall be exempt from this provision.~~
5-2.1.1	additional requirement	See Commission rule §9.140(b), Uniform Protection Standards.
5-3.1	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
5-4.1	with changes	Location of Storage Outside of Buildings. Storage outside of buildings for cylinders awaiting use, resale, or part of a cylinder exchange rack ~~point~~ shall be at least five feet ~~located at least 20 ft (6.1 m)~~ from any doorway or opening in a building frequented by the public where occupants have at least two means of egress as defined by NFPA 101, *Life Safety Code*. For buildings or sections of buildings having only one means of egress, the location of such storage from the doorway or opening shall be at least 10 feet; 20 ft ~~(6.1 m)~~ from any automotive service station fuel dispenser; and in accordance with Table 5-4.1 with respect to (a) Nearest important building or group of buildings (b) Line of adjoining property that may be built upon (c) Busy thoroughfares or sidewalks (d) Line of adjoining property occupied by schools, churches, hospitals, athletic fields, or other points of public gathering (e) Dispensing station (f) Combustible materials and sources of ignition shall be at least five feet away from any cylinder exchange rack. *Exception: Cylinders in the filling process shall not be considered to be in storage.*
5-4.2.1	additional requirement	See Commission rule §9.140(b), Uniform Protection Standards.
5-4.2.2	not adopted	See Commission rule §9.140(d), Uniform Protection Standards.
6-2.4	with changes	Fire Extinguishers. Each truck or trailer transporting portable containers as provided by 6-2.2 or 6-2.3 shall be equipped with at least one approved portable fire extinguisher having a minimum capacity of 10 lb ~~18 lb (8.2 kg)~~ dry chemical with a B:C rating. *(Also see NFPA 10, Standard for Portable Fire Extinguishers.)*
6-3.2.1	errata	*Exception No. 1: If an internal valve meets the functional provisions for an emergency shutoff valve in compliance with 2-4.5.4 and 3-2.10.11(b) ~~3-2.10.12(b)~~, an emergency shutoff valve shall not be required in the cargo container piping.*
6-3.3.4	with changes	Hose . . . in overall length. Flexible connectors ~~on existing LP-gas cargo units replaced after December 1, 1967,~~ shall comply with 2-4.6. (a) Flexible connectors . . . visually inspected annually. In addition, any flexible connector installed prior to October 1, 1990, which has not been replaced in accordance with this subsection, must be replaced by August 1, 2001, and within every 10 years thereafter, with a flexible connector which complies with 2-4.6.
6-3.4.2(c)	errata	A valve specifically recommended and listed by the manufacturer for this type of service and that meets the requirements of 3-2.15.1(b) ~~3-2.14.1(b)~~.
6-3.6	with changes	Painting and Marking Liquid Cargo Vehicles. Painting of cargo vehicles shall comply with ~~Code of Federal Regulations, Title 49, Part 195~~ 49 Code of Federal Regulations, Section 178.337-1. Placarding and marking shall comply with ~~CFR 49~~ 49 CFR, Section 172, Subparts D and F, respectively.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
6-3.7	with changes	Fire Extinguishers. Each tank truck or tractor shall be provided with at least one approved portable fire extinguisher having a minimum capacity of 10-B:C ~~18 lb (8.2 kg) dry chemical with a B:C rating~~. *(Also see NFPA 10, Standard for Portable Fire Extinguishers.)*
6-5.2.1	with changes	ASME containers of 125 gal (0.5 m^3) or more water capacity shall contain no more than 5 percent of their water capacity in liquid form during transportation. ~~*Exception: containers shall be permitted to be transported with more LP-Gas than 5 percent of their water capacity in a liquid form, but less than the maximum permitted by Section 4-4, provided that all the following conditions apply:*~~ ~~*(a) Such transportation shall be permitted only to move containers from a stationary or temporary installation to a bulk plant.*~~ ~~*(b) The owner of the container or the owner's designated representative shall have authorized its transportation.*~~ ~~*(c) Valves and fittings shall be protected by a method approved by the authority having jurisdiction to minimize the possibility of damage.*~~ ~~*(d) Lifting lugs shall not bear more than the empty weight of the container plus 5 percent liquid volume. Additional means for lifting, securing, and supporting the container shall be provided.*~~
7-1.1.2	not adopted	NFPA is considering deleting this section; it refers to a date that is no longer relevant.
8-1.4	not adopted	See Commission rules in Chapter 9, Subchapter A.
8-2.3.1	with changes	Container appurtenances (such as valves and fittings) shall comply with Section 2-3 and the following. Container appurtenances subject to working pressures in excess of 125 psi (0.9 MPa) ~~but not to exceed 250 psi (1.7 mPa)~~ shall be rated ~~suitable~~ for a working pressure of at least 250 psi (1.7 MPa) or the design pressure of the container if the design pressure of the container is greater than 250 psi.
8-2.3.1(d)	not adopted	No applicable Commission language.
8-2.3.1(i)	with changes	(i) Containers fabricated ~~after January 1, 1984,~~ for use as engine fuel containers on vehicles shall be equipped or fitted with an automatic means to prevent filling in excess of the maximum permitted filling limit.
8-2.3.1(k)	with changes (first item marked) and errata (second item marked)	The venting of gas through a fixed maximum liquid level gauge during filling shall ~~not~~ be required when the engine fuel container being fueled is equipped with an overfilling ~~overfitting~~ prevention device.
8-2.6.6	with changes	Fuel containers shall be securely mounted to prevent jarring loose and slipping or rotating, and the fastenings shall be designed and constructed to withstand without permanent visible deformation static loading in any direction equal to four times the weight of the container filled with fuel. This shall not prohibit the use of specific mounting brackets designed and manufactured by a container manufacturer or its authorized representative. Each specific mounting bracket shall have the container manufacturer's name or logo stamped or notched on it in order to properly identify the bracket manufacturer.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) To Be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
8-2.8.1	with changes	The piping system shall be ~~designed,~~ installed, supported, and secured in such a manner to minimize the possibility of damage due to expansion, contraction, vibration, strains, or wear and to preclude any loosening while in transit.
8-2.10	with changes	Each over-the-road general purpose vehicle powered by LP-Gas shall be identified with a weather-resistant diamond-shaped label located on an exterior vertical or near vertical surface on the lower right rear of the vehicle (on the truck lid of a vehicle so equipped, but not on the bumper of any vehicle) inboard from any other markings. The label shall be approximately 4 3/4 in. (120 mm) long by 3 1/4 in (83 mm) high. The marking shall consist of a border and the word PROPANE [1 in. (25 mm) minimum height centered in the diamond] in silver or white reflective luminous material on a black or Pantone 2945 C Royal Blue or equivalent background. (*See Figure 8-2.10.*)
8-3.7	with changes	All cylinders used in industrial truck service (including forklift truck cylinders) shall have the cylinder pressure relief valve replaced by a new or unused valve within 12 years of the date of manufacturer of the cylinder and every 10 years thereafter. In addition, any cylinder whose cylinder pressure relief valve has not been replaced in accordance with this section shall have the cylinder pressure relief valve replaced by February 1, 2002, and every 12 years thereafter.
Chapter 10	not adopted	Commission authority does not extend to marine shipping and receiving activities.
Appendix A	additional requirement	See Commission rule §9.137, Inspection of Cylinders at Each Filling, and CGA Publication C-6 or C-6.3 for further information regarding cylinder inspection.
Appendix A, A-2.3.1.5(a)	errata	See Table F-5.3.4 ~~F-4.3.4~~.
Appendix C, C-1.1.1	errata	This appendix provides general information on cylinders referred to in this code. For complete information, consult the applicable specification (*see C-2.1* ~~*C-2.1.1*~~). The water capacity of such cylinders is not permitted to be more than 1000 lb (454 kg).
Appendix E, E-2.2	errata	The minimum rate of discharge for spring-loaded pressure relief valves is based on the outside surface of the containers on which the valves are installed. Paragraph 2-2.6.5(g) ~~2-2.6.3(h)~~ provides that new containers be marked with the surface area in square feet. The surface area of containers not so marked (or not legibly marked) can be computed by use of the applicable formula.

Figure: 40 TAC §700.1802

	Case Management	Treatment Coordination	Direct Care	Direct Care Administration	Medical	Total
LOC I (CPA)						
LOC II (CPA)						
LOC II (Res.)						
LOC III (CPA)						
LOC III (Res.)						
LOC IV (CPA)						
LOC IV (Res.)						
LOC V (Res.)						
LOC VI (Res.)						

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Boll Weevil Quarantine Administrative Penalty Matrix

The Texas Agriculture Code (the Code) at Chapter 71, General Control, provides for the establishment of quarantines against dangerous insect pests and plant diseases at the boundaries of the state or in other areas within the state. The Code, Chapter 74, Subchapter D, also provides for the establishment of quarantine rules relating to boll weevil control. Quarantine regulations for boll weevil are found in Title 4, the Texas Administrative Code, Chapter 20. The department's authority for the enforcement of Chapter 71 and Chapter 74 is found in the Code, §12.020, whereby the department may assess administrative penalties up to $5,000 for each violation of subchapters A and C of Chapter 71 and Chapter 74. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments. The department has developed the boll weevil quarantine administrative penalty matrix so that enforcement actions for violations of Chapter 71 and 74 and rules found in 4 Texas Administrative Code, Chapter 20 are fair, uniform, consistent, and appropriate. The matrix establishes language stating the actions that constitute a violation of the boll weevil quarantine, thereby creating a risk of boll weevil re- infestation and threatening eradication efforts. The department believes this penalty matrix is both necessary and appropriate. This filing is effective upon publication and is based upon current information. As the enforcement of these types of violations continues and additional data are gathered, the matrix will be reviewed and, if necessary, adjusted to reflect any changes in the information upon which the current matrix is based.

An administrative penalty may be levied for: (a) movement of a regulated article in violation of an applicable rule, statute or written directive of the department; (b) violation of the conditions of a compliance agreement, and (c) alteration or unauthorized use of a certificate issued by the department. For each type of offense, there is a penalty range for violations. The ranges were established by considering the following criteria set forth in the Code, §12.020: (1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts; (2) the history of previous violations; (3) the amount necessary to deter future violations; (4) efforts to correct the violation; and (5) any other matter that justice may require.

Depending upon the violation, the hazard or potential hazard to the agricultural community, each violation will be considered on a case by case basis. Subject to the nature and circumstances of the violation, a penalty may be probated or adjusted as justice may require. The low end of each range is the presumptive base penalty for each violation, and represents an appropriate penalty for the violations which are considered "minor" with respect to the criteria in the Code, §12.020. Penalties may be increased to the maximum within each range as the department considers the nature and circumstances of each violation in the context of the criteria in the Code, §12.020(d).

176 - TDA Boll Weevil Quarantine Administrative Penalty Matrix

Boll Weevil Quarantine Administrative Penalty Matrix

(a) Movement of regulated article in violation of an applicable rule, statute or written directive of the department.

(b) Violation of the conditions of a compliance agreement.

(c) Alteration or unauthorized use of a certificate issued by the department.

Offense	First Violation	Second Violation	Subsequent Violation
(a)	Seizure[1] and $1000 - $2000	Seizure[1] and $2000 - $4000	Seizure[1] and $4000 - $5000
(b)	$2000 - $3000[2]	$3000 - $4000[2]	$4000 - $5000[2]
(c)	$3000 - $4000	$4000 - $5000	$5000

[1]Seized articles may be detained, treated, destroyed or ordered to be returned to point of origin.

[2]Compliance agreement is additionally subject to suspension/revocation.

TRD-200103624
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 26, 2001

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Request for Proposals: GO TEXAN Partner Program

Pursuant to the Texas Agriculture Code, §§46.001-46.013, relating to the GO TEXAN Partner Program, and 4 Texas Administrative Code §§17.300-17.310, the Texas Department of Agriculture (the department) hereby requests proposals for GO TEXAN Partner Program projects for the period of September 1, 2001 through August 31, 2003. The GO TEXAN Partner Program is a dollar-per-dollar matching fund promotion program designed to increase consumer awareness of Texas agricultural products and expand the markets for Texas agricultural products by developing a general promotional campaign for Texas agricultural products and advertising campaigns for specific Texas agricultural products based on project requests submitted by successful applicants.

Eligibility. An eligible applicant must be a state or regional organization or board that promotes the marketing and sale of Texas agricultural products and does not stand to profit directly from specific sales of agricultural commodities, a cooperative organization, as defined by 4 Texas Administrative Code §17.301, a state agency or board that promotes the marketing and sale of Texas agricultural products, a small business, as defined by 4 Texas Administrative Code §17.301, or any other entity that promotes the marketing and sale of Texas agricultural products. For purposes of this section, the department has the sole discretion to determine whether an entity meets program eligibility requirements.

Proposal Requirements. To be eligible for participation in the program through the use of matching funds under this program, an applicant must be a member of the GO TEXAN program in good standing, be an eligible applicant under program rules, prepare and submit a project request in accordance with program rules, submit a sworn affidavit certifying that applicant is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code and will notify the department of status change, submit a sworn affidavit disclosing any existing or potential conflict of interest relative to the evaluation of the project plan by the GO TEXAN Partner Program Advisory Board and acknowledge that applicant will notify the department of status change, and submit to the department, within ten business days after receiving written notification of board approval of the project request, cash matching funds as specified in the project request and in accordance with the GO TEXAN Partner Program rules.

Each project request submitted by an eligible applicant must describe the advertising or other market-oriented promotional activities to be carried out using matching funds and must include a cover page including the name, title, and address of applicant; a table of contents;

an abstract of approximately 200 words or less, on one page, including the title, if any, a brief description of the project, project plan and methodology, and expected contribution to further or enhance the GO TEXAN Program; a detailed specific narrative or factual description of the project; anticipated benefits to a specific region of the state, to specific commodities; any preliminary market research and sales percent increases to be achieved as a result of the project; a biography of the applicant; a description of the business entity; a detailed project budget including specific dollar amounts for all potential costs; a description of how anticipated sales increases due to implementation of the projects will be quantified and reported to the department and a completed creative blueprint on a form provided by the department. Please send one original with ten additional copies.

All approved projects must be completed by August 31, 2003, or the date specified in the project contract, whichever is earlier. All approved projects will be subject to audit and periodic reporting requirements.

Proposals should be submitted to: Debbie Wall, Funding Coordinator for Marketing and Promotion, Texas Department of Agriculture, 1700 North Congress Avenue, 10th Floor, Austin, Texas 78701. Ms. Wall may be contacted by telephone at (512) 463-7731 or by fax at (512) 463-7483 for additional information about preparing the proposal. Proposals will be accepted by the department on a continuous basis until all available funds are depleted.

All qualifying proposals will be evaluated by the GO TEXAN Partner Program Advisory Board appointed by the Commissioner of Agriculture. This panel consists of representatives from the following: the Texas Department of Agriculture, radio media, print media, television media, advertising, higher education, United States Department of Agriculture Commodity Credit Corporation (non-voting), Internet website or electronic commerce industry, the field of economic analysis, and a consumer representative. Proposals will be selected for funding on a competitive basis. Preference will be given to project requests that are unique in nature and avoid duplication with other project requests that are being funded by the department. Only project requests that further or enhance the department's GO TEXAN Program and are submitted by applicants who are physically located in Texas or who have their principal place of business in Texas will be funded. The announcement of the grant awards will be made at Advisory Board meetings held at least once quarterly.

TRD-200103642
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 27, 2001

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Texas Bond Review Board

Biweekly Report of the 2001 Private Activity Bond Allocation Program

The information that follows is a report of the 2001 Private Activity Bond Allocation Program for the period of June 9, 2001 through June 22, 2001.

Total amount of state ceiling remaining unreserved for the $325,809,688 subceiling for qualified mortgage bonds under the Act as of June 22, 2001: $116,746,244.50

Total amount of state ceiling remaining unreserved for the $143,356,262 subceiling for state-voted issue bonds under the Act as of June 22, 2001: $143,356,262

Total amount of state ceiling remaining unreserved for the $97,742,906 subceiling for qualified small issue bonds under the Act as of June 22, 2001: $88,242,906

Total amount of state ceiling remaining unreserved for the $215,034,394 subceiling for residential rental project bonds under the Act as of June 22, 2001: $1,050,394

Total amount of state ceiling remaining unreserved for the $136,840,069 subceiling for student loans bonds under the Act as of June 22, 2001: $69

Total amount of state ceiling remaining unreserved for the $384,455,431 subceiling for all other issue bonds under the Act as of June 22, 2001: $250,431

Total amount of the $1,303,238,750 state ceiling remaining unreserved under the Act as of June 22, 2001: $350,046,306.50

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from June 9, 2001 through June 22, 2001:

1) Issuer: Cass County IDC

User: International Paper Co.

Description: All Other Issue--Domino, Texas

Amount: $3,000,000

2) Issuer: Houston HFC

User: Park Row Apartments

Description: Multifamily Residential Rental Project--Park Row Apts.

Amount: $9,549,000

Following is a comprehensive listing of applications, which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from June 9, 2001 through June 22, 2001:

1) Issuer: Montgomery County HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $18,060,750

2) Issuer: Galveston HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $5,235,000

3) Issuer: Midland County HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $10,495,000

4) Issuer: Austin HFC

User: Arbors Creekside LLC

Description: Multifamily Residential Rental Project--The Arbors at Creekside Apts.

Amount: $8,600,000

5) Issuer: Austin HFC

User: Eligible Borrowers

Description: Single Family Mortgage Credit Certificates

Amount: $23,000,000

For a more comprehensive and up-to-date summary of the 2001 Private Activity Bond Allocation Program, please visit the website (www.brb.state.tx.us). If you have any questions or comments, please contact Steve Alvarez, Program Administrator, at (512) 475-4803 or via email at alvarez@brb.state.tx.us.

TRD-200103614
Steve Alvarez
Program Administrator
Texas Bond Review Board
Filed: June 25, 2001

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of June 15, 2001, through June 21, 2001. The public comment period for these projects will close at 5:00 p.m. on July 30, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: P & T Properties; Location: The project is located between Terramar Beach and Bay Harbor subdivisions on Galveston Island in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Sea Isle, Texas. Approximate UTM Coordinates: Zone 15; Easting: 299380; Northing: 3224180. CCC Project No.: 01-0195-F1; Description of Proposed Action: The applicant proposes to fill approximately 0.25 acres of tidally influenced wetlands in order to construct a culverted access road for two proposed single-family dwellings on the 56.4-acre tract of land. The applicant proposes to scrape down 0.25 acres of an old dredged material containment berm on the northwest portion of his property and allow this area to revegetate naturally to compensate for the impacts to wetlands. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Sullivan Land & Cattle Company; Location: The project is located at an existing boat basin at 5810 Harborside Drive on Galveston Island in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Galveston, Texas. Approximate UTM Coordinates: Zone 15; Easting: 321600; Northing: 3242400. CCC Project No.: 01-0222-F1; Description of Proposed Action: The applicant proposes to modify his existing permit by changing the design and use of his existing marine facility. The applicant proposes to construct a breakwater, a 185-slip marina, attendant features, a travel-lift, a 272 berth dry stack building and a floating fuel facility. The original permit work for the basin has been completed but the access channel has not been deepened to the authorized depth at this time. The applicant has an upland disposal site on his property that will be used to contain the dredge material. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Richard Lane; Location: The project is located in Aransas Bay at 168 Front Street, Lot 26, east of Lamar, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled St. Charles Bay, Texas. Approximate UTM Coordinates: Zone 14; Easting: 697800; Northing: 3112950. CCC Project No.: 01-0223-F1; Description of Proposed Action: The applicant proposes to modify Permit 19313 to include access for golf carts and wheelchairs and to authorize additional structures. The pier width would be increased from 4-feet wide to 6-feet wide. To widen the pier, the existing east row of pilings would remain in place. Damaged pilings would be replaced. In wetland areas the pilings would be set into holes dug by a post-hole digger instead of hand-jetting them into place. Soil removed from the holes would be hauled to an upland location. For safety purposes, the applicant proposes reducing the spacing between deck boards from 1-inch to 1/4 inch. Because of the wetlands and seagrasses currently established under the existing pier, the applicant proposes to increase the pier elevation from 4-feet Mean High Tide (MHT) to 5-foot MHT to eliminate shading impacts. Additionally the applicant proposes to add a 30-foot by 30-foot double stall boathouse. One stall would accommodate a shallow-draft fishing boat and the other would accommodate a pontoon-type deck boat for handicap usage. A 5-foot wide wheelchair ramp would be constructed from the existing pier to the boathouse walkway. The boathouse would have equipment needed to lower the wheelchair and user from the pier deck to the boathouse walkway and from the boathouse walkway to the deck boat. The applicant also proposes to construct two additional covered decks measuring 24-foot by 18-foot and 9-foot by 18-foot respectively. The smaller, nearshore structure would provide fishing access to the nearshore wetland edge and seagrass beds and the larger structure, located further offshore, would offer fishing access to the channel and wetlands across the channel. Additional structures proposed are various "fish down" steps measuring 2-foot by 4-foot with 3-foot rails. These steps would be constructed 1.5-feet below the pier deck elevation and would facilitate netting hooked fish. These steps would not be constructed over any type of vegetation. A 3-foot by 6-foot covered fish cleaning table would also be constructed. The square footage in the amended design requested totals 3,636 square feet. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Atofina Petrochemicals, Inc.; Location: The project is located at the Atofina (formerly Fina Oil & Chemical Company) refinery, 3,400-feet upstream from the State Highway 87 bridge, on the south shoreline of the Neches River in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Arthur, Texas. Approximate UTM Coordinates: Zone 15; Easting: 415001; Northing: 3316992. CCC Project No.: 01-0224-F1; Description of Proposed Action: The applicant proposes to modify the existing permit to include maintenance dredging by mechanical means. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Matagorda County; Location: The project is located along the Gulf Intracoastal Waterway (GIWW) adjacent to the U.S. Army Corps of Engineers (USACE) Mooring Facility 1, approximately 1-mile west of the swing bridge at the west end of Sargent Beach, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Sargent, Texas. Approximate UTM Coordinates: Zone 15; Easting: 243040; Northing: 3184620. CCC Project No.: 01-0225-F1; Description of Proposed Action: The applicant proposes to mechanically dredge a 100-foot long access channel to the GIWW. The access channel would measure approximately 36-feet

wide at the bottom of the cut and 48-feet wide at the top of the cut. The channel would be dredged to a depth of 6-feet Mean Low Tide. The dredged material would be placed on adjacent uplands located approximately 80-feet northward from the centerline of the existing unpaved road. The fill would be spread out to a depth of approximately 1 to 2-feet deep and a temporary erosion control fence would be placed around the placement area. A boat ramp, consisting of a 20-foot by 48-foot concrete apron, connected to a 40-foot by 48-foot articulating ramp would be installed at the shoreline. The applicant proposes to place 3 timber piers entirely upon the apron/ramp structure. The installation of the boat ramp would result on 0.02 acres of shoreline wetlands being filled. The construction of the proposed parking area would result in fill being deposited into 0.06 acre of wetlands. To offset the impacts to wetlands, the applicant proposes to excavate 0.08 acre of uplands located adjacent to the existing wetland. No planting is proposed within the mitigation area at this time. Since the elevation of the mitigation area is proposed at an optimal level, it is anticipated that the adjacent wetland vegetation will colonize the area. If no vegetation has established after one year, the applicant will sprig the mitigation area with the appropriate wetland species to remedy the situation. A minimum offset buffer of 5-feet would be left between the parking area and the created wetland. The proposed roadway will connect to the existing unpaved road. This unpaved road is located landward of the existing USACE rock revetment and extends to the swing bridge that crosses the GIWW at FM 457. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Texas Department of Transportation; Location: The project is located along park Road 22 from its western terminus at Waldron Road in the Flour Bluff area to 1,740-feet east of Aquarius Drive on Padre Island. The proposed work will take place in and along the Laguna Madre adjacent to the JFK Causeway portion of Park Road 22 in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Oso Creek, Crane Islands NW, and Crane Islands SW, Texas. Approximate UTM Coordinates: Zone 14; Easting: 669000; Northing: 3061750. CCC Project No.: 01-0226-F1; Description of Proposed Action: The applicant proposes to raise the existing causeway to a minimum of +9 feet mean sea level by constructing one new bridge, replacing an existing bridge and placing fill to construct the elevated roadbed. The purpose of the project is to provide a safe evacuation route for Padre Island during high tides associated with storm activity. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Calpine Texas Pipeline L.P.; Location: The project is located along an approximate 17 linear mile stretch, starting at a tie-in to an existing pipeline NE of Odem in San Patricio County and running SW to cross under the Nueces Bay in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Odem, Taft and Corpus Christi, Texas. Approximate UTM Coordinates: Zone 14; Easting: 654896.50 to 655256.76; Northing: 3084597.31 to 655256.76. CCC Project No.: 01-0227-F1; Description of Proposed Action: The applicant proposes to construct a 16-inch natural gas pipeline approximately 17 miles long, beginning at a tie-in to an existing pipeline northeast of Odem in San Patricio County. It would then proceed in a southwesterly direction for approximately 13 miles to a point at which it would enter the Nueces Bay. The pipeline would extend across the bay bottom and under the Corpus Christi Ship Channel and terminate at the Corpus Christi Energy Center. The portion of the pipeline directionally drilled under the Corpus Christi Ship Channel is already authorized. As it extended inland the pipeline would traverse open cropland and continue adjacent to existing roadways. The pipeline would be installed by typical jetting and limited trenching. A portion of the route on the north shoreline would be directionally drilled to avoid sensitive habitats. One inland jurisdictional area (Peters Swale) would be directionally drilled as well. In the event that drainage ditches are encountered on the route, they would be directionally drilled using the typical cross-section diagram used for Peters Swale. The bay bottom would be restored to pre-project conditions and no filling is anticipated. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

APPLICATION FOR FEDERAL ASSISTANCE

The Coastal Impact and Assistance Program was authorized by Congress under §903 of the Commerce, State, Justice FY 2001 Appropriations Act (Act) to assist states in mitigating the impacts associated with Outer Continental Shelf (OCS) oil and gas production. Congress appropriated $150 million to the National Oceanic Atmospheric Administration (NOAA) to be allocated to Texas and six other coastal states. This money is to be used to undertake a variety of projects for protecting and restoring coastal resources and mitigating the impacts of OCS leasing and development. The Office of the Governor has directed the Texas General Land Office to coordinate with the Coastal Coordination Council (CCC) in the allocation of program funds.

Under the one-time authorization, Texas will receive approximately $26.4 million, which will be apportioned between the state and eligible coastal counties. The state's share will be approximately $17.1 million and approximately $9.2 million will be earmarked for eligible coastal counties to undertake projects for protecting and restoring coastal resources. The eighteen eligible coastal counties are Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Victoria, Calhoun, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Jefferson, and Orange counties.

Texas must develop and submit to NOAA a comprehensive CIAP plan by August 31, 2001. The Land Office has worked with and collaborated with federal and local governments, and coastal agencies in the identification of projects and development of the CIAP plan. The plan is available at http://www.glo.state.tx.us/coastal/ciap/index.html from July 5-August 3.

The Texas General Land Office has prepared a draft plan for the Coastal Impact Assistance Program for submittal to NOAA for these funds. This plan has been reviewed for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the CCC and has determined that the plan is consistent with the applicable CMP goals and policies. Individual projects approved under this plan must still obtain necessary state and federal permits. These projects will be subject to individual consistency reviews, as required, as more details of these projects become available.

Please contact Ms. Leah F. Esparza at (512) 463-5310 or at leah.esparza@glo.state.tx.us if you have any questions or need additional information.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200103664
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 27, 2001

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Texas's Coastal Impact Assistance Program Plan

The Texas' Coastal Impact Assistance Program Plan is available for a 30-day public comment period on the Texas General Land Office Web site at www.glo.state.tx.us/coastal/ciap/index/html from July 5, 2001 until August 3, 2001. Please submit all comments regarding Texas' Coastal Impact Assistance Program Plan in writing to Ms. Leah F. Esparza, Texas General Land Office, Resource Management, P.O. Box 12873, Austin, Texas 78711-2873 or e-mail leah.esparza@glo.state.tx.us.

TRD-200103530
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 22, 2001

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Comptroller of Public Accounts

Notice of Award

Notice of Awards: Pursuant to Chapters 403, 2155, and 2156, Texas Government Code and §§54.602, 54.611-618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract award.

The notice of request for proposals (RFP #120f) was published in the February 23, 2001 issue of the *Texas Register* at (26 TexReg 1776).

The contractors will assist the Comptroller in providing domestic large capitalization growth and core growth equity investment management services for the Texas Tomorrow Fund's portfolio.

Contracts are awarded to: Chase Investment Counsel, Corporation, 300 Preston Avenue, Suite 403, Charlottesville, Virginia 22902-5091. The total amount of the contract is based on the volume of funds invested. The contract was executed on May 29, 2001. The term of the contract is May 29, 2001 through August 31, 2004. INVESCO, INC., 400 West Market Street, Suite 2500, Louisville, Kentucky 40202. The total amount of the contract is based on the volume of funds invested. The contract was executed on June 27, 2001. The term of the contract is June 27, 2001 through August 31, 2004.

TRD-200103652
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 27, 2001

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to §1201.027, and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for Underwriter/Dealer services in connection with the Marketing of Tax Exempt Commercial Paper Notes. The successful respondent will be expected to begin performance of the contract on or about August 15, 2001. The Comptroller reserves the right, in its sole judgment and discretion, to award one or more contracts as a result of the issuance of this RFP.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, July 6, 2001, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, July 6, 2001, 2:00 p.m. (CZT).

Questions: All questions concerning the RFP must be in writing and submitted no later than Friday, July 20, 2001, 2:00 p.m. Questions must be faxed to (512) 475-0973, Attn: Thomas H. Hill, Assistant General Counsel, Contracts. On or before Tuesday, July 24, 2001, the Comptroller expects to post answers to these written questions as a revision to the Texas Marketplace notice of the issuance of this RFP. The address of the Texas Marketplace is www.marketplace.state.tx.us.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2:00 p.m. (CZT), on Tuesday, July 31, 2001. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 6, 2001, 2:00 p.m. CZT; Questions Due - July 20, 2001, 2:00 p.m. CZT; Answers to Questions Posted - on or before July 24, 2001, or as soon thereafter as practical; Proposals Due - July 31, 2001, 2:00 p.m. CZT, Contract Execution - August 8, 2001, or as soon thereafter as practical; Commencement of Project Activities-August 15, 2001.

TRD-200103651
Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 27, 2001

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 3, 2001 - July 9, 2001 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 3, 2001 - July 9, 2001 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of July 1, 2001 - July 31, 2001 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by §303.005 for the period of July 1, 2001 - July 31, 2001 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.

[3]For variable rate commercial transactions only.

TRD-200103618
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 26, 2001

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Texas Department of Criminal Justice

Notice to Bidders

The Texas Youth Commission invites bids for the renovations of Marlin Orientation and Assessment Center and San Saba State School at Marlin and San Saba , Texas. The project consists of providing electronic sally ports at primary entrances to facilities. Remodel selected areas as a result of changes in area's configuration at the existing Marlin and San Saba Units, Marlin Orientation & Assessment Unit, Hwy. 6 Bypass at Industrial Park II, Marlin, Texas 76661; San Saba State School, 206 South Wallace Creek Road, San Saba, Texas 76877. The work includes, mechanical, electrical, plumbing, security electronics, structural, concrete, and steel as further shown in the Contract Documents prepared by : ROFDW Architects, Attn. Larry Janousek.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of three consecutive years of experience as a General Contractor and provide references for at least three projects within the last three years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid must be accompanied by a Bid Guarantee in the amount of 5.0% of greatest amount bid. Bid Guarantee may be in the form of a Bid Bond or Certified Check. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $50 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : ROFDW Architects, 703 McKinney, Suite 401, Dallas, Texas 75202, Attn: Larry Janousek, Phone: (214) 871-0616, FAX: (214) 954-0855.

A Pre-Bid conference will be held at 11AM at San Saba State School and 3PM at Marlin Orientation & Assessment Unit on July 12, 2001, at the times stated for the above units, at San Saba and Marlin Texas, followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2PM on July 31, 2001, in the Contracts and Procurement Office Conference Room located at 2 Financial Plaza, Suite 525, Huntsville, Texas 77340, in the Westhill Mall.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2 % of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200103633
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 27, 2001

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Request for Qualifications

The Texas Department of Criminal Justice - Institutional Division hereby provides notice of Request for Qualification, #696-ID-1-Q045, soliciting the qualifications of a consultant to review current criteria for assigning appropriate security levels to each TDCJ facility. The review shall include recommendations for modifications to existing policies. The consultant shall also assist in the ongoing development and implementation plans for the revision of the TDCJ security classification system. This procurement is being conducted in accordance with requirements in Chapter 2254, Subchapter B, Texas Government Code. Contract award will be made on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price.

TDCJ anticipates award of a firm fixed-price contract on or about August 10, 2001, with a completion date within 90 days after contract award.

Proposals will be accepted at the following address until 3pm, August 6, 2001.

Agency contact is Naomi Wright, Contract Administrator, TDCJ Contracts and Procurement, Two Financial Plaza, Suite. 525, Huntsville, Texas 77340, Phone (936) 437-7139, Fax (936) 437-7009. All requests for a copy of the solicitation must be in writing. Fax requests are acceptable.

TRD-200103641
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 27, 2001

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General Services Commission

Summary of Other State Bidder Preference Laws

The General Services Commission publishes this list of other state bidder preference laws in accordance with Texas Codes Annotated, Government Code, Title 10, §2252.003, which requires the publication of a list of states which have laws or regulations regarding the award of contracts for general construction, improvements, services, or public works projects or purchases of supplies, materials, or equipment to nonresident bidders, together with a citation to and summary of the most recent law or regulation of each state relating to the evaluation of bids from and award of contracts to nonresident bidders.

Reciprocal Preference - The General Services Commission may award a contract to a nonresident bidder only if its bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state where the nonresident's principal place of business is located. In evaluating

a bid of a nonresident bidder, an amount will be added equal to the amount a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state where the nonresident bidder's principal place of business is located. After the amount is added, an award may be made to the nonresident bidder if it is determined to have the lowest price and best bid. The amount added is for evaluation purposes only; in no event shall an amount be awarded in excess of the amount actually bid. (Title 1, T.A.C., §113.8)

ALABAMA:

Code of Alabama, Title 14, §14-7-13 (Lexis 2001) - Preference for prison-made articles or products from the Alabama Board of Corrections. Exceptions provided under §14-7-14 for articles or products produced or manufactured by the Alabama Institute for the Deaf and Blind.

Code of Alabama, Title 21, §21-2-2 (Lexis 2001) - Preference for products made or manufactured by the blind, visually handicapped, deaf or severely handicapped through the Alabama Institute for the Deaf and Blind. Preference is not applied over articles produced or manufactured by convicts in Alabama employed in industries operated or supervised by the board of corrections.

Code of Alabama, Title 39, §39-3-1 (Lexis 2001) - Preference in contracts for public works projects financed entirely by the State of Alabama to stipulate in the contract or cause to be stipulated a provision whereby the person, firm or corporation undertaking the project agrees to use materials, supplies, and products manufactured, mined, processed or otherwise produced in the United States or its territories.

Code of Alabama, Title 39 §39-3-5 (Lexis 2001) - Preference to resident contractors in tie bids for public contracts in which any state county or municipal funds are utilized.

Reciprocal preference is applied to nonresident contractors in the letting of public contracts. A nonresident contractor is defined in §39-2-12 as a contractor who is neither organized and existing under the laws of the State of Alabama, nor maintains its principal place of business in the State of Alabama.

Code of Alabama, Title 41, §41-16-20 (Lexis 2001) - With the exception of public works contracts, a five percent (5%) preference is applied in all contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, or other personal property, involving seven thousand five hundred dollars ($7,500) or more to a person, firm or corporation who (1) produces or manufactures the product within the State of Alabama; (2) has an assembly plant or distribution facility for the product within the State of Alabama; and (3) is organized for business under the applicable laws of the State of Alabama as a corporation, partnership, or professional association and has maintained at least one retail outlet or service center for the product or service within the State of Alabama for not less than one year prior to the deadline date of the competitive bid.

Code of Alabama, Title 41, §41-16-27 (Lexis 2001) - Contractual services and purchases of personal property regarding the athletic department, food services and transit services negotiated on behalf of two-year and four-year colleges and universities may be awarded without competitive bid and preference given to an Alabama business entity (a sole proprietorship, partnership or corporation organized in the State of Alabama). Preference to an Alabama business entity does not apply if the product or service is supplied by a foreign corporation is substantially different or superior to the product or service supplied by the Alabama business entity.

Code of Alabama, Title 41, §41-16-57 (Lexis 2001) - Preference in tie bids for commodities produced in Alabama or sold by Alabama persons, firms, or corporations in the purchase of or contract for personal property or contractual services.

ALASKA:

Alaska Statutes, §36.15.010 (Lexis 2001) - Preference for use of only timber, lumber and manufactured lumber products originating in Alaska from local forests to be used in projects financed by state money.

Alaska Statutes, §36.15.050 (Lexis 2001) - A seven percent (7%) preference for agricultural products harvested in the state of Alaska and for fisheries products harvested or processed within the jurisdiction of the State of Alaska when purchased by the state or by a school district that receives state money.

Alaska Statutes §36.30.170(b) (Lexis 2001) - Applies an Alaska bidder preference of five percent (5%), an Alaska products preference as described in §36.30.322 through 36.30.328, and a recycled products preference under §36.30.337 over the lowest responsive and responsible bidder.

"Alaska bidder" is defined as (1) a person who holds a current Alaska business license; (2) submits a bid for goods, services or construction under the name in the Alaska business license; (3) maintains a place of business within the state; (4) is incorporated or qualified to do business under the laws of the State of Alaska, is a sole proprietorship and the proprietor is a resident of the State of Alaska, is a limited liability company organized under Alaska Statutes §10.50 and all members are residents of the State of Alaska, or is a partnership under Alaska Statutes §§32.05 and 32.11 and all partners are residents of Alaska; and (5) if it is a joint venture, that it is composed entirely of ventures that meet the preceding qualifications.

Alaska Statutes §36.30.170(c) (Lexis 2001) - Award to an Alaska bidder who is not more than fifteen percent (15%) higher than the lowest bid when Alaska bidder offers services through an employment program. "Program" means the state training and employment program established in Alaska Statutes, §23.15.620 through 23.15.660

Alaska Statutes §36.30.170(d) (Lexis 2001) - An Alaska bidder preference of five percent (5%) over the lowest bid for insurance related contracts.

Alaska Statutes §36.30.170(e) (Lexis 2001)- An Alaska bidder preference of ten percent (10%) over the lowest bid applied to a bidder who qualifies under §36.170(b) and is a qualifying entity. Qualifying entity is defined as (1) a sole proprietorship owned by a person with a disability; (2) a partnership if each of the partners is a person with a disability; or (3) a limited liability company if each of the members is a person with a disability.

Alaska Statutes §36.30.170(f) (Lexis 2001) -- An Alaska bidder preference of ten percent (10%) over the lowest bid if at least 50 percent of bidder's employees at time of the bid are persons with a disability.

Alaska Statutes, §36.30.322 (Lexis 2001) - Preference for timber, lumber and manufactured lumber products originating in the state of Alaska forests to be procured by an agency or used in construction projects of an agency.

Alaska Statutes, §36.30.324 (Lexis 2001) - Preference for use of Alaska products and recycled Alaska products in procurements for an agency.

Alaska Statutes, §36.30.332 (Lexis 2001) - Preference for the following Alaska products: Preference of three percent (3%) for Class I products that are more than 25 percent and less than 50 percent produced or manufactured in the State of Alaska. Preference of five percent (5%) for Class II products that are 50 percent or more and less than 75 percent produced or manufactured in the State of Alaska. Preference of seven percent (7%) for Class III products that are 75 percent produced or manufactured in the State of Alaska.

Alaska Statutes, §36.30.333 (Lexis 2001) - A preference for purchasing recycled paper in which at least 25% of the quantity purchased must be recycled paper unless recycled paper is not available for the purchase or unless, after application of the procurement preference under Alaska Statute §36.30.337, the recycled paper is more expensive than the non-recycled paper.

Alaska Statutes, §36.30.337 (Lexis 2001) - Preference of five percent (5%) for recycled products.

Alaska Statutes, §36.30.338 (Lexis 2001) - Definitions:

(1) "Alaska product" means a product of which not less than 25 percent of the value has been added by manufacturing or production in the State of Alaska.

(2) "Produced or manufactured" means processing, developing, or making an item into a new item with a district character and use through the application within the state of materials, labor, skill or other services.

(3) "Product" means materials or supplies but does not include gravel and asphalt.

(4) "Recycled Alaska product" means an Alaskan product of which not less than 50 percent of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the State of Alaska.

Title 2, Alaska Administrative Code, §12.260(d) (Lexis 2001) - A preference of five percent (5%) over the lowest bid is applied to an Alaska bidder under Alaska Statutes §36.30.170(b) in competitive sealed proposals.

Title 2, Alaska Administrative Code, §12.260(e) (Lexis 2001) - If a numerical rating system is used in evaluating competitive sealed proposals, an Alaska offeror's preference of at least 10 percent of the total possible value of the rating system is assigned to a proposal from an Alaska bidder.

Title 2, Alaska Administrative Code, §12.890 (Lexis 2001) - If both the Alaska bidder's preference under AS 36.30.170(b) and the Alaska products preference under AS 36.30.322 -- 36.30.328 apply to a solicitation, a procurement officer shall apply the bidder's preference first and the products preference second.

ARIZONA:

Arizona Revised Statutes Annotated, Title 34, §34-242 (Lexis 2001) - Preference of five percent (5%) for bidders who furnish materials produced or manufactured in the State of Arizona to construct a building or structure, or additions to or alterations of existing buildings or structures to any political subdivision of the State of Arizona. Bidders cannot claim a preference pursuant to both §§34-242 and 34-243 and may not receive more than five percent total preference.

Arizona Revised Statutes Annotated, Title 34, §34-243 (Lexis 2001) - Preference of five percent (5%) to bidders who furnish materials supplied by a dealer who is a resident of the State of Arizona to construct a building or structure, or additions to or alterations of existing buildings or structures for any political subdivision of Arizona.

Arizona Revised Statutes Annotated, Title 41, §41-2533(I) (Lexis 2001 ARIZ HB 2038) - Preference of five percent (5%) to the bidder of recycled paper product.

Arizona Revised Statutes Annotated, Title 41, §41-2636 (Lexis 2001) - Preference for state governmental units to purchase office products, vinyl binders and furniture from Arizona correctional industries if (1) such materials and services are readily available; (2) such materials and services are capable of timely delivery; and (3) such materials and services are of equal quality and price for these same materials and services in the private sector.

Arizona Administrative Code, Title 2, Chapter 7, §R2-7-335 (Lexis 2001) - When practical, purchases that cost less than $10,000 shall be restricted to small businesses. Impractical purchases are under the following circumstances: Sole-source procurements as defined in A.R.S., §41-2536; emergency procurement as defined in A.R.S., §41-2537; purchases not expected to exceed $1,000; purchases delegated within a purchasing agency to field offices; and purchases that have been unsuccessfully completed by failure to contain a notice that only small businesses respond, or because the procurement officer has failed to request confirmation that a bidder contacted to offer a quote is a small business.

ARKANSAS:

Arkansas Code Annotated, §12-30-304 (Lexis 2001) - Preference for state institutions to purchase products grown or produced by the Arkansas State penitentiary and other farms.

Arkansas Code Annotated, §13-8-206 (Lexis 2001) - Preference for works of art by Arkansas artists when purchasing or commissioning art work for a state agency building to be constructed or renovated.

Arkansas Code Annotated, §19-11-259 (Lexis 2001 AR S.B. 358) - Preference of five percent (5%) to a firm resident in Arkansas in the purchase of commodities that are materials and equipment used in public works projects.

Arkansas Code Annotated, §19-11-260 (Lexis 2001 AR S.B. 358) - Preference of ten percent (10%) for recycled paper products. An additional one percent (1%) preference is allowed for products containing the largest amount of postconsumer materials recovered within the State of Arkansas. A bidder receiving a preference under this section shall not be entitled to an additional preference under §19-11-259.

Arkansas Code Annotated, §19-11-304 (Lexis 2001) - Priority for bids submitted by private industries located within the State of Arkansas and employing Arkansas taxpayers over bids submitted by out-of-state penal institutions employing convict labor.

Arkansas Code Annotated, §19-11-305 (Lexis 2001) - Preference of five percent (5%) to Arkansas bidders (as provided for in §19-11-259) in the purchase of commodities that are materials and equipment used in public works projects against bids received from private industries located outside the State of Arkansas; and a preference of fifteen percent (15%) to Arkansas bidder against out-of-state correctional institution bids.

CALIFORNIA:

California Government Code, Title 1, Division 5, Chapter 4, §4303 (Lexis 2001) Contracts for the construction, alteration, or repair of public works, or the purchasing of materials for public use, shall be awarded to persons who agree to use or supply only unmanufactured materials produced in the United States; manufactured materials manufactured in the United States; and manufactured materials made substantially from materials produced in the United States. The California Buy American Act (§§4300 - 4305) has been found to be unconstitutional *(See 53 Ops. Ca. Atty Gen. 65)*. California's Department of General Services, Procurement Division, does not apply this preference.

California Government Code, Title 1, Division 5, Chapter 4, §4331 (Lexis 2001) -- Preference for supplies grown manufactured, or produced in the State of California, and next preference for supplies partially manufactured, grown or produced in the State of California.

NOTE: Although §4331 has not been repealed, it was found to be unconstitutional by the California Attorney General. *(See 53 Ops. Cal. Atty. Gen. 72, 73 (1970))*.

Preference for California-made supplies by this section not applicable to materials going into construction of state-owned buildings; and not applying to general contractors purchasing materials necessary to perform their contracts with the State of California. *(See 27 Ops. Cal. Atty. Gen. 52 (1956))* . California's Department of General Services, Procurement Division, does not apply this preference.

California Government Code, Title 1, Division 5, Chapter 4, §4332 (Lexis 2001) A preference for California-made supplies to be stated when advertising for supplies. *(See §4331 preceding)*

California Government Code, Title 1, Division 5, Chapter 4, §4334 (Lexis 2001) -- Preference of five percent (5%) to bidders manufacturing in the State of California supplies to be used or purchased in the letting of contracts for public works, with the construction of public bridges, buildings and other structures, or with the purchase of supplies for any public use. NOTE: Although §4334 has not been repealed, it was found to be unconstitutional by the California Attorney General. *(See 53 Ops. Cal. Atty. Gen. 72, 73 (1970))*.

California Government Code, Title 1, Division 5, Chapter 10.5, §4531 (Lexis 2001) - Preference for California based companies submitting bids or proposals for state contracts to be performed at worksites in distressed areas by persons with a high risk of unemployment when the contract is for goods or services in excess of one hundred thousand dollars ($100,000). *(Target Area Contract Preference Act).*

California Government Code, Title 1, Division 5, Chapter 10.5, §4533 (Lexis 2001) -- Contracts for goods in distressed areas. Preference of five percent (5%) in contracts for goods in excess of $100,000 given to California based companies that have at least 50 percent of the labor hours required to manufacture the goods and perform the contract performed at a worksite or worksites located in a distressed area.

California Government Code, Title 1, Division 5, Chapter 10.5, §4533.1 (Lexis 2001) -- Additional preference awarded to bidders for contracts of goods in excess of $100,000 and who comply with §4533 are as follows: One percent (1%) preference for bidders who agree to hire persons with high risk of unemployment equal to 5 to 9 percent of its work force during the period of contract performance; a two percent (2%) preference for bidders who agree to hire persons with high risk of unemployment equal to 10 to 14 percent of its work force during the period of contract performance; a three percent (3%) preference for bidders who agree to hire persons with high risk of unemployment equal to 15 to 19 percent of its workforce during the period of contract performance.

California Government Code, Title 1, Division 5, Chapter 10.5, §4534 (Lexis 2001) -- Preference of five percent (5%) in contracts for services in excess of $100,000 given to California based companies that have no less than 90 percent of the labor required for the contract performed at a worksite or worksites located in a distressed area.

California Government Code, Title 1, Division 5, Chapter 10.5, §4534.1 (Lexis 2000) -- Additional preferences as set forth in §4533.1 are awarded to bidders for contracts of services in excess of $100,000 who comply with provisions as set forth in §4534.

California Government Code, Title 1, Division 5, Chapter 10.5, §4535.2 (Lexis 2001) -- The maximum preference and incentive a bidder may be awarded under Chapter 10.5, the Target Area Contract Preference Act, is fifteen percent (15%) and is not to exceed a cost preference of $50,000. The combined cost of preferences and incentives granted pursuant to Chapter 10.5 and any other provision of law is not to exceed $100,000. Small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders.

California Government Code, Title 1, Division 7, Chapter 12.8, §7084 (Lexis 2001) -- Contracts for goods in enterprise zones. Preference of five percent (5%) in contracts for goods in excess of $100,000 to California based companies who certify that not less than fifty percent of the labor hours required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

Additional preferences to California-based companies complying with this section during the performance of the contract are as follows: Five percent (5%) preference given when not less than 90 percent of the labor hours required to perform the contract for goods is accomplished at a worksite or worksites located in an enterprise zone. One percent (1%) preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to five to nine percent of its workforce. Two percent (2%) preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 10 to 14 percent of its work force. Three percent (3%) preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 15 to 19 percent of its workforce. Four percent (4%) preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 20 or more percent of its workforce during the period of the contract performance.

The maximum preference awarded to a bidder under the California Government Code, Chapter 12.8, Enterprise Zone Act, is fifteen percent (15%), and the maximum preference cost cannot exceed $50,000.00.

California Government Code, Division 7, Title 1, Chapter 12.97, §7118 (Lexis 2001) - A preference of five percent (5%) is awarded to California-based companies in contracts for goods in excess of $100,000 if no less than 50 percent of the labor required to perform the contract is accomplished at a worksite or worksites located in a local agency military base recovery area (LAMBRA).

A preference of five percent (5%) is awarded to California-based companies in contracts for services in excess of $100,000 who perform the contract at a worksite or worksites located in a LAMBRA.

Additional preferences are awarded to California-based companies complying within this section as follows: A one percent (1%) preference for bidders who shall agree to hire persons living within a LAMBRA; a two percent (2%) preference for bidders who agree to hire persons living within a LAMBRA that is equal to 10 to 14 percent of its work force during the period of contract performance; a three percent (3%) preference for bidders who agree to hire persons living within a LAMBRA that is equal to 15 to 19 percent of its work force during the contract performance; and a four percent (4%) preference for bidders who hire persons living within a LAMBRA that is equal to 20 percent or more of its work force during the contract performance.

The maximum preference a bidder may be awarded under Chapter 12.97, Local Agency Military Base Recovery Area Act, is fifteen percent (15%) and the maximum preference cost cannot exceed $50,000.00.

A small business bidder, who is the lowest responsible bidder or is eligible for a five percent (5%) small bidder's preference, notwithstanding any other provision of this section, shall be given precedence over nonsmall businesses.

California Code of Regulations, Title 2, Division 2, Chapter 3, §1896.2 (Lexis 2001) - Each California state agency shall grant to all qualified small business a preference that is not to exceed five percent (5%).

California Government Code Annotated, Title 2, Division 3, Chapter 6.5, §14837 (Lexis 2001) - Definitions. "Small business" means an independently owned and operated business, which is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or is a manufacturer with 100 or fewer employees.

"Manufacturer" means a business that is (1) primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products; and (2) classified between codes 2000 and 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

California Government Code Annotated, Title 2, Division 3, Chapter 6.5, §14838 (Lexis 2001) - Small businesses - A five percent (5%) preference to small business over the lowest responsible bidder meeting specifications in state procurement, construction contracts, and in service contracts. The maximum small business preference shall not exceed $50,000 for any bid and the combined cost for preferences granted by law shall not exceed $100,000.

In the event of a precise tie between the low responsible bid from a small business and the low responsible bid from a disabled veteran-owned small business, the disabled veteran-owned small business will be awarded the contract.

California Government Code Annotated, Title 2, Division 3, Chapter 2.1, §15813.1 (Lexis 2001) - Definitions. "Work of art" means any work of visual art, including but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, or photograph, a work of calligraphy, a work of graphic art (including an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature), crafts (including crafts in clay, textile, fiber, wood, metal, plastic, glass, and like materials), or mixed media including a collage, assemblage, or any combination of the foregoing art media). The term "work of art" does not include environmental landscaping placed about a state building.

California Government Code Annotated, Title 2, Division 3, Chapter 2.1, §15813.3 (Lexis 2001) - Preference given to artists who are California residents when purchasing, leasing, or commissioning works of art for public buildings.

California Public Contract Code, Division 2, Part 1, Chapter 3, §3410 (Lexis 2001) - Preference for United States-grown produce and United States-processed foods when a governmental entity purchases food.

California Public Contract Code, Division 2, Part 1, §6107 (Lexis 2001) -- Reciprocal preference awarded to a California company applied when awarding contracts for construction. If the California company is eligible for a California small business preference described in §14838, the preference applied is the greater of the two, but not both.

California Public Contract Code, Division 2, Part 2, Chapter 2.5, §10855 (Lexis 2001) - "Recycled paper product" means a paper product with not less than 50 percent, by fiber weight, consisting of secondary and postconsumer material with not less than 10 percent of fiber weight consisting of postconsumer material.

"Postconsumer material" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item.

"Secondary material" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value.

California Public Contract Code, Division 2, Part 2, Chapter 2.5, §10860 (Lexis 2001) - Under Chapter 2.5, California State University Contract Law, recycled paper product contracts are awarded to the bidder with the greater percentage of postconsumer material

California Public Contract Code, Division 2, Part 2, Chapter 3, §12102 (Lexis 2001) - A preference of five percent (5%) for small business (provided for in Government Code Annotated, Title 2, Division 3, Chapter 6.5, §14838) is applied for the acquisition of electronic data processing and telecommunications goods and services.

California Public Contract Code, Division 2, Part 2, Chapter 4, §12162 (Lexis 2001) - All state agencies are to give a price preference, not to exceed ten percent (10%), to recycled paper products if the product's fitness, quality, and availability are comparable to nonrecycled products.

California Public Contract Code, Division 2, Part 2, Chapter 4, §12168 (Lexis 2001) - The combined dollar amount of preference granted by public agencies for the purchase of recycled paper is not to exceed $100,000. The recycled paper bidder preference shall not exceed $50,000 if a preference exceeding that amount would preclude a small business that offers nonrecycled paper products and is qualified under the California Government Code, §14838.

California Public Contract Code, Division 2, Part 2, Chapter 4, §12183 (Lexis 2001) - A preference exists for compost and co-compost products when they can be substituted for, and cost no more than, the cost of regular fertilizer or soil amendment products, or both.

Government Code Annotated, Title 2, Division 2, Part 2, Chapter 4, §12210 (Lexis 2001) - All local and state public agencies are to give preference to the suppliers of recycled products.

COLORADO:

Colorado Revised Statutes Annotated, §8-18-101 (Lexis 2000) -Reciprocal preference against a nonresident bidder is applied in favor of resident bidders for contracts of commodities and services, and for construction contracts.

Colorado Revised Statutes Annotated, §8-19.5-101 (Lexis 2000) - Preference of five percent (5%) in a public project contract to a bidder who has used recycled plastics in the manufacture of commodity or supplies. "Public project" means any publicly funded contract entered into by a governmental body of the executive branch of the State of Colorado that is subject to the Procurement Code, articles 101 to 112 of Title 24, Colorado Revised Statutes.

Colorado Revised Statutes Annotated, §8-19-102.5 (Lexis 2000) - Reciprocal preference against nonresidents and from another state or foreign country is applied in favor of a Colorado resident bidder for public projects.

Colorado Revised Statutes Annotated, §17-24-111 (Lexis 2000) - Preference applied in the competitive sealed bidding for the purchase of goods and services purchases for goods and services for purchases from Colorado's Division of Correctional Industries. Printing to be purchased from the Division of Correctional Industries unless a state agency operates its own printing operation.

Colorado Revised Statutes Annotated, §24-30-1203 (Lexis 2000) - Preference to purchase products and services from nonprofit agencies for persons with severe disabilities.

Colorado Revised Statutes Annotated, §24-103-202.5 (Lexis 2000) - Preference for resident bidder in "low tie bids" for award of a supply contract. "Low tie bids" means low responsible bids from bidders that are identical in amount and that meet all the requirements and criteria set forth in the invitation for bids. (C.R.S. §24-103-101)

CONNECTICUT:

Connecticut General Statutes, §4a-59 (Lexis 2001) - Preference of up to ten per cent (10%) for (A) the purchase of goods made with recycled materials, or the purchase of recyclable or remanufactured products; (B) the purchase of motor vehicles powered by a clean alternative fuel; or (C) the purchase of motor vehicles powered by fuel other than a clean alternative fuel, and conversion equipment to convert such motor vehicles allowing the vehicles to be powered by either the exclusive use of clean alternative fuel or dual use of a clean alternative fuel and a fuel other than a clean alternative fuel.

"Recyclable" means able to be collected, separated or otherwise recovered from the solid waste stream for reuse, or for use in the manufacture or assembly of another package or product, by means of a recycling program.

"Remanufactured" means restored to its original function and thereby diverted from the solid waste stream by retaining the bulk of components that have been used at least once and by replacing consumable components.

"Remanufacturing: means any process by which a product is remanufactured.

"Clean alternative fuel" means natural gas or electricity when used as a motor vehicle fuel.

Preference in tie bids is given to supplies, materials and equipment produced, assembled or manufactured in the State of Connecticut and services originating and provided for in the State of Connecticut.

Connecticut General Statutes, §10-298b (Lexis 2001) - Preference for all departments, institutions, or agencies supported whole or in part by the State of Connecticut to purchase products made or manufactured or services provided by blind persons under the direction or supervision of the Board of Education and Services for the Blind. Preference does not apply to articles produced or manufactured by the Department of Correction Industries in the State of Connecticut, and emergency purchases.

Connecticut General Statutes, §17b-656 (Lexis 2001) - Preference for any department, institution, or agency supported whole or in part by the State of Connecticut to purchase products and services rendered by persons with disabilities, except (1) articles produced or manufactured by blind persons, (2) articles produced or manufactured by the Department of Corrections, and (3) emergency purchases.

Connecticut General Statutes, §18-88 (Lexis 2001) - Preference for each state department, agency, commission or board to purchase its necessary products and services from the Correctional Institutions and Department of Correction Industries, provided they are comparable in price and quality and in sufficient quantity as may be available outside the institutions.

DELAWARE:

Delaware Code, Title 16, §9605 (Lexis 2000) - Preference for a product or service of the Delaware Industries for the Blind and other severely disabled individuals.

Delaware Code, Title 29, §6962 (Lexis 2000) - Preference for Delaware laborers, workers or mechanics in the construction of all public works for the State of Delaware or any political subdivision, or by firms contracting with the State or any political subdivision thereof.

DISTRICT OF COLUMBIA:

District of Columbia Code, Title 1, §1-1183.1 (Lexis 2000) - Preference for the purchase of materials, equipment, and supplies produced in the District government or sold by District-based businesses.

FLORIDA:

Florida Statutes, Title XVIII, §255.04 (Lexis 2000) - Preference in tie bids awarded to materialmen, contractors, builders, architects, and laborers who reside in Florida for the purchase of material and in contracts for the erecting or construction of any public administrative or institutional building.

Florida Statutes, Title XIX, §283.32 (Lexis 2000) - Preference for each agency to use recycled paper. A preference of 10 percent to bidders who certify that the materials used for a printing contract contain at least the minimum percentage of recycled content established by the Department of Management Services.

Florida Statutes, Title XIX, §283.35 (Lexis 2000) - Preference in tie bids for printing contracts awarded to bidders located within the State of Florida.

Florida Statutes, Title XIX, §287.045 (Lexis 2000) - Preference of ten percent (10%) to responsive bidder who has certified that the products or materials contain at least the minimum percentage of recycled content and post consumer recovered material and up to an additional five percent preference to a responsible bidder who has certified that the products or material are made of materials recovered in Florida.

Florida Statutes, Title XIX, §287.082 (Lexis 2000) - Preference in tie bids for commodities manufactured, grown, or produced in the State of Florida.

Florida Statutes, Title XIX, §287.084 (Lexis 2000) Reciprocal preference awarded to a bidder whose principal place of business is in the State of Florida for the purchase of personal property through competitive bidding. Reciprocal preference is awarded when lowest responsible bid is by a bidder whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state. Reciprocal preference is equal to the preference granted by the state from which the lowest bidder has his or her principal place of business.

Florida Statutes, Title XIX, §287.087 (Lexis 2000) - Preference to a business that has implemented a drug-free workplace program in the procurement of commodities or contractual services by the state or any political subdivision.

"Commodity" means any of the various supplies, materials, goods, merchandise, food, equipment, and other personal property, including a mobile home, trailer, or other portable structure with floor space of less than 3,000 square feet, purchased, leased, or otherwise contracted for by the state and its agencies. "Commodity" also includes interest on deferred-payment commodity contracts. However, commodities purchased for resale are excluded from this definition. Further, a prescribed drug, medical supply, or device required by a licensed health care provider as a part of providing health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration for clients at the time the service is provided is not considered to be a "commodity." Printing of publications shall be considered a commodity when competitively bid.

Florida Statutes, Title XXIX, §403.714 (Lexis 2000) - Preference for the procurement of compost products applies to all state agencies, the Department of Transportation, the Department of Management Services and local governments, when the compost products can be substituted for, and cost no more than, regular soil amendment products. The preference applies, but is not limited to, the construction of highway projects, road rights-of-way, highway planting projects, recultivation and erosion control programs, and other projects.

Florida Statutes, Title XXIX, §403.753 (Lexis 2000) - Applies a five percent (5%) preference in the procurement of recycled automotive, industrial and fuel oils, and oils blended with recycled oils for all state and local government uses.

Florida Statutes, Title XXX, §413.035 - (Lexis 2000) - Priority to purchase any product or service from a qualified nonprofit agency for the blind or for other severely handicapped persons.

Florida Administrative Code, Title 25, §25-25-009 (Lexis 2000) - Preference awarded to bidders located within the State of Florida when awarding contracts, whenever commodities bid can be purchased at no greater expense than, and at a level of quality comparable to, those bid by a bidder located outside the State of Florida.

Florida Administrative Code, Title 25, §25-25-025 (Lexis 2000) - General Purchasing Procedures - Preference in tie bids awarded to a minority owned business.

"Minority business enterprise" means any small business domiciled in Florida, and which at least 51 percent is owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin which has been subjected historically to disparate treatment . (Florida Statute, Title XIX, §288.703).

GEORGIA:

Georgia Code, Title 30, §30-2-4 (Lexis 2000) - All departments, subdivisions, and institutions of the State of Georgia are directed to give preference in purchases of goods manufactured at the Georgia Industries for the Blind.

Georgia Code Annotated, §50-5-60 (Lexis 2000) - Preference in tie bids in the purchase and contracting of supplies, materials, equipment manufactured and printing produced in Georgia.

Preference in all cases shall be given to surplus products or articles manufactured or produced by other state departments, institutions, or agencies.

Reciprocal preference applied in favor of vendors resident in the State of Georgia or Georgia businesses.

Georgia Code Annotated, §50-5-60.4 (Lexis 2000) - Preference given to Georgia compost and mulch to use in road building, land maintenance, and land development activities.

Georgia Code Annotated, §50-5-61 (Lexis 2000) - Preference in tie bids for supplies, materials, agricultural products and printing produced in Georgia.

HAWAII:

Hawaii Revised Statutes, Title 9, §103D-1002 (Lexis 2000) -- Preference of three percent (3%) for Class I Hawaii products that have 25 percent to 49 percent of their manufactured cost in Hawaii; preference of five percent (5%) for Class II Hawaii products that have 50 percent to 74 percent of their manufactured cost in Hawaii; and a preference of ten percent (10%) for Class III Hawaii products that have 75 percent or more of their manufactured cost in Hawaii. Hawaii products mean products that are mined, excavated, produced, manufactured, raised, or grown in the state where the input constitutes no less than twenty-five percent of the manufactured cost. *(H.R.S., §103D-1001)*

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-5 (Lexis 2000) - Should the price comparison for bids, after all applicable preferences are taken into consideration, result in identical total prices award shall be made to the offeror offering a registered Hawaii (Class I, II or III) product in preference to a non-Hawaii product.

Hawaii Revised Statutes, Title 9, §103D-1003 (Lexis 2000) and Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-10 (Lexis 2000) - Preference of fifteen percent (15%) is awarded to contracts in which all work will be performed in the State of Hawaii for printing, binding or stationery, including all preparatory work, presswork, bindery work, and any other production-related work.

Hawaii Revised Statutes, Title 9, §103D-1004 (Lexis 2000) - Reciprocal preference against bidders from those states that apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by the State of Hawaii.

Hawaii Revised Statutes, Title 9, §103D-1005 (Lexis 2000) and Weils Code of Hawaii Rules, Title 3, Chapter 124, §§3-124-20 to 26 - Preference given to products containing recycled material. Purchase specifications shall include but not be limited to paper, paper products, glass and glass-by-products, plastic products, mulch and soil amendments, tires, batteries, oil, paving materials and base, subbase, and pervious backfill materials.

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-24(a) (Lexis 2000) Preference of five percent (5%) given to recycled products only when purchase does not specify only recycled products and when non-recycled products are offered.

Hawaii Revised Statutes, §103D-1006 (Lexis 2000) and Weils Code of Hawaii Rules, Title 3, Chapter 124, §§3-124-30 to 35- Preference is awarded in tie bids for software development to Hawaii software development businesses.

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-34(a) (Lexis 2000) - Price preference of ten percent (10%) applied to Hawaii software development businesses.

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-31 (Lexis 2000) - Definitions. "Hawaii software development business" means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State of Hawaii and which proposes to obtain 80 percent of the labor for software development from persons domiciled in Hawaii.

Weils Code of Hawaii Rules, Title 3, Chapter 124, §3-124-25(e) (Lexis 2000) - After all preferences are applied to recycled products, and the price comparison, after taking into consideration all applicable preferences, results in identical evaluated prices, award shall be made to the offeror offering the product with the higher post-consumer recovered material content; or the product with the higher recovered material content if the products have identical post-consumer recovered material content.

Hawaii Revised Statutes, Title 9, §103D-1007 (Lexis 2000) - Preference of seven percent (7%) on bids for public works project contracts given to a bidder who has filed all state tax returns due to the State of Hawaii and paid all amounts owing on such returns for two successive years prior to submitting the bid and if the amount of the bid is $5,000,000.00 or less; and a preference of seven percent to a bidder who has filed all state tax returns due to the State of Hawaii and paid all amounts owing on such returns for four successive years prior to submitting the bid and the amount of the bid is more than $5,000,000.00.

Weil's Code of Hawaii Rules, Title 3, Chapter 124, §3-124-44(a) (Lexis 2000) - Preference of seven percent (7%) for in-state contractors bidding on public works contracts.

Hawaii Revised Statutes, Title 9, §103D-1304 (Lexis 2000) - Affirmative program to include description of the preference for recycled oil products in soliciting bids from suppliers and vendors.

Hawaii Revised Statutes, Title 19, §342G-41 (Lexis 2000) - Preference in state and county public agencies to purchase products made from recycled materials, that are themselves recyclable, and that are designed for durability.

IDAHO:

Idaho Code, Title 60, §60-101 (Lexis 2000) -- Preference for all printing, binding, engraving and stationery work to be executed within the State of Idaho, except as provided in §60-103 of the Idaho Code.

Idaho Code, Title 60, §60-103 (Lexis 2000) - Preference of ten percent (10%) awarded to a person, firm or corporation proposing to execute printing, engraving, binding, and stationery work in the State of Idaho.

Idaho Code, Title 67, §67-2348 (Lexis 2000) - Reciprocal preference applied in favor of Idaho domiciled contractors on public works contracts.

Idaho Code, Title 67, §67-2349 (Lexis 2000) - Reciprocal preference for the purchase of any materials, supplies, services or equipment is awarded to a responsible bidder domiciled in Idaho. Any bidder domiciled outside the boundaries of the State of Idaho may be considered an Idaho domiciled bidder provided that for a period of the year the bidder maintains in Idaho a fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and if a corporation be registered and licensed to do business in the Sate of Idaho.

In the evaluation of paper product bids, those items that meet recycled content standards may be given not more than a five percent (5%) purchasing preference.

Idaho Code, Title 67, §67-5718 (Lexis 2001 ID S.B. 1025 and H.B. 128) - Preference in tie bids for property purchased in excess of $25,000.00 or procured at $1,000.00 per month to be awarded to bidders having property of local and domestic production and manufacture, or bidders having a significant Idaho economic presence.

ILLINOIS:

Illinois Compiled Statutes Annotated, 30 ILCS 500/45-10 (Lexis 2001) - Reciprocal Preference - When a contract is to be awarded to the lowest responsible bidder, a resident bidder is allowed a preference as against a non-resident bidder from any state that gives or requires a preference to bidders from that state.

A resident bidder is defined as a bidder who is a person or foreign corporation authorized to transact business in the State of Illinois and has a bona fide establishment for transacting business within the State of Illinois.

Illinois Administrative Code, 44 Ill. Admin. Code §500.1110 (Lexis 2001) - Resident Vendor Preference - A preference in tie bids is awarded to Illinois resident bidders. An Illinois resident bidder is a person or foreign corporation authorized to transact business in Illinois and who has a bona fide establishment for transacting business within Illinois.

Illinois Compiled Statutes Annotated, 30 ILCS 500/45-20 (Lexis 2001) - A preference of ten percent (10%) is awarded to a bidder who can fulfill a contract through the use of products made of recycled materials.

Illinois Administrative Code, 44 Ill. Admin. Code §500.1130 (Lexis 2001) - Recycled Materials - A preference of ten (10%) percent is awarded to a qualified bidder with products made of recycled materials.

Illinois Compiled Statutes Annotated, 30 ILCS 500/45-30 (Lexis 2001) - Illinois purchasing agency are to give preference to articles, materials, services, food stuffs, and supplies produced or manufactured by persons confined to the Department of Corrections.

Illinois Administrative Code, 44 Ill. Admin. Code §526.4530 (Lexis 2001) - Preference is given for supplies or services made available from Correctional Industries for procurements by public institutions of higher education.

Illinois Compiled Statute Annotated, 30 ILCS §500/45-35 (2001) - Preference to procure, without advertising bids, supplies and services from Illinois Sheltered workshops for the severely handicapped.

Illinois Compiled Statutes Annotated, 30 ILCS 500/45-50 (Lexis 2001) - A preference is awarded to a bidder for the use of agricultural products grown in Illinois.

Illinois Compiled Statutes Annotated, 30 ILCS 500/45-55 (Lexis 2001) - A preference is awarded to a bidder, in contracts requiring the procurement of plastic products, who fulfill the contract through the use of plastic products made from Illinois corn by-products.

Illinois Compiled Statutes Annotated, 30 ILCS §500/45-60 (Lexis 2001) - Preference to award contract for vehicles to a bidder or offerer who will fulfill the contract through the use of vehicles powered by ethanol produced from Illinois corn or bio diesel fuels produced from Illinois soybeans.

Illinois Administrative Code, 44 Ill. Admin. Code §1.4535 (Lexis 2001) - Preference is given to articles, materials, services, food stuffs and supplies that are produced or manufactured by persons with disabilities in state use sheltered workshops.

Illinois Compiled Statutes Annotated, 30 ILCS §520/2 (Lexis 2001) - Preference given to vendors in those states whose preference laws do not prohibit the purchase by the public institutions of commodities grown or produced in Illinois. Applies to all Illinois state agencies. The term "institution" means all institutions maintained by the State of Illinois or any political subdivision thereof or municipal corporation therein, including municipally-owned public utility plants. *(30 ILCS §520/1)*

Illinois Compiled Statutes Annotated, 30 ILCS §555/1 (Lexis 2001) Every institution in the State of Illinois is required to give a ten percent (10%) preference to the cost of coal mined in the State of Illinois if used as fuel. The term "institution" means all institutions maintained by the State of Illinois or any political subdivision thereof or municipal corporation therein, including municipally-owned public utility plants. *(30 ILCS §555/2)*

Illinois Compiled Statutes Annotated, 30 ILCS §565/2 (Lexis 2001) - Preference for steel products produced in the United States in all contracts for construction, reconstruction, repair, improvement or maintenance of public works. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. *(30 ILCS §565/3)*

Illinois Administrative Code, 44 Ill. Admin. Code §1120.4510 (Lexis 2001) - Preference for Illinois resident vendor in tie bids. An Illinois resident vendor who would perform the services or provide the supplies from another state, or produces or performs at least 51% of the goods or services in another state, will be considered a resident of the other state as against an Illinois resident vendor who performs the services or provides the supplies from Illinois. Reciprocal preference is applied

against vendors considered residents of another state if the state has an in-state preference.

INDIANA:

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-16 (Lexis 2000) - A price preference of not less than ten percent (10%) or more than fifteen percent (15%) may be awarded for the purchase of supplies that contain recycled materials or post-consumer materials.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-18 (Lexis 2000) - Preference of ten percent (10%) for soybean oil based ink.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-19 (Lexis 2000) Preference of ten percent (10%) for the purchase of fuel that is at least 20% soy diesel/bio diesel by volume. "Soy diesel/bio diesel" includes fuels (other than alcohol) that are primarily esters derived from biological materials, including oil seeds and animal fats, for use in compression and ignition engines.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-20- (Lexis 2000) - A purchasing preference may be awarded by a governmental body to an Indiana business. Reciprocal preference is applied in favor of Indiana businesses. This section does not apply to the Indiana State Lottery Commission.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-21- (Lexis 2000) - A preference for governmental bodies to purchase supplies manufactured in the United States. This section does not apply to the Indiana State Lottery Commission.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-22 (Lexis 2000) - Preference applied for coal mined in Indiana when purchasing coal for fuel. The preference does not apply if federal law requires the use of low sulphur coal in the circumstances for which the coal is purchased.

Burns Indiana Statutes Annotated, Title 5, Chapter 15, §5-22-15-23 (Lexis 2000) - A preference of fifteen percent (15%) is awarded to an Indiana small business. Small business is defined as a business that is independently owned and operated; is not dominant in its field of operation; and has the following criteria: (1) A wholesale business is not a small business if its annual sales for its most recently completed fiscal year exceed four million dollars ($4,000,000). (2) A construction business is not a small business if its average annual receipts for the preceding three (3) fiscal years exceed four million dollars ($4,000,000). (3) A retail business or business selling services is not a small business if its annual sales and receipts exceed five hundred thousand dollars ($500,000). (4) A manufacturing business is not a small business if it employs more than one hundred (100) persons. (Burns Indiana Code, §5-22-14-3)

IOWA:

Code of Iowa, Title 1, Chapter 18, §18.6 (Lexis 2001) - Preference in tie bids for equipment, supplies or services to be awarded to Iowa products and purchases from Iowa based businesses. Reciprocal preference shall be applied against states that mandate a percentage preference for the purchase of equipment, supplies, or services.

Code of Iowa, Title 1, Chapter 18, §18.22 (Lexis 2001) - Preference to purchase lubricating oil and industrial oil with the greatest percentage of recycled oil.

State agencies to give preference to purchasing Bio-Based hydraulic fluids, greases, and other industrial lubricants manufactured from soybean.

"Bio-based hydraulic fluids, greases, and other industrial lubricants" means the same as defined by the United States department of agriculture, if the department has adopted such a definition. If the United States department of agriculture has not adopted a definition, "bio-based hydraulic fluids, greases, and other industrial lubricants" means hydraulic fluids, greases, and other lubricants containing a minimum of fifty-one percent soybean oil. *(2001 Ia. House File 194)*

"Other Industrial Lubricants" means lubricants used or applied to machinery.

Code of Iowa, Title II, Chapter 73, §73.6 (Lexis 2001) - Preference for the purchase of coal that is mined or produced within the State of Iowa by producers who are complying with all the workers' compensation and mining laws of the state.

Code of Iowa, Title 1, Chapter 73, §73.16 (Lexis 2001) - A preference of ten percent (10%) is awarded to certified targeted small businesses for the procurement of goods and services, including construction, but not including utility services.

Code of Iowa, Title II, Chapter 73, §73A.21 (Lexis 2001) - Reciprocal preference is applied by Iowa state agencies and political subdivisions in public improvement contracts. The reciprocal preference is applied against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country.

Public improvement means a building or other construction work which includes road construction, reconstruction and maintenance projects. (See Iowa Code, Chapter 73, §73A.1; and Iowa Administrative Code, §27-6.2 (Lexis 2001))

Resident bidder means a person authorized to transact business in the state of Iowa and who has a place of business for transacting business within the state at which it has conducted business for at least six months . Fifty one percent (51%) of the resident bidder's common stock has to be owned by residents of Iowa.

KANSAS:

Kansas Statutes Annotated, §75-3740 (Lexis 2000) - Preference in tie bids awarded to bidder within the State of Kansas. In bids for paper products, preference is given to the bidder whose paper products contain the highest percentage of recyclable materials. Reciprocal preference is applied in awarding of any contract for construction of a building or the making of repairs or improvements upon any building for a state agency.

Kansas Statutes Annotated, §75-3740a (Lexis 2000) - Reciprocal preference is applied against a contractor domiciled outside of the State of Kansas for contracts for the erection, construction, alteration, repair or addition to any public building or structure; or for any purchase of goods, merchandise, materials, supplies or equipment of any kind.

Kansas Statutes Annotated, §75-3740b (Lexis 2000) - Preference to bidder for newsprint or high grade bleached printing or writing paper containing not less than 50 percent waste paper by weight.

KENTUCKY:

Kentucky Revised Statutes, Title VI, §45A.470 (Lexis 2001) - Preference for all governmental bodies and political subdivisions of the State of Kentucky to purchase commodities or services from the Kentucky Department of Corrections. Second preference given to the Kentucky Industries for the Blind.

Kentucky Revised Statutes, Title VI, §45A.520 (Lexis 2001) - Preference for recycled materials. State agencies are required to provide minimum recycled material content equal to those established by the United States Environmental Protection Agency for purchasing goods, supplies, equipment, materials, and printing.

Kentucky Revised Statutes, Title VII, §56.005 (Lexis 2001) - Preference for composted materials collected at Kentucky state and local facilities, to be used by state agencies for projects including, but not limited to, roadway construction, reconstruction, or maintenance, restoration of sites including abandoned mine lands reclamation, stream bank stabilization, and reforestation.

Kentucky Revised Statutes, Title XVII, §197.210 (Lexis 2001) Preference to purchase products made by Kentucky prison industries.

LOUISIANA:

Louisiana Revised Statutes, Title 30, §30:2415 (Lexis 2000) - Preference for state agencies in Louisiana to purchase recycled paper and paper products, tissue and paper towels.

"Recycled paper product" means all paper and woodpulp products which contain the recommended minimum content standards specified in the guidelines as adopted by the Environmental Protection Agency under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. 6901 et seq.), as amended, and which are specified in the rules and regulations promulgated by the secretary of the Department of Environmental Quality pursuant to R.S. 30:2415.4, except that high grade bleach printing and writing papers defined in such guidelines, rules, and regulations shall contain a minimum of fifty percent recovered paper or twenty percent recovered post-consumer fiber by fiber weight. *(La. R.S. 30:2412)*

A preference of up to five percent (5%) is allowed for the purchase of products with recycled content, provided that such products are either manufactured in Louisiana or contain recovered materials diverted or removed from the solid waste stream which otherwise would go into a Louisiana landfill.

Louisiana Revised Statutes, Title 30, §30:2417 (Lexis 2000) - When purchasing lubricating oils, a purchasing agent for any agency, of the State of Louisiana is to give preference of five percent (5%) to rerefined oil which meets manufacturer's warranty, and the product of which contains at least twenty-five percent rerefined oil.

Louisiana Revised Statutes, Title 38, §38:2184 (Lexis 2000) - Preference given to supplies material, or equipment produced or offered by Louisiana citizens.

Louisiana Revised Statutes , Title 38, §38:2225 (Lexis 2000) - Reciprocal preference against nonresident contractors in public works contracts.

Louisiana Revised Statutes, Title 38,§38:2251 (2001 S.B. 417) -- A seven percent (7%) preference is applied for products assembled, processed, produced or manufactured in Louisiana.

A seven percent (7%) preference is applied for processed meat, meat products, domesticated catfish and produce grown outside of the State of Louisiana, but processed in the State of Louisiana.

A ten percent (10%) preference is applied for produce produced and processed in Louisiana.

A ten percent (10%) preference is applied for purchasing Louisiana products which include materials supplies and equipment. "Louisiana products" means products which are manufactured, processed, produced, or assembled in Louisiana.

Paper and paper products are to be manufactured and converted in Louisiana. "Manufactured" means the process of making a product suitable for use from raw materials by hand or by machinery. "Converted" means the process of converting a roll stock into a sheeted and fully packaged product in a full-time converting operation.

Agricultural or forestry products are to be produced, manufactured or processed in Louisiana.

Eggs and egg products are to be processed from eggs laid in Louisiana. *(See §39:1595 for percentage of preference)*

Louisiana Revised Statutes, Title 38, §38:2251.1 (Lexis 2000) - A ten percent (10%) preference for milk and dairy products produced or processed in Louisiana.

Louisiana Revised Statutes, Title 38, §38:2251.2 (Lexis 2000) -- A ten percent (10%) preference for steel rolled in Louisiana.

Louisiana Revised Statutes, Title 38, §38:2251(K), and Title 39, §39:1595(J) (2001 S.B. 417) - Preference of ten percent (10%) is applied for the procurement or purchase of Louisiana products whose source is a clay which is mined or originates in Louisiana and which is manufactured, processed, or refined in Louisiana for sale as an expanded clay aggregate form different than its original state, and which is equal in quality to such products manufactured, processed, or refined outside of Louisiana.

Louisiana Revised Statutes, Title 38, §38:2253 (Lexis 2000) -- Preference in tie bids awarded to firms doing business in the State of Louisiana.

Louisiana Revised Statutes, Title 39, §39:1595 (2001 S.B. 417) - Preferences only apply to bidders whose Louisiana business workforce is comprised of a minimum of fifty percent of Louisiana residents. A preference of seven percent (7%) is applied for products produced, manufactured, assembled, grown or harvested in Louisiana; a preference of seven percent (7%) is applied for meat and meat products and domesticated catfish processed in Louisiana; a preference of seven percent (7%) is applied for eggs or crawfish processed in Louisiana.

Louisiana Revised Statutes, Title 39, §39:1595.1 (Lexis 2000) - Reciprocal preference in favor of contractors domiciled in Louisiana is awarded in contracts, except contracts for the construction, maintenance, or repair of highways and streets.

Louisiana Revised Statutes, Title 39, §39:1595.2 (Lexis 2000) - Reciprocal preference in favor of contractors domiciled in Louisiana is awarded in public works contracts.

Louisiana Revised Statutes, Title 39, §39:1595.3 (2000 Lexis H.B. 102) - A ten percent (10%) preference is awarded to resident vendors to organize or administer rodeos and livestock shows.

Louisiana Revised Statutes, Title 39, §39:1595.5 (2000 H.B. 102) - A ten percent (10%) preference is awarded for items purchased from a retail dealer located in the state of Louisiana.

Louisiana Revised Statutes, Title 39, §39:1595.6 (Lexis 2000) - A ten percent (10%) percent preference is applied for purchasing steel rolled in Louisiana.

Louisiana Revised Statutes, Title 39, §39:1733 (Lexis 2000) - Set aside for awarding to small businesses an amount not to exceed 10 percent of the value of anticipated total state procurement of goods and services, excluding construction.

Title 34 Louisiana Administrative Code, §34:1.301 (Lexis 1998) - Preference for commercially available products. It is the general policy of the State of Louisiana to procure standard commercial products whenever practicable.

Title 34 Louisiana Administrative Code, §34:1.529 (Lexis 1998) - Tie bid - In state contracts awarded by competitive sealed bidding resident business are preferred over nonresident businesses where there is a tie bid.

MAINE:

Maine Revised Statutes Annotated Title 5, §1812-B (Lexis 2000) - Preference of ten percent (10%) to bidders offering paper or paper products with recycled material content.

Maine Revised Statutes Annotated, Title 5, §1825-B (Lexis 2000) - Preference in tie bids to award contracts to in-state bidders or to bidders offering commodities produced or manufactured in the State of Maine if the price, quality and availability and other factors are equivalent. Reciprocal preference applied in favor of Maine businesses.

Maine Revised Statutes Annotated, Title 5, §1826-C (Lexis 2000) - Preference for products and services from work centers. Second preference given to purchases from the Department of Corrections if no bid is received from a work center.

"Work center" means a program that provides vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement. (M.R.S. 1826-B)

Maine Revised Statutes Annotated Title 26, §1301 (Lexis 2000) - Preference in tie bids awarded to workmen and bidders who are residents of the State of Maine for contracts that are greater than $1,000 for constructing, altering, repairing, furnishing or equipping its buildings or public works.

MARYLAND:

Annotated Code of Maryland, Article 24, Title 8, §8-102 (Lexis 2001). "Maryland firm" means a business entity that has its principal office in the State of Maryland.

Reciprocal preference. When awarding a contract by competitive bidding, if the state in which a nonresident firm is located gives an advantage to its resident businesses, a political subdivision or any instrumentality of government within the State may give an identical advantage to the lowest responsive and responsible bid from a Maryland firm over that of a nonresident firm.

Annotated Code of Maryland, State Finance and Procurement Code, §14-206 (Lexis 2001) - Up to a five percent (5%) preference applied to a small business. Percentage preference may vary among industries to account for their particular characteristics. "Small business" preference means a purchase request for which bids are invited from a list of qualified bidders that includes small businesses. (Md. State Finance and Procurement Code, §14-201)

Annotated Code of Maryland, State Finance and Procurement Code, §14-401 (Lexis 2001)- "Resident bidder" means a bidder whose principal office is located in the State of Maryland.

Reciprocal preference applied in favor of resident bidders in procurement contracts for supplies and services. "Preference" includes a percentage preference; an employee residency requirement; or any other provision that favors a resident over a nonresident.

Annotated Code of Maryland, State Finance and Procurement Code, §14-404 (Lexis 2001) - Preference for the use of Maryland coal in the design of a heating system for a building or facility in which the State of Maryland provides at least 50 percent of the money for construction of the building or facility.

Annotated Code of Maryland, State Finance and Procurement Code, §14-405 (Lexis 2001) - Preference, not to exceed five percent (5%), for the purchase of products made from recycled materials. "Recycled materials" means material recovered from or otherwise destined for the waste stream. Recycled materials includes post-consumer material, industrial scrap material, compost and obsolete inventories.

MASSACHUSETTS:

Massachusetts General Laws Annotated, Chapter 7, §22 (Lexis 2001) - Preference in tie bids for supplies and materials manufactured and sold within the State of Massachusetts. An additional preference may be applied for supplies and materials manufactured and sold in cities and towns of Massachusetts that are designated as depressed areas as defined by the Department of Labor of the United States.

Massachusetts General Laws Annotated, Chapter 149, §179A (Lexis 2001) -- Preference in tie bids to U.S. citizens in awarding of public work contracts.

MICHIGAN:

Michigan Statutes Annotated, Title 3, §3.516(261) (Lexis 2000) - Preference in tie bids for services or products manufactured by Michigan-based firms.

Michigan Statutes Annotated, Title 3, §3.516(268) (Lexis 2000) - Reciprocal preference in favor of Michigan business applied in procurements in excess of $100,000.

Michigan Statutes Annotated, Title 3, §3.405(6) (Lexis 2000) - Preference in tie bids for the purchase of fish harvested in the waters of the State of Michigan.

Michigan Statutes Annotated, Title 4, §4.315 (Lexis 2000) - Printing paid wholly or in part with state funds must be printed within the State of Michigan. Firms must use the allied printing trades council union label.

MINNESOTA:

Minnesota Statutes Annotated, §§16B.121 and 16B.122, Subd. 3 (Lexis 2000) - Preference of ten percent (10%) for the purchase of recycled materials.

Minnesota Statutes, Annotated, §16C.06 (Lexis 2000) - Reciprocal preference applied against other states with resident preference in the acquisition of goods and services. A resident vendor shall be allowed a preference over a nonresident vendor from a state that gives or requires a preference to vendors from that state. The preference shall be equal to the preference given or required by the state of the nonresident vendor.

Minnesota Statutes, Annotated, §16C.16 (Lexis 2000) - Set-aside of at least twenty-five percent (25%) of total state procurement of goods and services, including printing and construction to be awarded to small businesses. Small businesses are to have their principal place of business in Minnesota.

A preference of up to six percent (6%) is to be applied to small targeted group businesses. Small targeted group businesses are majority owned and operated by women, persons with a substantial physical disability, or specific minority groups.

Up to a four percent (4%) preference may be award in the amount bid on state construction to small businesses located in an economically disadvantaged area. (See also Minnesota Administrative Code, §1230.1830 (Lexis 2000))

A business is considered to be in an economically disadvantaged area if (1) the owner resides in or the business is located in a county in which the median income for married couples is less than 70 percent of the state median income for married couples; (2) the owner resides in or the business is located in an area designated a labor surplus area by the United States Department of Labor; or (3) the business is a rehabilitation facility or work activity program.

MISSISSIPPI:

Mississippi Code 1972 Annotated, §31-3-21 (Lexis 2001) - Preference in tie bids given to resident bidders of the State of Mississippi for public contracts; and reciprocal preference in favor of in-state bidders for public contracts.

"Public project" is any project for the erection, building, construction, reconstruction, repair, maintenance or related work which is funded in whole or in part with public funds. (See §31-3-1)

Mississippi Code 1972 Annotated, §31-5-23 (Lexis 2001) - Public Works Projects - In the construction of any building, highway, road, bridge or other public work or improvement a preference is awarded in tie bids for the use of only materials grown, produced, prepared, made and or manufactured within the State of Mississippi. The paint, varnish and turpentine used in construction are to be produced in Mississippi.

Mississippi Code 1972 Annotated, §31-7-15 (Lexis 2001) - Preference in tie bids given to resident bidders of the State of Mississippi for commodities grown, processed or manufactured within the State of Mississippi. Preference of ten percent (10%) for products made of recovered materials. "Recovered materials" means those materials having known recycling potential, which can be feasibly recycled and have been diverted or removed from the waste stream for sale, use or reuse, by separation, collection or processing. (Miss. Code Ann. §49-31-9)

Mississippi Code 1972 Annotated, §31-7-47 (Lexis 2001) - Preference in tie bids given to resident bidders of the State of Mississippi in the letting of public contracts, and reciprocal preference when awarding public contracts to out-of-state bidders.

Mississippi Code 1972 Annotated, §73-13-45 (Lexis 2001) [Repealed effective December 31, 2004] - Preference in tie bids given to resident contractors of the State of Mississippi for professional engineering services; and reciprocal preference when awarding to out-of-state contractors for professional engineering services.

MISSOURI:

Missouri Revised Statutes, Title II, §8.280 (Lexis 2001) - Preference to use products from the mines, forests, and quarries of the State of Missouri with the construction or repair of public buildings. Preference is also given for using Missouri materials and labor.

Missouri Revised Statutes, Title IV, §34.031 (Lexis 2001) - Preference in tie bids for the purchase of products made from materials recovered from solid waste. Particular emphasis is given to recycled oil, retread tires, compost materials, and recycled paper products.

The minimum percentage of recycled paper in paper products is as follows: Forty percent (40%) recovered materials from newsprint, eighty percent (80%) recovered materials for paperboard; fifty percent (50%) waste paper in high grade printing and writing paper; and five (5%) to forty percent (40%) in tissue products.

Missouri Revised Statutes, Title IV, §34.060 (Lexis 2001) - Preference in tie bids to purchase materials, products, supplies, provisions, and all other articles produced or manufactured, made or grown within the State of Missouri. A preference in tie bids is also applied in favor of individuals doing business as Missouri firms, corporations, or individuals.

Missouri Revised Statutes, Title IV, §34.070 (Lexis 2001) - Preference in tie bids to all commodities manufactured, mined, produced or grown within the state of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals.

Missouri Revised Statutes, Title IV, §34.073 (Lexis 2001 - Preference in tie bids for the performance of any job or service given to bidders doing business as Missouri firms, corporations or individuals, or which maintain Missouri offices or places of business.

Missouri Revised Statutes, Title IV, §34.076 (2001) - Reciprocal preference applied against a bidder domiciled outside the boundaries of the State of Missouri for any public works or product. Reciprocal preference in awarded in favor to a bidder or contractor domiciled in Missouri for products and for public works contracts. Reciprocal preference does not apply to any contractor who is qualified for bidding purposes with the department of transportation and submits a successful bid where part of or all funds are furnished by the United States. It also does not apply to contracts for highways and public transportation where the bid is less than $5,000.

Missouri Revised Statutes, Title IV, §34.080 (Lexis 2001) - Preference in tie bids for the purchase of coal mined in the State of Missouri to be used by any institution supported in whole or in part by public funds of the state. In determining the cost of the coal mined either in the state of Missouri or an adjoining state, the cost of transportation is included in the bid. Institutions do not include municipal corporations, political subdivisions or public school

The term "institution" includes all institutions supported by public funds of the state, but does not include municipal corporations, political subdivisions or public schools.

Missouri Revised Statutes Title IV, §34.090 (Lexis 2001) - Preference is given to any products manufactured by any institution of the state of Missouri.

Missouri Revised Statutes, Title IV, §34.165 (Lexis 2001) - Preference of five bonus points awarded for products or services manufactured, produced or assembled in qualified nonprofit organizations for the blind.

Missouri Revised Statutes Title IV, §34.353 (Lexis 2001) - Domestic Product Procurement Act (Buy American). Each contract for the purchase or lease of manufactured goods or commodities by any public agency, and each contract made by a public agency for construction, alteration, repair, or maintenance of any public works shall contain a provision that any manufactured goods or commodities used or supplied in the performance of that contract or any subcontract shall be manufactured or produced in the United States.

EXCEPTIONS: The Buy American Act does not apply: when the purchase, lease, or contract involves an expenditure of less than $25,000; or when only one line of a particular good or product is manufactured or produced in the United States. It also does not apply where the executive head of a public agency certifies in writing that:

(1) The specified products are not manufactured or produced in the United States in sufficient quantities to meet the agency's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the agency's requirements;

(2) Obtaining the specified products manufactured or produced in the United States would increase the cost of the contract by more than ten percent;

(3) The specified products are to be purchased or leased by a state-supported four-year institute of higher education and such certification as required by subdivision

(4) The specified products are to be purchased or leased by a publicly supported institution and such certification as required by subdivision (1) or (2) of this subsection has been made within the last three years; or

(5) The political subdivision has adopted a formal written policy to encourage the purchase of products manufactured or produced in the United States.

Missouri Code of State Regulations, Title 1, Division 40, §4-1.050 (Lexis 2001) - Bids/proposals with a value of $25,000 or more, and bidders/offerors who can certify that goods or commodities to be provided in accordance with the contract are manufactured or produced in the United States or imported in accordance with a qualifying treaty, law, agreement or regulation, shall be entitled to a ten percent (10%) preference over bidders whose products do not qualify.

Bids/proposals submitted for products and services manufactured, produced or assembled in qualified nonprofit organizations for the blind or in sheltered workshops holding a certificate of approval from the Missouri Department of Elementary and Secondary Education shall be entitled to five (5) bonus points in addition to other points awarded during the evaluation process.

MONTANA:

Montana Code Annotated, §18-1-102 (Lexis 2001 Mt. S.B. 90) - Reciprocity - Montana resident bidders are allowed a reciprocal preference against nonresident bidders on public contracts for construction, repair and public works of all kinds, and the purchase of goods. The reciprocal preference given to the resident bidder must be equal to the preference given to the other state or country.

Montana Code Annotated, §18-1-103 (Lexis 2001 Mt. S.B. 90) - Definitions - The word "resident " includes actual residence of an individual within the State of Montana for a period of more than 1 year immediately prior to bidding.

Montana Code Annotated, §18-2-401 (Lexis 2001 Mt. H.B. 500) - Definition for the purpose of labor used in construction contracts pursuant to §18-2-409.

Resident - A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana.

Montana Code Annotated, §18-2-403 (Lexis 2000) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide residents of Montana in the performance of the work.

Montana Code Annotated, §18-2-409 (Lexis 2000) - Montana residents to be employed on state construction contracts. On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States department of transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the work must be performed by bona fide Montana residents, as defined in 18-2-401. Montana Code Annotated, §18-5-304 (Lexis 2000) -Designation of small business set-asides -Each department, division or agency of the State of Montana has the authority to designate as small business set-asides specified commodities, equipment, or services, except those services rendered and furnished by registered professions, such as but not limited to accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, and pharmacists, for which purchase has been requested under the Montana Small Business Purchasing Act. (TO BE REAPEALED JUNE 30, 2003)

"Small business" means a business that is independently owned and operated. The department of administration shall establish a detailed definition by rule using, in addition to the foregoing criteria, other criteria. Small business shall further mean a business domiciled in the state of Montana and that employs more than 50% of its total employed personnel within the boundaries of the state of Montana. *(Montana Code Annotated, §18-5-303 (Lexis 2000)) (Repealed effective June 30, 2003--secs. 4(2), 5(2), Ch. 271, L. 1999.)*

"Small business set-aside" means a purchase request for which bids are to be invited and accepted only from small businesses by a department. *(Montana Code Annotated, §18-5-303 (Lexis 2000)) (Repealed effective June 30, 2003--secs. 4(2), 5(2), Ch. 271, L. 1999.)*

Montana Code Annotated, §18-7-107 (Lexis 2001 Mt. S.B. 90) - All printing, binding and stationery work for the State of Montana is subject to the reciprocal preference in §18-1-102.

NEBRASKA:

Nebraska Revised Statutes, §73-101.01 (Lexis 2001) - Reciprocal preference in favor of Nebraska business in the letting of a public contracts for road contract work or any public improvements work, or for supplies, construction, repairs and improvements. *(See Nebraska R.S., §73-101)*

Nebraska Revised Statutes, §81-15,159 (Lexis 2001-) - Preference to purchase products, materials and supplies which are manufactured or produced from recycled material or which can be ready reused or recycled after their normal use. Preference to purchase corn-based biodegradable plastics and road deicers when available, suitable, of adequate quality, unless at a substantially higher cost.

NEVADA:

Nevada Revised Statutes, Title 27, §333.300 (Lexis 2000) - Preference in tie bids to Nevada businesses for the purchase of supplies, materials and equipment; preference in tie bids with nonresident bidders awarded to bidder who will furnish goods or commodities produced or manufactured in the State of Nevada, or to the bidder who will furnish goods or commodities supplied by a dealer in the State of Nevada.

Nevada Revised Statutes, Title 27, §333.410 (Lexis 2001) - Preference is awarded to state institutions who use the labor of inmates to supply commodities or services.

Nevada Revised Statutes, Title 27, §333.4606 (Lexis 2001) - Preference for recycled products in tie bids for the purchase of goods and products; preference of five percent (5%) to recycled products over comparable nonrecycled products in the purchase of goods and products; preference of ten percent (10%) to a bidder who manufactures a product in Nevada in which at least 50 percent of the weight of the product is post-consumer waste (a finished material which would normally be disposed of as a solid waste having completed its life cycle as a consumer item).

Nevada Revised Statutes, Title 27, §333.4609 (Lexis 2001) - Preference to purchase recycled paper or any paper product in tie bid; and a preference for recycled paper or any paper product that is not more than ten percent (10%) higher than that of paper products made from virgin material.

NEW HAMPSHIRE:

New Hampshire Revised Statutes, Title I, §21-I:14-a (Lexis 2001 N.H. H.B. 111) - Printing and writing paper purchased by or for state agencies is to contain not less than thirty percent (30%) post consumer waste material, and coated printing paper purchased by or for state agencies are to contain not less than ten percent (10%) post consumer waste material.

"Post consumer waste material" means a substance or a finished product which has served its original or intended use and has been discarded for disposal or recovery but does not include any substance or by-product generated by the original manufacturing process. "Post consumer waste material" for paper means de-inked paper and recovered textiles cleaned and bleached for use in the manufacturing of printing and writing paper.

NEW JERSEY:

New Jersey Statutes Annotated, §13:1E-99.24 (Lexis 2001) - Preference given to the purchase of products made from recycled paper or recycled paper products with the highest percentage of post-consumer waste material.

New Jersey Statutes Annotated, §13:1E-99.25 (Lexis 2001) - Preference of ten percent (10%) for the purchase of items which are manufactured or produced from recycled paper or recycled paper products. Up to a fifteen percent (15%) preference may be for recycled paper or recycled paper products when it is determined to be in the best interest of the State of New Jersey.

New Jersey Statutes Annotated, §13:1E-99.27 (Lexis 2001) - Not less than 65 percent of the total dollar amount of paper or paper products purchased by the State is to be made from recycled paper or recycled paper products having a total weight consisting of not less than 50 percent secondary waste paper material and with not less than 25 percent of its total weight consisting of post-consumer waste material; except that high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, mimeo paper and duplicator paper is to be made from recycled paper having a total weight consisting of not less than 50% secondary waste paper material and with not less than 15 percent of its total weight consisting of post-consumer waste material.

New Jersey Statutes Annotated, §13:1E-99.27a (Lexis 2001) - Preference of fifteen percent (15%) for nonpaper finished products or supplies made from recycled material.

New Jersey Statutes Annotated, §52:32-1 (Lexis 2001) - Preference to use manufactured and farm products of the United States in all contracts for state work which the state pays any part of the cost.

New Jersey Statutes Annotated, §52:32-1.4 (Lexis 2001) - Reciprocal preference in favor of New Jersey resident bidders awarded in contracts for goods and services.

New Jersey Statutes Annotated, §52:34-23 (Lexis 2001) The Division of Purchase and Property in the State of New Jersey to give preference for the purchase of items which are made whole or in part from recycled materials.

New Jersey Statutes Annotated, §52:34-24 (Lexis 2001) Preference for items made in whole or in part with the use of recycled materials whenever the price is reasonably competitive and the quality satisfactory.

New Jersey Administrative Code, §17:12-2.13 (Lexis 2001) Reciprocal preference in favor of a New Jersey resident bidder is applied in the evaluation of bids. Reciprocal preference may be waived for (1) procurements supported by Federal funds where Federal rules prohibit the use of residential preferences; (2) if it would result in an award to a vendor which has a poor record of complaints; (3) when a public exigency requires the immediate delivery of articles or performance of the service; and (4) if when after price and other factors are considered, an award is considered to be "most advantageous" to the State of New Jersey.

NEW MEXICO:

New Mexico Statutes Annotated, §13-1-21 (Lexis 2000) - Preference of five percent (5%) to resident businesses and manufacturers; preference of five percent (5%) to resident manufacturers and resident businesses for the purchase of recycled content goods or virgin content goods; preference of ten percent (10%) to resident manufacturers and resident business for the purchase of both recycled content goods and virgin content goods. The preferences do not apply when the expenditure of federal funds is involved for the bid price is greater than five million dollars ($5,000,000).

"Resident business" means a New Mexico resident business or a New York state business enterprise.

"New Mexico resident business" means a business that is authorized to do and is doing business under the laws of the State of New Mexico that (1) maintains its principal place of business in the State of New Mexico; (2) has staffed an office and has paid applicable state taxes for two years prior to awarding of the bid; and (3) is an affiliate of a business that meets the requirements of (1) and (2). "Affiliate" means and entity that directly or indirectly through one or more intermediate controls, is controlled by or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity.

"New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state.

New Mexico Statutes Annotated, §13-1-135.1 (Lexis 2000) - Preference to purchase recycled content goods. "Recycled content goods" means supplies and materials composed in whole or in part of recycled materials, provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

New Mexico Statutes Annotated, §13-1-188 (Lexis 2000) - Preference for state agencies to purchase cars and trucks assembled in North America.

New Mexico Statutes Annotated, §13-1-189 (Lexis 2000) - Preference to purchase personal property and services from correction industries if the bid price is not higher than comparable items of tangible personal property or services.

New Mexico Statutes Annotated, §13-4-1 (Lexis 2000) - Whenever practicable award is to be made to a resident contractor for public works contracts or for the repair, reconstruction, including highway reconstruction, demolition or alteration thereof.

New Mexico Statutes Annotated, §13-4-2 (Lexis 2001 N.M. H.B. 89) - Preference of five percent (5%) to resident contractors for public works contracts. "Resident contractor" means a New Mexico resident business or a New York state business enterprise.

New Mexico Statutes Annotated, §13-4-5 (Lexis 2000) - Preference to be given to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico or provided or offered by a New York state business enterprise in contracting for materials to be used in the construction or maintenance of public works.

New Mexico Statutes Annotated, §13-4-7 (Lexis 2000) - Preference to use New Mexico timber in the construction or repair work of public buildings.

New Mexico Statutes Annotated, §63-9F-6 (Lexis 2000) - Preference of five percent (5%) awarded to any business that qualifies as a resident business for a telecommunications relay system that will enable impaired individuals to communicate with unimpaired individuals.

NEW YORK:

Consolidated Law of New York, State Finance Law, Article IX, §139-g (Lexis 2001) - State agencies that have let two million dollars in service contracts in a prior fiscal year are to give priority to purchases from small businesses. Small business means a business which is resident in the State of New York, independently owned and operated, not dominant in its field and employs one hundred or less persons (See State Finance Law, Article IX, §135-a)

Consolidated Law of New York, State Finance Law, Article XI, §162 (Lexis 2001) Expires June 30, 2005 - Preferred source status is accorded to the following entities:

Commodities produced by the Department of Correctional Services' Correctional Industries Program (CORCRAFT)

Commodities and services produced by any qualified, charitable, nonprofit making agency for the blind approved by the Commissioner of Social Services.

Commodities and services produced by any special employment program serving mentally ill persons, operated by facilities within the Office of Mental Health and approved by the Commissioner of Mental Health.

Commodities and services produced by a qualified veterans' workshop providing job and employment skill training to veterans, operated by the United States Department of Veterans Affairs, that manufactures products or performs services within the State and is approved by the Commissioner of Education.

Consolidated Law of New York, State Finance Law, Article XI, §165.1 (Lexis 2001) - Preference to purchase non-tropical hardwood species. "Non-tropical hardwood species" means any and all hardwood that grows in any geographically temperate regions, as defined by the United States Forest Service, and is similar to tropical hardwood in density, texture, grain stability, or durability. Non-tropical hardwoods include ash, basswood, beech, birch, butternut, cherry, cottonwood, elms, black gum, red gum, hackberry, hickory, maples, oaks, pecan, yellow poplar, sycamore, and black walnut.

Consolidated Law of New York, State Finance Law, Article XI, §165.3.a (Lexis 2001) - Preference of 10 percent for recycled products (a product manufactured from secondary materials). Preference of 15 percent for products in which fifty percent (50%) of the secondary materials utilized in the manufacture of the product are generated from the waste stream in New York State. "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including, but not limited to post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies. It does not include by-products generated from and commonly reused within an original manufacturing process. (Article XI, §165.1)

State Finance Law, Article XI, §165.4-a (Lexis 2001) - New York state labeled wines are provided with favored source status for the purposes of procurement. Procurement of New York state labeled wines are exempt from the competitive procurement statutes.

New York state labelled wine" means wine made from grapes, at least seventy-five percent the volume of which were grown in New York state. *(Consolidated Law of New York, Alcoholic Beverage Control Law, §3 (Lexis 2001))*

State Finance Law, Article XI, §165.4.a to .b (Lexis 2001) - Preference in the letting of contracts for food products grown, produced or harvested in the State of New York on behalf of facilities and institutions of the State of New York, who are authorized to purchase products locally. The Commissioner of General Services assisted by the Commissioner of Agriculture and Markets determine the percentage of each food product or class that must meet the requirements.

State Finance Law, Article XI, §165.6.a to .e (Lexis 2001) - Office of General Services may deny to non-resident vendors placement on bidders mailing lists and award of contracts for products and services that they would otherwise obtain if their principal place of business is located in a state that penalizes New York state vendors, and if the goods or services offered will be substantially produced or performed outside New York State.

New York state business enterprise, includes a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, commodities which are substantially manufactured, produced or assembled in New York state, or services, other than construction services, which are substantially performed within New York state. For purposes of construction services, a New York State business enterprise means a business enterprise, including a sole proprietorship, partnership, or corporation that has its principal place of business in New York State.

NORTH CAROLINA:

General Statutes of North Carolina, §143-59 (Lexis 2000) - State of North Carolina's policy to promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services.

General Statutes of North Carolina, §143-59 (Lexis 2000) - Preference in tie bids for foods, supplies, materials, equipment, printing or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina.

General Statutes of North Carolina, §143-128(f) (Lexis 2000) - The State of North Carolina has a ten percent (10%) goal for participation by minority businesses in the total value of public work contracts to erect, construct, alter or repair any buildings for the State of North Carolina.

"Minority business" means a business in which at fifty-one percent (51%) of the stock is owned by one or more minority persons; and which the management of daily business operations are controlled by one or more of the minority persons who own it. "Minority person" means Black, Hispanic, Asian-American, American Indian or Alaskan Native, or Female.

General Statutes of North Carolina, §148-70 (Lexis 1999) - Preference for purchasing articles, products and commodities which are manufactured or produced by North Carolina's Department of Corrections prison system.

NORTH DAKOTA:

North Dakota Century Code, §44-08-01 (Lexis 2000) - Reciprocal preference awarded in favor of North Dakota business for the purchase of any goods, merchandise, supplies, equipment, and contracting to build or repair any building, structure, road, or other real property.

North Dakota Century Code, §46-02-15 (Lexis 2000) - Preference when practicable for all public printing, binding and blank book manufacturing, blanks, and other printed stationery, to be done in the State of North Dakota.

North Dakota Century Code, §48-02-10 (Lexis 2000) Preference in tie bids to purchase materials manufactured or produced within the State of North Dakota, and second, to purchase such as have been manufactured or produced in part in North Dakota for making alterations, repairs, additions, or erecting new public buildings.

North Dakota Century Code, §48-02-10.2 (Lexis 2000) - Preference in tie bids for furnishing materials, products and supplies which are

found, produced, or manufactured within the State of North Dakota from native natural resources.

OHIO:

Ohio Revised Code Annotated Title 1, §125.09 (Anderson 2001) - Preference for United States and Ohio products. Vendors from border states who do not impose greater restrictions on Ohio bidders are treated as Ohio bidders. Also, bidders with a significant Ohio economic presence shall qualify for award of a contract on the same basis as if their products were produced in the State of Ohio

Ohio Revised Code Annotated Title 1, §125.11 (Anderson 2001) - Department of Administrative Services, prior to awarding a contract, will first remove from bids goods or supplies that are not produced or mined in the United States. From among the remaining bids, preference to be given to bidders with goods or supplies produced or mined in Ohio.

Ohio Revised Code Annotated Title 1, §125.56 (Anderson 2000) - All printing to be executed within the State of Ohio except for printing contracts requiring special, security paper. Preference of five percent (5%) to Ohio bidders in printing contracts requiring special, security paper.

Ohio Revised Code Annotated Title 1, §153.012 (Anderson 2001) - Reciprocal preference in favor of contractors who have their principal place of business in Ohio, for construction, public improvement, including highway improvement, contracts.

Ohio Administrative Code, Chapter 123:5-1, §123:5-1-06 (Anderson 2001) - Domestic Ohio Bid preference with respect to supply and service contracts, other than construction contracts. A preference of five percent (5%) is awarded to a Ohio bid. Ohio bid" means a bid received from a bidder offering Ohio products or a bidder demonstrating significant Ohio economic presence. *(§123:5-1-01 Definitions (Anderson 2001))*

Preference is awarded to Ohio bids or bidders who are located in a border state, provided that the border state does not impose a greater restriction than contained in the Ohio Revised Code, §§125.09 and 125.11. "Border state" means any state that is contiguous to Ohio and that does not impose a restriction greater than Ohio imposes pursuant to section 125.09 of the Revised Code. *(§123:5-1-01 Definitions (Anderson 2001)*

Ohio Administrative Code, Chapter 123:5-1, §123:5-1-09 (Anderson 2001) - State departments, boards, offices, commissions, agencies, institutions, the Ohio Supreme Court, all courts of appeal, and all courts of common pleas, may purchase recycled products when (1) the recycled product is substantially equivalent to the non-recycled product and is commercially available in sufficient quantities; (2) the recycled product is consistent and substantially equivalent to regulations pursuant to the "Resource Conservation and Recovery Act of 1976, Stat. 2806, 42 U.S.C.A 6921; and (3) when it is economically feasible. A five percent (5%) preference over the lowest price offered for non-recycled products is awarded to comparable recycled products.

OKLAHOMA:

Oklahoma Statutes, Title 61, §6 (Lexis 2000) - preference is given to materials mined, quarried, manufactured or procured within the State of Oklahoma, provided that the same can be procured at no greater expense than like material or materials of equal quality from without the state.

Oklahoma Statutes 1991 Title 61. §51 (Lexis 2000) - All agencies, boards, commissions, offices, institutions, or other governmental bodies of the State of Oklahoma are to give preference to purchasing goods and equipment manufactured or produced in the United States of America as determined pursuant to federal and state law, unless: (1) a foreign-made product is substantially cheaper and of equal quality; (2) a foreign-made product is of substantially superior quality to competing American products and is sold at a comparable price; or (3) a reciprocal trade agreement or treaty has been negotiated by the State of Oklahoma or by the United States government on behalf of or including the State of Oklahoma with a foreign nation or government for nondiscriminatory governmental procurement practices or policies with such foreign nation or government.

The state and any political subdivision may apply a preference of two and one-half percent (2 1/2%) to the cost of goods and equipment manufactured or produced in the United States of America over foreign-made products; provided that such preferences shall not be for goods or equipment of inferior quality to those offered from outside the United States of America. This preference shall not be in addition to any other preference for which such goods or equipment may be eligible pursuant to law.

Oklahoma Statutes Title 74, §85.17a (Lexis 2001 OK. H.B. 1090) - State agencies to apply reciprocal preference against the bidding preference of other states or nations that is applied in favor of bidders domiciled in their jurisdictions for acquisitions.

Oklahoma Statutes Title 74, §85.45c (Lexis 2000) - A maximum of five percent (5%) bid preference is awarded to minority business enterprises if the amount of funds expended on state contracts awarded to minority business enterprises is less than the ten percent (10%) goal of funds expended on state contracts awarded to minority businesses.

Oklahoma Statutes Title 74, §85.53 (Lexis 2000) - Preference to purchase from suppliers of recycled paper products and products manufactured from recycled materials.

OREGON:

Oregon Revised Statutes, Title 26, §279.021 (Lexis 1999) - Preference for goods or services that have been manufactured or produced in the State of Oregon.

Oregon Revised Statutes, Title 26, §279.029, (Lexis 1999) and Oregon Administrative Rules, §125-030-0070 (Lexis 2000) - Reciprocal preference in favor of Oregon businesses for public contracts. A resident bidder is a bidder who has paid unemployment taxes or income taxes in the State of Oregon for one year immediately preceding submission of the bid.

Oregon Revised Statutes, Title 26, §279.555, (Lexis 1999) and Oregon Administrative Rules, §125-030-0028 (Lexis 2000) - State agencies are to use and require persons with whom they contract to use, in the performance of the contract work, to the maximum extent economically feasible, recycled paper, recycled polyethylene material, as well as other recycled plastic resin products. (See also §279.567 for preference to use recycled polyethylene material, as well as other recycled plastic resin products)

Oregon Revised Statutes, Title 26, §279.570 (Lexis 1999) and Oregon Administrative Rules, §125-030-0028 (Lexis 2000) - Preference of five percent (5%) for materials and supplies manufactured from recycled materials. "Recycled material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled. (O.R.S. §279.545)

Oregon Revised Statutes, Title 26, §279.590 (Lexis 1999) - Preference of five percent (5%) to bidder whose oil products contain the greater

percentage of recycled oil. "Recycled oil" means oil that has been prepared for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations. (O.R.S. §279.580)

Oregon Revised Statutes, Title 26, §279.621 (Lexis 1999) and Oregon Administrative Rules, §125-030-0028 and §125-030-0030 (Lexis 2000) - Preference of twelve percent (12%) awarded to bidder or suppliers of recycled paper.

Oregon Revised Statutes, Title 26, §282.210 (Lexis 1999) - All printing, binding and stationery work for the state and political subdivisions to be performed in the State of Oregon.

Oregon Revised Statutes, Title 30, §346.220, (Lexis 1999) - Preference for products of visually impaired in state purchases.

PENNSYLVANIA:

Pennsylvania Consolidated Statutes, Title 53, Chapter 15, §4000.1505 (Lexis 2000) - Preference of five percent (5%) is awarded to bidders which certify that the goods, supplies, equipment, materials and printing subject to the bid contain a minimum percentage of recycled content that is set forth in the invitation for bids.

Tie bids are awarded to the bidder which provides for the greatest weight of recycled content in goods, supplies, equipment, materials, or printing set forth in the invitation for bids.

The minimum percentage of recycled content for goods, supplies, equipment materials, or printing are set forth in the procurement guidelines adopted by the Environmental Protection Agency under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 USC §6901 et seq.)

Pennsylvania Consolidated Statutes, Title 62, Chapter 1 §103 (Lexis 2000) Supplies means any property, including, but not limited to equipment, materials, printing, insurance and leases of an installment purchases of tangible or intangible personal property. The term does not include real property, leases of real property or alcoholic beverages or liquor purchased for resale by the Pennsylvania Liquor Control Board.

Pennsylvania Consolidated Statutes, Title 62, Chapter 1, §107 (Lexis 2000.) - Reciprocal preference is applied against a nonresident bidder in the purchase, invitation for bids, or request for proposals, for procurement of supplies exceeding $10,000 to be given to those bidders offering supplies produced, manufactured, mined, brown, or performed in the State of Pennsylvania.

Reciprocal preference is applied against a nonresident bidder in the award of construction contracts, exceeding $10,000. *(See 62 Pa.C.S. §514)*

Resident bidder or offeror means a person, partnership, corporation or other business entity authorized to transact business in the State of Pennsylvania and having a bona fide establishment for transacting business in the State of Pennsylvania.

Pennsylvania Consolidated Statutes, Title 62, Chapter 1, §108 (Lexis 2000) - Preference for supplies containing minimum percentage of recycled content.

Pennsylvania Administrative Code, Title 25, §272.226 (Lexis 2000) - Recyclable materials include clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper, plastics, other marketable grades of paper and leaf waste.

RHODE ISLAND:

General Laws of Rhode Island, §37-2.2-3 (Lexis 2001) - Preference for the state to purchase articles made or manufactured and services provided by persons with disabilities in nonprofit rehabilitation facilities, or in profit making facilities where 75 percent of the employees are disabled.

General Laws of Rhode Island, §37-2-8 (Lexis 2001) - Preference for Rhode Island state institutions are to purchase foodstuffs of good quality grown or produced in Rhode Island by Rhode Island farmers when they are available.

General Laws of Rhode Island, §37-2-59.1 (Lexis 2001) - Preference in tie bids for professional contracts entirely supported by state funds to be awarded to architectural, engineering, and consulting firms with their place of business located in Rhode Island. Second preference in tie bids awarded to architectural, engineering, and consulting firms who propose a joint venture with a Rhode Island firm.

General Laws of Rhode Island, §37-2-76 (Lexis 2001) - 50% of the annual expenditure for office paper products purchased by the state of Rhode Island, its agencies, and departments shall be for recycled paper products.

General Laws of Rhode Island, §37-2-76.1 (Lexis 2001) - Recycled product means a product containing preconsumer content and post consumer content.

SOUTH CAROLINA:

Code Of Laws Of South Carolina Annotated, Title 11, Article 5, §11-35-1520 (Lexis 2000) In competitive sealed bidding involving contracts of $25,000 or more, preference is awarded in tie bids to a South Carolina firm that is tied with an out-of-state firm. Preference is also awarded to the bidder with South Carolina produced or manufactured products who is tied with a bidder having items produced or manufactured out-of-state.

Code Of Laws Of South Carolina Annotated, Title 11, Article 5, §11-35-1524 (Lexis 2000) Preference of seven percent (7%) provided to residents of South Carolina or whose products are made, manufactured, or grown in South Carolina. An addition three percent preference is awarded to a bidder who is both a resident of South Carolina and whose products are made, manufactured, or grown in South Carolina.

Code Of Laws Of South Carolina Annotated, Title 12, Article 29, §12-28-2930 (Lexis 2000) Set-asides of five percent (5%) of the total state source highway funds are to be expended through direct contracts for $250,000 or less to small business concerns owned and controlled by socially and economically disadvantaged ethnic minorities, and to firms owned and controlled by disadvantaged females.

Preference of 2.5% (two and one-half percent) awarded to South Carolina contractors in tie bids for highway, bridge, and building construction and building renovation contracts.

Code Of Laws Of South Carolina Annotated, Title 24, Article 3, §24-3-330 (Lexis 2000)- Preference for all offices, departments, institutions and agencies of South Carolina to purchase articles or products made or produced by convict labor in the State of South Carolina.

Code Of Laws Of South Carolina Annotated, Title 44, Article 1, §44-96-140 (Lexis 2000) - Preference for all state agencies or political subdivisions using state funds to procure products and materials with a recycled content. The State of South Carolina has 25% goal in their procurement policies to purchase products and materials with recycled content.

Code Of Laws Of South Carolina Annotated, Title 44, Article 1, §44-96-180 (Lexis 2000) - All state agencies, all political subdivisions using state funds, and all persons contracting with state agencies and political subdivisions are to procure recycled lead-acid batteries where practicable, subject to the provisions of §44-96-140.

SOUTH DAKOTA:

South Dakota Codified Laws Annotated, §§5-19-1 and 5-19-2 (Lexis 2001) - Preference for materials, products and supplies which are found, produced or manufactured within the State of South Dakota.

South Dakota Codified Laws Annotated, §5-19-3 (Lexis 2001) - Reciprocal preference in favor of South Dakota businesses in contracts for public works or improvement, goods, merchandise, supplies, and equipment. Resident bidder is any person who has been a bona fide resident of the State of Dakota for one year or more immediately prior to bidding upon a contract. *(S.D. Codified Laws, §5-19-4).*

South Dakota Codified Laws Annotated, §5-20-2 (Lexis 2001) - Preference for the officials, boards and commissions and political subdivisions of the State of South Dakota to purchase goods and services, or custodial and maintenance services from qualified agencies of the state.

South Dakota Codified Laws Annotated, §5-23-13 (Lexis 2001) - Preference in tie bids to any person, firm, or corporation who has his or its principal place of business in the State of South Dakota and to goods manufactured in South Dakota.

South Dakota Codified Laws Annotated, §5-23-21.2 (Lexis 2001) - Reciprocal preference in favor of a resident bidder against a bidder from any state which enforces a preference for resident bidders is applied in state purchasing and printing contracts.

South Dakota Codified Laws Annotated, §5-23-45 (Lexis 2001) - Preference of ten percent (10%) applied to bids supplying recycled or starch-based materials.

TENNESSEE:

Tennessee Code Annotated, §12-3-808 (Lexis 2001) Preference in tie bids to purchase goods or services from small businesses and minority owned businesses.

"Minority business" means a business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of (1) past practices of discrimination based on race, religion, ethnic background, or sex; (2) a disability; and (3) past practices of racial discrimination against African-Americans. (Tennessee Code, §12-3-802)

"Small business" means a business which is independently owned and operated, in accordance with the provisions of this part, and is not dominant in its field of operation. *(Tennessee Code §12-3-802).*

Tennessee Code Annotated, §12-3-809 (Lexis 2001) - Preference in tie bids for departments, agencies and institutions of the State of Tennessee to purchase meat, meat food products or meat by-products from in-state meat producers.

Tennessee Code Annotated, §12-3-810 (Lexis 2001) - Preference for public education institutions to purchase meat, meat food products or meat products from producers located within the State of Tennessee.

Tennessee Code Annotated, §12-3-811 (Lexis 2001) - All state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities to award a preference in tie bids to in-state coal mining companies.

Tennessee Code Annotated, §12-3-812 (Lexis 2001) - All state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities to award a preference in tie bids to in-state natural gas producers.

Tennessee Code Annotated, §12-4-802 (Lexis 2001) - Reciprocal preference allowed to residents of Tennessee, and residents of another state that do not have a preference in public construction contracts against another state that is contiguous to Tennessee and allows a preference to a resident contractor of that state.

Tennessee Code Annotated, §71-4-703 (Lexis 2001) - Preference to purchase all services or commodities that are available and certified by the Board of Standards from qualified nonprofit work centers for the blind or agencies serving individuals with severe disabilities.

TEXAS:

Texas Codes Annotated, Government Code Annotated, Title 4, §466.106 (Lexis 2000) - Preference in tie bids for lottery equipment or supplies produced in the State of Texas or services or advertising offered by a bidder from the State of Texas. If bidders from the State of Texas are not equal in cost and quality, then lottery equipment or supplies produced in another state or services or advertising offered by a bidder from another state shall be given preference over foreign equipment, supplies, services, or advertising.

Texas Codes Annotated, Government Code, §497.024 (Lexis 2000) - Preference for state agencies to purchase prison-made articles or products.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.441 (Lexis 2000) - Preference for products from workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or a physical disability if they meet state specifications.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.442 (Lexis 2000) - Preference in tie bids given to bidders with energy efficient products.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.443 (Lexis 2000) Preference to bidders of rubberized asphalt paving made from scrap tires by a facility located in the State of Texas if the cost as determined by a life-cycle cost benefit analysis does not exceed by more than 15 percent the bid cost of alternative paving materials.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.444 -(Lexis 2000) - First preference is given in tie bids for goods and agricultural products produced or grown in Texas, or offered by Texas bidders, that are of equal cost and quality to other states of the United States. Second preference is given in tie bids for goods and agricultural products from other states of the United States over foreign goods and agricultural products that are of equal cost and quality.

Preference is also given to Texas vegetation native to the region in purchases for vegetation for landscaping purposes, including plants.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.445 (Lexis 2000) Preference for recycled, remanufactured, or environmentally sensitive products if the product meets State of Texas specifications regarding quantity and quality.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.446 (Lexis 2000) Preference for paper containing the highest proportion of recycled fibers.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.447 (Lexis 2000) - Preference for motor oil and automotive lubricants that contain at least 25 percent recycled oil if cost to the State of Texas and quality are comparable to those of new oil and lubricants.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2155.449 (2001 Lexis S.B. 311) - Preference in tie bids for products and services from an economically depressed or blighted area. The cost of the good or service cannot exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area.

"Economically depressed or blighted area" is either an area that is defined by the Texas Government Code, §2306.004 as defined below, or meets the definition a historically underutilized business zone as defined by 15 U.S.C. §632(p) also defined below.

"Economically depressed or blighted area" means an area:

(A) that is a qualified census tract as defined by Section 143(j), Internal Revenue Code of 1986 (26 U.S.C. Section 143(j)) or has been determined by the housing finance division to be an area of chronic economic distress under Section 143, Internal Revenue Code of 1986 *(26 U.S.C. Section 143)*;

(B) established in a municipality that has a substantial number of substandard, slum, deteriorated, or deteriorating structures and that suffers from a high relative rate of unemployment; or

(C) that has been designated as a reinvestment zone under Chapter 311, Tax Code. (Texas Government Code, §2306.004)

Historically underutilized business zone. The term "historically underutilized business zone" means any area located within 1 or more-- (A) qualified census tracts; (B) qualified nonmetropolitan counties; (C) lands within the external boundaries of an Indian reservation; or (D) redesignated areas. *(15 U.S.C. 632(p))*

Texas Codes Annotated, Government Code, Title 10, Subtitle D, §2158.0031 (Lexis 2000) - Preference for state agencies to purchase passenger vehicles or other ground transportation vehicles for general use that are economical, fuel-efficient vehicles assembled in the United States.

Texas Codes Annotated, Government, Title 10, Subtitle D, §2171.052 (Lexis 2000) - Preference given to resident entities of the State of Texas for contracts with travel agents.

Texas Codes Annotated, Government Code Annotated, Title 10, Subtitle D, §2252.002 (Lexis 2000) Reciprocal preference in favor of Texas businesses for all governmental contract.

Title 1, Texas Administrative Code, Chapter 113, §113.8 (Lexis 2000) - Preferences listed are for Texas resident bidders; Texas and United States products; certified Historically Underutilized Business; products of persons with mental or physical disability; recycled, remanufactured or environmentally sensitive products; energy efficient products; rubberized asphalt paving material; and recycled motor oil and lubricants.

Texas Codes Annotated, Transportation Code, §223.047 (Lexis 2000) - Preference of fifteen percent (15%) is awarded to a bid that provides for using, as a part of the paving material, rubberized asphalt paving made from scrap tires.

"Rubberized asphalt" means an asphalt material containing at least 15 percent by weight of a reacted whole scrap tire.

"Scrap tire" means a tire that can no longer be used for its original intended purpose.

Texas Administrative Code, Chapter 113, §113.137 (Lexis 2001) - State agencies are to apply a preference for the following commodities or services which have been designated as "first choice" products: (1) Re-refined oils and lubricants; (2) Recycled-content toilet paper, toilet seat covers and paper towels; and (3) Recycled-content printing, computer and copier paper, and business envelopes.

UTAH:

Utah Code Annotated, §63-56-20.5 (Lexis 2000) - Reciprocal preference in favor of Utah businesses for goods, supplies, equipment, materials and printing.

Utah Code Annotated, §63-56-20.6 (Lexis 2000) - Reciprocal preference in favor of Utah businesses for construction contracts.

Utah Code Annotated, §63-56-20.7 (Lexis 2000) - Preference of five percent for the purchase of recycled paper or paper products.

"Paper" means any newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, mimeographic paper, duplicator paper, and related types of cellulosic material containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings, or saturants.

"Paper product means any paper items or commodities, including paper napkins, towels, corrugated and other cardboard, toilet tissue, paper and related types of cellulosic products containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings, or saturants. "Paper product" does not include preprinted cellulosic products such as books, newspapers, calendars and magazines.

Utah Code Annotated, §63-56-35.6 (Lexis 2000) - Preference for state departments, agencies and institutions to procure goods and services produced by Utah Correctional Industries Division.

Utah Code Annotated, §63-56-35.8 (Lexis 2000) - Preference for procurements from a sheltered workshop if products meet needs and specifications, can be supplied within a reasonable amount of time, and price is reasonably competitive. "Sheltered workshop" means a nonprofit organization operated in the interest of severely disabled individuals.

VERMONT:

Vermont Statutes Annotated, Title Twenty-Nine, Part 2, Chapter 49, §903 (Lexis 2001) - Preference of five percent (5%) to purchase recycled materials or products. Recycled materials include recycled paper products, retreaded automobile tires, re-refined lubricating oil, used automotive parts, reclaimed solvents, recycled asphalt, recycled concrete and compost materials.

Vermont Statutes Annotated, Title Twenty-Nine, Part 2, Chapter 55, §§1401 and 1402 (Lexis 2001) - When purchasing fire and casualty insurance coverage for the benefit of the State of Vermont, preference is applied to Vermont-domiciled companies and independent agents licensed in and resident of Vermont when consistent as to coverages, services and the best interest of the State of Vermont.

VIRGINIA:

Code of Virginia Annotated, 11-47 (Lexis 2000) - Preference in tie bids given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations; reciprocal preference for the purchase of goods, services, and construction applied against other states having resident preferences; preference in tie bids occurring after existing price preferences taken into account awarded to bidder whose goods contain the greatest amount of recycled content.

Code of Virginia Annotated, 11-47.1 (Lexis 2000) - Preference of four percent (4%) to bidder offering coal mined in Virginia.

Code of Virginia Annotated, 11-47.2 (Lexis 2000) - Preference of ten percent (10%) to bidder offering recycled paper and paper products.

WASHINGTON:

Revised Code of Washington, §39.04.133 (Lexis 2001) - State's preference for the purchase and use of recycled content products in the design and development of state capital improvement projects.

Revised Code of Washington, §43.19.520 (Lexis 2001) - Preference to purchase products and services from sheltered workshops and programs for the handicapped and disadvantaged.

Revised Code of Washington, §43.19.535 (Lexis 2001) - Preference to bidder providing goods or services to a state agency if goods or services are provided whole or in part by an inmate work program of the department of corrections; and an amount at least fifteen percent of the total bid amount will be paid by the bidder to inmates as wages.

Revised Code of Washington, §43.19.538 (Lexis 2001) - Preference in state purchasing for the purchase of products containing recycled material.

Revised Code of Washington, §43.19.637 (Lexis 2001) - Preference for vehicles designed to operate exclusively on clean fuels.

Revised Code of Washington, §43.19.700 (Lexis 2001) - Reciprocity preference in favor of Washington businesses.

Washington Administrative Code, Chapter 236, §236-48-085 (Lexis 2000) - Reciprocal preference - In procuring goods and services, an appropriate percentage penalty will be added to an out-of-state bid by the Office of State Procurement, if the bidder's state has in-state preference clauses. States with only reciprocity will not be included.

Washington Administrative Code, Chapter 236, §236-48-096 (Lexis 2000) - Preference of ten percent (10%) for goods containing recovered material. The bidder must certify the minimum percent content of recovered material as set forth in the invitation to bid.

WEST VIRGINIA:

West Virginia Code Annotated, §5-19-2 (Lexis 2001) - 20 percent domestic preference over foreign products involving public contracts over $5,000 or steel contracts involving over $50,000 or over 10,000 pounds; 30 percent preference if domestic production is in area determined by the U.S. Department of Labor to be a "substantial labor surplus area".

West Virginia Code Annotated, §5A-3-37 (Lexis 2001) - "Resident bidder" means an individual who has resided in West Virginia continuously for four years, or a partnership, association, corporation resident vendor, or a corporation nonresident vendor that has an affiliate or subsidiary that employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia.

The following preferences are listed under §5A-3-37: Preference of two and one-half percent (2.5%) to resident bidders for construction contracts over $50,000; preference of 2.5 percent to resident bidders who employ at least 75 percent West Virginia residents; and preference of 2.5 percent to nonresident vendors who employ at least 100 residents and have at least 75 percent resident employees;

West Virginia Code Annotated, §5A-3-37a (Lexis 2001) - Reciprocal preference in the purchase of commodities or printing except where the provisions of §5A-3-37 may apply.

West Virginia Code Annotated, §18B-5-4 (Lexis 2001) - Preference for resident bidders in the purchase or acquisition of materials, supplies, equipment and printing by institutions of higher education.

West Virginia Code Annotated, §20-11-7 (Lexis 2001) - Preference of ten percent (10%) for recycled products. Priority given to paper products with highest post-consumer content.

WISCONSIN:

Wisconsin Statutes, §16.75(1)(a)(2) (Lexis 2000) - Preference awarded to Wisconsin producers, distributors, suppliers and retailers, in the purchase of materials, supplies, equipment, and contractual services over non Wisconsin bidders who are from a state that grants a resident preference.

Wisconsin Statutes, §16.75(c)(2g) (Lexis 2000) - Purchases of products or goods from Wisconsin's prison industries, other than printing or stationery, are not subject to the competitive bidding process.

Wisconsin Statutes, §16.754 (Lexis 2000) and Wisconsin Administrative Code §7.07 (Lexis 2001) - Preference for American-made materials. The State of Wisconsin is to purchase materials which are manufactured to the greatest extent in the United States.

Exemptions are provided for materials purchased (1) for the purpose of commercial resale or for the purpose of use in the production of goods for commercial sale; (2) for the purchase of stationery and printing materials; (3) if the Wisconsin Department of Administration determines that the foreign nation or subdivision thereof in which the vendor is domiciled does not give preference to vendors domiciled in that nation or subdivision in making governmental purchases; (4) if the department or other person having contracting authority in respect to the purchase determines that the materials are not manufactured in the United States in sufficient or reasonably available quantities; and that (5) the quality of the materials is substantially less than the quality of similar available materials manufactured outside the United States.

Wisconsin Statutes, §16.855(1) (Lexis 2000) - Preference to resident bidders in construction projects where the cost exceeds $30,000 is applied against states that impose a resident preference.

Wisconsin Statutes, §16.855(10m)(a) (Lexis 2000) - Preference of five percent (5%) to minority businesses in the letting of construction contracts.

Wisconsin Statutes, §44.57 (Lexis 2000) - Preference to resident artists for works of art in state buildings.

Wisconsin Administrative Code, §8.03 - Tie bids - Wisconsin suppliers are preferred over out-of-state suppliers in tie bids.

WYOMING:

Wyoming Statutes Annotated, §9-2-1016(b)(iv)(G) (Lexis 2000) - Preference of five percent (5%) given to a nonprivate sector bidder over a private sector bidder in awarding bids or contracts for supplies or services if competitive sealed bidding is required.

§9-2-1016(g) All meat used or purchase for use in any Wyoming state institution is to be produced and processed within the United States.

Wyoming Statutes Annotated, §16-6-102 (Lexis 2000) and Weil's Code of Wyoming Rules 006-160-006§1 (Lexis 2000) - Preference of five percent (5%) given to a certified resident bidder in public works contracts for the erection, construction, alteration or repair of any public building, or other public structure, or for making any addition thereto, or for any public work or improvement. A successful resident bidder cannot subcontract more than twenty percent of the work covered by his contract to nonresident contractors (§16-6-103).

A resident bidder cannot contract more than twenty percent (20%) of the work covered by his contract to a nonresident contractor. (See §16-6-103).

Wyoming Statutes Annotated, §16-6-105 (Lexis 2000) - Preference of five percent (5%) in public purchases for Wyoming materials, supplies, agricultural products, equipment and machinery manufactured or grown in the State of Wyoming.

"Agricultural product" means any horticultural, viticultural, vegetable product, livestock, livestock product, bees or honey, poultry or poultry product, sheep or wool product, timber or timber product.

Wyoming Statutes Annotated, §16-6-301 (Lexis 2000) and Weil's Code of Wyoming Rules 006-160-006§2 (Lexis 2000) - Preference of ten percent (10%) given to resident bidders in public printing contracts.

Wyoming Statutes Annotated , §16-6-803 (Lexis 2000) and Weil's Code of Wyoming Rules 006-160-006§4 (Lexis 2000) Preference is given to Wyoming artists for works of art in the public buildings of the State of Wyoming.

Weil's Code of Wyoming Rules 006-160-006§6 (Lexis 2000) - A five percent (5%) preference is awarded to Wyoming contractors for any contractual service. Resident laborers, workmen and mechanics are to be used whenever possible, provided that Wyoming materials and products of equal quality and desirability are given preference over materials or products produced outside the State of Wyoming.

For questions concerning the Bidder Preference List, please contact the Office of General Counsel at (512) 463-3960.

TRD-200103632
Cynthia J. Hill
Acting General Counsel
General Services Commission
Filed: June 26, 2001

♦ ♦ ♦

Texas Department of Health

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Iso-Tex Diagnostics, Incorporated, dba Biotecx Laboratories

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Iso-Tex Diagnostics, Incorporated, doing business as Biotecx Laboratories (licensee-L02999) of Friendswood. A total penalty of $15,000 is proposed to be assessed to the licensee for alleged violations of 25 Texas Administrative Code, §289.252 and a condition of its radioactive materials license.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200103644
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 27, 2001

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Notice of Request for Proposals for Syphilis Elimination Activities

INTRODUCTION

The Texas Department of Health (department) requests proposals from community based organizations (CBOs) in the Dallas metropolitan area that are representative of and serve the communities affected by syphilis, specifically the African American, Hispanic, and men who have sex with men (MSM) communities, to coordinate a grassroots response to the challenge of eliminating syphilis in the United States, as contemplated in The National Syphilis Elimination Plan. The project period will be from January 1, 2002, through December 31, 2002. The department is seeking to select one or more community-based organizations that serve the affected communities to perform one or more of the following four activities:

assist the department and the Dallas County Health and Human Services Department (DCHHSD) Sexually Transmitted Disease (STD) Program in maintaining and coordinating a Syphilis Elimination Community Coalition and collaborative partnership among local businesses, community clinics and community based organizations, to include purchase of media for a Syphilis elimination campaign;

within the African-American community affected by Syphilis, work with the department and the DCHHSD STD Program to expand Syphilis screening, improving access to and utilization of services by the community; enhance outreach, including identification, testing, education and risk reduction of high risk persons; provide culturally competent interventions, as identified and recommended by the Syphilis Elimination Community Coalition; identify gaps in services or barriers to accessibility of services for at-risk individuals; and raise awareness of and mobilize community involvement and resources in the elimination of Syphilis;

within the Hispanic community affected by Syphilis, work with the department and the DCHHSD STD Program to expand Syphilis screening, improving access to and utilization of services by the community; enhance outreach, including identification, testing, education and risk reduction of high risk persons; provide culturally competent interventions, as identified and recommended by the Syphilis Elimination Community Coalition; identify gaps in services or barriers to accessibility of services for at-risk individuals; and raise awareness of and mobilize community involvement and resources in the elimination of Syphilis; and

within the men who have sex with men community affected by Syphilis, work with the department and the DCHHSD STD Program to expand Syphilis screening, improving access to and utilization of services by the community; enhance outreach, including identification, testing, education and risk reduction of high risk persons; provide culturally competent interventions, as identified and recommended by the Syphilis Elimination Community Coalition; identify gaps in services or barriers to accessibility of services for at-risk individuals; and raise awareness of and mobilize community involvement and resources in the elimination of Syphilis.

Each of the four activities will be funded, and applicants may apply to perform one or more of the activities. In addition to the above activities, each awardee will be required to participate in the performance of a Rapid Ethnographic Community Assessment Project (RECAP), in conjunction with the department and the DCHHSD. Project proposals will be reviewed and awarded on a competitive basis.

PURPOSE

The specific purposes of community involvement in Syphilis elimination are to:

acknowledge and respond to the effects of racism, poverty, and social issues relevant to the persistence of syphilis in the United States;

develop and maintain partnerships to increase the availability of and accessibility to quality preventive and care services; and

assure that affected communities are collaborative partners in developing, delivering, and evaluating syphilis elimination interventions.

ELIGIBLE APPLICANTS

Eligible entities include community based organizations located within the Dallas metropolitan statistical area that are representative of and serve the communities affected by Syphilis and are or will become members of the Dallas-area Syphilis Elimination Community Coalition. Individuals are not eligible to apply. Applicants must have experience and/or expertise in working with the target populations. Entities that have had state or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply. Applicants must provide historical evidence of fiscal and administrative responsibility as outlined in the Administrative Information of the grant instructions. For purposes of this announcement, organizations that are representative of and serve the affected communities are defined as those that have (1) a governing board composed of more than 50% of the affected community members; (2) a significant number of individuals from the affected community in key program positions (including management, administrative, and service provision); and (3) an established record of service to the affected community. In addition, if the organization is a local affiliate of a larger organization with a national board, the larger organization must meet the same requirements listed above.

AVAILABLE FUNDS

Award of these funds is contingent upon annual federal grant awards to the department from the Centers for Disease Control and Prevention. This announcement is made prior to the award of these funds to allow applicants sufficient time to respond by the application due date. Award of these funds is contingent upon satisfactory completion of the grant application and the negotiation process. The projected total amount available for all four activities is approximately $154,141 per year. The department expects to fund one or more projects for the project period January 1, 2002, through December 31, 2002.

DEADLINE

Applications must be received by the Manager, Grants and Contracts Branch, HIV/STD Health Resources Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, on or before 5:00 p.m., Central Daylight Saving Time, September 27, 2001. No facsimiles will be accepted.

FOR INFORMATION

For a copy of the Request for Proposals (RFP), contact Ms. Laura Ramos, HIV/STD Health Resources Division, at (512) 490-2525 or by email: laura.ramos@tdh.state.tx.us. No copies of the RFP will be released prior to July 27, 2001.

TRD-200103629
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 26, 2001

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Notice of Texas Department of Health 2001 Income Guidelines and Schedule of Charges for Clinical Health Services

Pursuant to Health and Safety Code, §12.032, the Texas Board of Health has adopted 25 Texas Administrative Code §1.91 concerning fees for clinical health services. Section 1.91(b) requires the Texas Department of Health to base its calculation of fees for personal health services provided directly or through contractors at public health clinics on current poverty income guidelines. Section 1.91(b) also requires the commissioner of health to adjust the income guidelines as needed to conform with changes in federal poverty income guidelines as needed to conform with changes in federal poverty income guidelines.

Under §1.91(b)(1), the commissioner of health has adopted the following adjusted income guidelines for assessment of fees for clinical health services. These income guidelines are derived from the 2001 Poverty Guidelines for the 48 Contiguous States and the District of Columbia published by the Secretary of Health and Human Services in Volume 66, Federal Register Number 33, pages 10695-10697, on February 16, 2001. For further information, please contact Debra Edwards, Public Health Nursing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7111 extension 2190.

2001 Income Guidelines and Schedule of Charges Clinical Health Services

Family Size	Annual Income 0-99% of Poverty Income	Annual Income 100%-199% of Poverty Income	Annual Income 200 - 299% of Poverty Income	Annual Income 300%+ of Poverty Income
1	0 - $ 8,589	$ 8,590 - 17,179	$17,180 - 25,769	$25, 770
2	0 - 11,609	11,610 - 23,219	23,220 - 34,829	34, 830
3	0 - 14,629	14,630 - 229,259	29,260 - 43,889	43,890
4	0 - 17,649	17,650 - 35,299	35,300 - 52,949	52,950
5	0 - 20,669	20,670 - 41,339	41,340 - 62,009	62,010
6	0 - 23,689	23,690 - 47,379	47,380 - 71,069	71,070
7	0 - 26,709	26,710 - 53,419	53,420 - 80,129	80,130
8	0 - 29,729	29,720 - 59,459	59,460 - 89,189	89,190
Charges/Visit	$0.00	$5.00	$10.00	$30.00
Maximum Charge/Family	$0.00	$10.00	$30.00	No maximum

For each additional family member in family units with more than 8 members, add $3,020 to the income level at 100% of poverty.

TRD-200103653
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 27, 2001

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Texas Health and Human Services Commission

Planning Forum and Public Hearing

The Health and Human Services Commission (HHSC), in collaboration with the Health and Human Services agencies and the Betty Hardwick Mental Health and Mental Retardation Center, will conduct one of a series of statewide public hearings to receive public comment on the development of the *Health and Human Services Coordinated Strategic Plan* and to fulfill statutory local planning requirements. The public hearing is required under §531.022(d)(4), Government Code, and §531.036, Government Code, and is intended to produce the following outcomes: (1) Increase local involvement and participation in the planning process, (2) Provide feedback to local communities on statewide and regional progress made on health and human services goals and strategic priorities since the community forums in 1999, (3) Solicit input from the communities on the effectiveness of current health and human services efforts, (4) Update regional demographic information and needs profiles, (5) Assess local capacity to address the strategic priorities, and (6) Foster grass roots support for/build community coalitions to improve health and human service delivery in the area.

A community planning forum and public hearing will be conducted in Abilene, Texas on July 18, 2001 at the Abilene Civic Center at 1100 North 6th Street, Abilene, Texas. The planning forum is intended to provide the opportunity for public input and participation. Agency clients and consumers of health and human services, advocates, consumer advisors, local state agency representatives, local governmental and non-governmental representatives, service providers and other interested parties are encouraged to participate.

The planning forum will be held from 8:00 a.m. to 4:00 p.m., Central Time. State and regional progress reports, needs assessments and demographic information will be presented. Breakout group activities will be conducted in the morning and afternoon for members of the community to discuss specific strategic priorities that significantly impact the Abilene area. Topics will include children's medical and insurance needs, access to long-term care, mental health care, health and human services transportation issues, children and adolescent issues (juvenile justice, substance abuse, behavioral), rural service issues, respite services, abuse/neglect and adult issues (homelessness, crime, employment).

A public hearing to receive public comment will begin at 3:30 p.m. Testimony and comments should focus on regional needs and suggestions for the most effective ways to deliver and coordinate services funded by the state. Written comments may be submitted to the Health and Human Services Commission until 5:00 p.m., Central Time, on July 25, 2001. Please address written comments to the attention of Colleen Edwards at HHSC, 4900 North Lamar Blvd., 4th Floor, Austin, Texas 78751, Fax (512) 424-6590 or Email: colleen.edwards@hhsc.state.tx.us.

AGENDA

Morning Session

I. Registration (8:00 a.m.)

II. Welcome and hearing overview (8:30)

III. Regional Progress Report on Information & Referral (9:30)

IV. Breakout Session I (10:15)

V. Breakout Summary (11:45)

Lunch (12:15)

Afternoon Session

I. Regional Report on Transportation Needs (12:45)

II. Breakout Session II (1:15)

III. Breakout Summary (3:00)

Public Comment (3:30 p.m.)

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Elizabeth Walker by phone at 915-698-9346 or Email: Elizabeth.Walker@tcb.state.tx.us by July 11, 2001 so that appropriate arrangements can be made.

TRD-200103662
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 27, 2001

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Planning Forum and Public Hearing

The Health and Human Services Commission (HHSC), in collaboration with the Health and Human Services agencies and the United Way of El Paso, will conduct one of a series of statewide public hearings to receive public comment on the development of the *Health and Human Services Coordinated Strategic Plan* and to fulfill statutory local planning requirements. The public hearing is required under §531.022(d)(4), Government Code, and §531.036, Government Code, and is intended to produce the following outcomes: (1) Increase local involvement and participation in the planning process, (2) Provide feedback to local communities on statewide and regional progress made on health and human services goals and strategic priorities since the community forums in 1999, (3) Solicit input from the communities on the effectiveness of current health and human services efforts, (4) Update regional demographic information and needs profiles, (5) Assess local capacity to address the strategic priorities, and (6) Foster grass roots support for/build community coalitions to improve health and human service delivery in the area.

A public hearing and community planning forum will be conducted in El Paso, Texas on July 18 and 19, 2001. The planning forum is intended to provide the opportunity for public input and participation. Agency clients and consumers of health and human services, advocates, consumer advisors, local state agency representatives, local governmental and non-governmental representatives, service providers and other interested parties are encouraged to participate.

The Health and Human Services Agencies will conduct a public hearing to receive public comment on July 18, 2001 beginning at 6:00 p.m., Mountain Time. Prior to the public testimony, state and regional progress reports, local needs assessments and demographic information will be presented. Testimony and comments should focus on regional needs and suggestions for the most effective ways to deliver and coordinate services funded by the state. Written comments may be submitted to the Health and Human Services Commission until 5:00 p.m., Central Time, on July 25, 2001. Please address written comments to the attention of Colleen Edwards at HHSC, 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, Fax (512) 424-6590 or Email: colleen.edwards@hhsc.state.tx.us.

The planning forum will be held on July 19, 2001, from 9:00 a.m. to 12:00 p.m., Mountain Time, at the El Paso Housing Authority Administrative Office Complex, 5300 East Paisano, El Paso, Texas. The morning session will provide breakout group activities for members of the community to discuss specific strategic priorities that significantly impact the El Paso area, such as services for infants and children, youth, people with disabilities, senior citizens, and communities.

AGENDA

Public Hearing - July 18, 2001

I. Registration for public testimony (5:30 p.m.)

II. Welcome and overview of forum (6:00 p.m.)

III. Statewide progress report (6:10 p.m.)

IV. Local presentations (6:30 p.m.)

V. Public Comment (7:00 p.m.)

VI. Closing Remarks (9:00 p.m.)

Community Planning Forum - July 19, 2001

I. Registration (8:30 a.m.)

II. Welcome and overview (9:00 a.m.)

III. Breakout Groups (9:45 a.m.)

IV. Reports from Breakouts (11:15 a.m.)

VI. Closing Remarks (11:45 a.m.)

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact David Zarazua at phone: 915-590-7388 or email: David.Zarazua@tcb.state.tx.us by July 11, 2001 so that appropriate arrangements can be made.

TRD-200103663
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 27, 2001

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Public Notice

The Texas Health and Human Services Commission is submitting a Medicaid state plan amendment to provide for supplemental payment to eligible hospitals serving high volumes of Medicaid and uninsured patients.

The increase in aggregate annual expenditure for state fiscal year 2002 is estimated to be $137 million. Transfers from hospital districts will fund the state share.

For further information, contact Steve Lorenzen, Director of Medicaid Rate Setting, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247, (512) 424-6633, steve.lorenzen@hhsc.state.tx.us.

TRD-200103640
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 27, 2001

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Public Notice

The Texas Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 00-18, Amendment Number 583.

The amendment establishes the general provisions for delivery of Developmental Rehabilitation Therapy Services. The amendment is effective October 1, 2000.

If additional information is needed, please contact Glenn Hart, Early Childhood Intervention, at (512) 424-6830.

TRD-200103661
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 27, 2001

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Greens Road Apartments) Series 2001

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the High Meadows Public Library (Meeting Room), 4500 Aldine Mail Route Road, Houston, Texas 77039 at 5:30 p.m. on July 23, 2001 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $8,600,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Greens 14 Partners LP, (or a related person or affiliate thereof) (the "Borrower") a limited partnership, to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 224-unit multifamily residential rental development to be constructed on approximately 14 acres of land located approximately 1075 feet west of US 59 on the south side in the 6300 block of Greens Road, Houston, Harris County, Texas 77396. The Project will be initially owned and operated by Greens 14 Partners LP (or a related person or affiliate thereof). The Project will be initially managed by Southeastern Property Management.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200103647
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 27, 2001

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Multifamily Housing Revenue Bonds (The Meridian Apartments) Series 2001

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the Fort Worth Public Library (Meeting Room), Southwest Regional Library, 4001 Library Lane, Fort Worth, Texas 76109 at 6:00 p.m. on July

31, 2001 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $10,995,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Brisben Meridian Limited Partnership, (or a related person or affiliate thereof) (the "Borrower"), to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 280-unit multifamily residential rental development to be constructed on approximately 24.92 acres of land located on the northeast corner of the intersection of Marine Creek Parkway and Angle Avenue at the 4400 block of Marine Creek Parkway, Fort Worth, Tarrant County, Texas 76106. The Project will be initially owned and operated by Brisben Meridian Limited Partnership (or a related person or affiliate thereof). The Project will be initially managed by National Realty Management, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200103649
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 27, 2001

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Multifamily Housing Revenue Bonds (Wildwood Branch Apartments) Series 2001

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the Fort Worth Public Library (Meeting Room), Southwest Regional Library, 4001 Library Lane, Fort Worth, Texas 76109 at 6:00 p.m. on July 24, 2001 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $11,795,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Wildwood Branch Townhomes Limited Partnership, (or a related person or affiliate thereof) (the "Borrower"), to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 280-unit multifamily residential rental development to be constructed on approximately 29.94 acres of land located on the south side of the 6400 block of Shady Oaks Manor Drive approximately 1,000 feet east of Quebec Street, Fort Worth, Tarrant County, Texas 76135. The Project will be initially owned and operated by Wildwood Branch Townhomes Limited Partnership (or a related person or affiliate thereof). The Project will be initially managed by National Realty Management, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200103648
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 27, 2001

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Notice of Administrative Hearing

Manufactured Housing Division

Wednesday, August 1, 2001, 1:00 p.m.

State Office of Administrative Hearings, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Rance Nash dba D & N Service to hear alleged violations of Sections 4(f) (amended 1999) (current version at Section 4(d) of the Act)and 7(d) of the Act and Sections 80.54(a) and 80.123(e) of the Rules regarding installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license and not properly installing the manufactured home. SOAH 332-01-3184. Department MHD1999000313UI, MHD2000000167UI, MHD2000001344UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200103637
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 27, 2001

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Notice of Administrative Hearing

Manufactured Housing Division

Wednesday, August 1, 2001, 1:00 p.m.

State Office of Administrative Hearings, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. C. E. Hitchcock, Mark Hitchcock and Judith Hitchcock dba Hitchcock House Movers aka Hitchcock and Sons House and Mobile Home Moving aka C. E. Hitchcock and Sons aka C. E. Hitchcock Mobile Home Movers aka Hitchcock Movers aka H & H Mobile Home Movers aka Hitchcock House and Mobile Home Movers to hear alleged violations of Sections 4(d), 7(b)-(c), and 7(d) of the Act and Sections 80.54(a), 80.119(f)(1), 80.123(b)-(c) and 80.123(e) of the Rules regarding negotiating the sell of more than one manufactured home within a consecutive twelve (12) month period without obtaining, maintaining or possessing a valid retailer's license, the installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license, not properly installing the manufactured home and not properly submitting the Form T/Installation Report. SOAH 332-01-3183. Department MHD2000001828UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200103638
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 27, 2001

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Notice of Administrative Hearing

Manufactured Housing Division

Wednesday, August 1, 2001, 1:00 p.m.

State Office of Administrative Hearings, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Arthur Lee dba State and Farm Mobile Homes to hear alleged violations of Sections 7(d), 7(e), 7(f), and 13(f) of the Act and Section 80.123(e) of the Rules regarding contracting the installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license. SOAH 332-01-3182. Department MHD2000000283UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200103639
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 27, 2001

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Texas Department of Insurance

Insurer Services

Application to add the assumed name of EL PASO FIRST PREMIER PLAN for EL PASO FIRST HEALTH PLANS, INC., a domestic health maintenance organization. The home office is in El Paso, Texas.

Application for admission to the State of Texas by AMERICAN SUMMIT INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Scottsdale, Arizona.

Application for admission to the State of Texas by TECHNOLOGY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Nashua, New Hampshire.

Application for admission to the State of Texas by ACE GUARANTY RE INC., a foreign fire and casualty company. The home office is in New York, New York.

Application to change the name of NOBEL INSURANCE COMPANY to STONINGTON INSURANCE COMPANY, a domestic fire and casualty company. The home office is in Dallas, Texas.

Application to change the name of UNIFIED LIFE INSURANCE COMPANY OF TEXAS to UNIFIED LIFE INSURANCE COMPANY, a domestic life company. The home office is in Austin, Texas.

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-200103659
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 27, 2001

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of National Administrators, Inc., a domestic third party administrator. The home office is Houston, Texas.

Application for admission to Texas of American Physicians Network, Inc., (doing business under the assumed name of Oregon American Physicians Network, Inc.), a foreign third party administrator. The home office is Portland, Oregon.

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-200103622
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 26, 2001

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of National Benefit Resources, Inc., a foreign third party administrator. The home office is Minneapolis, Minnesota.

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-200103660
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 27, 2001

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Texas State Library and Archives Commission

Notice of Request for Consulting Services

In accordance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, the Texas State Library and Archives Commission (TSL) is soliciting proposals from qualified individuals or organizations to enter into a contract for consulting services to evaluate the agency's current Five-Year Library Services and Technology Act (LSTA) plan which will enable TSL to comply with the requirements of LSTA (20 USC Sec. 1934(c)).

The role of the consultant will be to evaluate the overall effectiveness of the current five-year LSTA plan, State Plan for the Library Services and Technology Act in Texas (the Plan), and to conduct in-depth evaluations of the effectiveness of one statewide program and two sub-grant programs administered by TSL. The successful vendor must examine grant activities for four fiscal years and provide an analysis of how well the programs meet the goals and objectives outlined in the LSTA five-year plan. The result of the study will provide valuable information to be used by the agency to prepare its next LSTA five-year plan.

The desired terms of the service will be September 1, 2001, to February 28, 2002. All written reports due under this renewal are due by March 15, 2002. The value of the contact is estimated to be $60,000.00.

Interested parties may contact Donna Osborne, TSL Director of Administrative Services, (512-463-5440). The due date for submission of proposals is July 11, 2001. The contract for consulting services evaluation will be awarded upon review of proposals submitted and evaluation based on previously established criteria.

TRD-200103657
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: June 27, 2001

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Notice of Request for Proposals for Internal Auditing Services Contract

In accordance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, the Texas State Library and Archives Commission (TSL) is soliciting proposals from qualified individuals or organizations to enter into a contract for internal auditing services which will enable TSL to comply with the Texas Internal Auditing Act, Article 6252-5d, Vernon's Texas Civil Statutes.

The role of the consultant will be to provide internal audit services to TSL for comprehensive audit services and to provide recommendations for improvement on key internal agency program divisions and external library system grant recipients. The agency does not have an internal auditor on staff, and the major consequence of not procuring this consultant assistance will be non-compliance with the Texas Internal Auditing Act. The cost estimate was determined from an estimate provided by the current internal audit contractor based on a review of the desired outcomes with agency staff and management. The results of the audits will provide the agency information needed for program management to implement changes required to improve internal program processes and establish efficiencies in working with future and current grant recipients.

The desired terms of the service will be September 1, 2001, to August 31, 2002. All written reports due under this renewal are due by August 31, 2002. The value of the contact is estimated to be $45,000.00.

Interested parties may contact Donna Osborne, TSL Director of Administrative Services, (512-463-5440). The due date for submission of proposals is July 31, 2001. The contract for internal audit consulting services will be awarded upon review of proposals submitted and evaluation based on previously established criteria.

TRD-200103658
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: June 27, 2001

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Texas Natural Resource Conservation Commission

Notice of Availability and Request for Comments on a Federal Consistency Determination under the Texas Coastal Management Program for a Draft Damage Assessment and Restoration Plan and Environmental Assessment

AGENCIES

Texas Natural Resource Conservation Commission (TNRCC), Texas Parks and Wildlife Department, Texas General Land Office (collectively the state trustees). The United States Department of the Interior and the National Oceanic and Atmospheric Administration (hereafter, federal trustees).

ACTION

Notice of availability of the Federal Consistency Determination (FCD) under the Texas Coastal Management Program (CMP) of a Draft Restoration Plan and Environmental Assessment (DRPEA) for ecological injuries and service losses associated with the Tex Tin Corporation Superfund Site (site) and of a 30-day period for public comment on the FCD beginning July 6, 2001. Comments on the DRPEA have been solicited previously in a separate notice.

SUMMARY

Notice is hereby given that the FCD with the CMP related to activities described in a document entitled "Draft Restoration Plan and Environmental Assessment for the Tex Tin Corporation Superfund Site, Texas City, Galveston County, Texas" is available for public review and comment.

The DRPEA was prepared by state and federal natural resource trustees to address natural resource injuries and resource services losses of an ecological nature attributable to releases of hazardous substances from the site. The DRPEA identifies the information and methods used to define the natural resource injuries and losses, including the scale of restoration actions, and identifies the restoration actions which are preferred for use to restore, replace or acquire resources and services equivalent to those lost.

The FCD for this DRPEA outlines the basis for the determination from the federal trustees that the restoration actions described in the DRPEA are consistent to the maximum extent possible, and will be undertaken

in a manner consistent with, the applicable policies of the CMP. Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the goals and policies of the CMP identified in 31 Texas Administrative Code (TAC) Chapter 501. Under 31 TAC §506.2(c) a determination of consistency with the CMP must be made by the federal trustees for natural resource damage assessment and restoration plans that are the product of a joint cooperative natural resource damage assessment by state and federal trustees. Review of the FCD is delegated to the state trustees. The state trustees will consider all comments received during the public comment period in their evaluation of the FCD for the DRPEA and will, depending on the comments received, submit a letter of concurrence to the federal trustees.

To receive a copy of the FCD with the CMP and/or the DRPEA, interested members of the public are invited to contact Richard Seiler at the Texas Natural Resource Conservation Commission, Remediation Division MC 142, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523 or (512) 239-4814 (fax).

COMMENTS

Comments must be submitted in writing on or before **August 6, 2001** to Richard Seiler, TNRCC, Remediation Division MC 142, P.O. Box 13087, Austin, Texas 78711-3087. The state trustees will consider all written comments prior to completing their review of the FCD.

For further information, contact Richard Seiler at (512) 239-2523 or e-mail *rseiler@tnrcc.state.tx.us*.

TRD-200103628
Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission
Filed: June 26, 2001

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 6, 2001**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed DOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 6, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: AAA Fiberglass, Inc.; DOCKET NUMBER: 2000-1038-AIR-E; TNRCC ID NUMBER: DB-2229-W; LOCATION: 2021 East Main Street, Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: fiberglass boat repair facility; RULES VIOLATED: §116.110(a), and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a permit by rule prior to construction of a facility that emits air contaminants into the air of the state; §106.392(1)(B), and THSC, §382.085(b), by failing to keep on a monthly and calendar year-to-date basis records of resin and acetone usage, and failing to maintain those records for the most recent 24 months; §106.392(2)(B) (if spraying facility), or §106.392(3)(B) (if non-spraying facility), and THSC §382.085(b), by failing to have an elevated stack for a facility using thermoset resins; PENALTY: $5,000; STAFF ATTORNEY: Dan Joyner, Litigation Division, MC 175, (512) 239-6366; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(2) COMPANY: Apollo Technology Corporation; DOCKET NUMBER: 2000-1021-IHW-E; TNRCC ID NUMBER: F0569; LOCATION: 823 and 827 High Street, Comfort, Kendall County, Texas; TYPE OF FACILITY: electroplating facility; RULES VIOLATED: §335.4, and TWC, §26.121, by discharging electroplating wastes onto the ground, and into the surface waters that flow to Cypress Creek which then flow to the Guadalupe River; §335.6(c) and (d), by failing to notify the Executive Director of the TNRCC of its small quantity generator status, industrial and hazardous waste streams for electroplating sludge, solid waste management units including, but not limited to, a settling tank and container storage area, and its activity as a transporter of three drums of hazardous waste to Southwest Powder Coatings, Inc.; §335.10(a), §335.11(a), and 40 CFR §262.20(a) and §263.20(a), by failing to prepare a manifest for three drums of electroplating waste that were transported to Southwest Powder Coatings, Inc.; §335.62, and 40 CFR §262.11, by failing to conduct a hazardous waste determination and waste classification of the following five waste streams: discharged industrial wastewater, industrial wastewater sludge, electroplating sludge, sandblasting dust, and vinyl tub liners; §335.63, §335.92, and 40 CRF §262.12, and §263.11(a), by failing to obtain an Environmental Protection Agency identification number for transportation of hazardous waste for the three drums of hazardous waste to Southwest Powder Coatings; §335.2(b), and 40 CFR §270.1(c), by generating hazardous waste and transporting drums of electroplating wastes to an unauthorized facility; PENALTY: $28,500; STAFF ATTORNEY: James Biggins, Litigation Division, MC R- 13, (210) 403-4017; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Rd., San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: John Henderson; DOCKET NUMBER: 2000-1291-OSS-E; TNRCC ID NUMBER: OS7582; LOCATION: located off U.S. Highway 79, approximately nine miles west of Jacksonville, Cherokee County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: §285.58(b)(9), by failing to perform satisfactory and valid final inspections of OSSF job sites to verify that the minimum criteria were met; §285.58(b)(4), by failing to maintain accurate records of permit applications, inspection records, and nuisance complaints; §§285.32(a)(1)(A) and (C), 285.33(a)(1)(A) and (b)(1)(A), and (c)(2)(D), 285.91, and 285.58(b)(3), by failing to enforce the rules and regulations of the permitting authority's OSSF program, Tables II and

III relating to obtaining information regarding water usage of the facility and the square footage of living area of the single-family dwellings; §285.5(1), (2)(A), and (2)(D), and §285.58(b)(3), by failing to enforce the rules and regulations of the permitting authority's OSSF program, specifically relating to obtaining the appropriate planning materials (including but not limited to technical reports, system drawings, water usage records, and test results) for the proposed OSSF systems; §285.30 and §285.58(b)(3), by failing to enforce the rules and regulations of the permitting authority's OSSF program, specifically relating to obtaining the appropriate site evaluation for the proposed site; §285.7(d) and (e), and §285.58(b)(3) and (b)(10), by failing to enforce the rules and regulations of the permitting authority's OSSF program, specifically relating to obtaining the appropriate maintenance contract for aerobic systems with surface irrigation; §285.7(g) and §285.58(b)(3), by failing to enforce the rules and regulations of the permitting authority's OSSF program, specifically relating to obtaining the appropriate affidavit to the public for aerobic systems with surface irrigation; §285.58(b)(3) and §285.4, by failing to enforce the rules and regulations of the permitting authority's OSSF program, specifically relating to conducting reviews of subdivisions or other land improvements for overall site suitability prior to subdivision of the land, or prior to the issuance of a permit; §285.58(b)(3) and §285.3(c), by failing to enforce the rules and regulations of the permitting authority's OSSF program, specifically relating to ensuring that a variance request demonstrates to the satisfaction of the permitting authority that the conditions are such that equivalent protection of the public health and environment can be provided and that such requests are prepared and sealed by either a registered sanitarian or registered professional engineer; PENALTY: $0; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Maan Enterprises, Inc. dba Anytime Convenience; DOCKET NUMBER: 2000-0469-PST-E; TNRCC ID NUMBER: 0046124; LOCATION: 1125 Palo Pinto, Weatherford, Parker County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: §334.50(a)(1)(A), and TWC, §26.3475(c), by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank (UST) system; §334.49(a), and TWC, §26.3475(d), by failing to have corrosion protection for the UST system; §334.93(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; §334.7(d)(3), by failing to amend, update or change registration information; PENALTY: $13,125; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(5) COMPANY: Oscar Mondragon dba Mondragon's Paint and Body; DOCKET NUMBER: 2000-1043-AIR-E; TNRCC ID NUMBER: JH-0401-1; LOCATION: 1144 South Broadway, Joshua, Johnson County, Texas; TYPE OF FACILITY: auto body shop; RULES VIOLATED: §116.110(a), and THSC, §382.085(b) and §382.0518, by failing to obtain a permit or comply with the standard exemption during an inspection on October 27, 1999; §116.110(a), and THSC, §382.085(b) and §382.0518, by failing to obtain a permit or comply with the standard exemption during an inspection on April 14, 2000; PENALTY: $5,000; STAFF ATTORNEY: Laurel Lindsey, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(6) COMPANY: Startex Gasoline & Oil Distributors, Inc.; DOCKET NUMBER: 2000- 0294-PST-E; TNRCC ID NUMBERS: 23481; 23483; LOCATION: 5416 Leopard Street and 5420 Leopard Street, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: wholesale fuel distributor (Facility 1); convenience store with retail gasoline sales (Facility 2); RULES VIOLATED: §334.50(a)(1)(A), and TWC, §26.3475, by failing to provide a method of release detection, capable of detecting a release from any portion of the underground storage tank (UST) system which contains regulated substances, including the tank, piping and other ancillary equipment at Facility 1; §334.7(d)(3), by failing to provide written notice of any change or additional information to the Executive Director within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition at Facility 1; §334.105(b), by failing to maintain an updated copy of certification of financial responsibility at Facility 1; §334.10(b)(1)(B), by failing to maintain copies of all required records pertaining to a UST system in a secure location on the premises for Facility 1; §334.50(a)(1)(A), and TWC, §26.3475, by failing to provide a method of release detection, capable of detecting a release from any portion of the UST system which contains regulated substances, including the tank, piping and other ancillary equipment at Facility 2; §334.105(b), by failing to maintain an updated copy of certification of financial responsibility at Facility #2; PENALTY: $6,200; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R-4, (817) 588-5877; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Dr., Ste. 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Timothy Poole; DOCKET NUMBER: 2000-0234-LII-E; TNRCC ID NUMBER: 14701; LOCATION: P. O. Box 268, Hawkins, Wood County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: TWC, §34.007, by acting as a landscape irrigator without possessing a certificate of registration as a licensed irrigator; PENALTY: $625; STAFF ATTORNEY: Laurel Lindsey, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200103627
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 26, 2001

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 6, 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 August 6, 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: City of Alamo Heights; DOCKET NUMBER: 2001-0134-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0150039; LOCATION: Alamo Heights, Bexar County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii), by failing to meet the required minimum total storage capacity of 200 gallons per connection; PENALTY: $438; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Samuel Alba dba Alba's Custom Iron Works; DOCKET NUMBER: 1999-1369- AIR-E; IDENTIFIER: Air Account Number HX-1453-V; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: ornamental iron fabrication; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.085(b) and §382.0518(a), by conducting outdoor surface coating operations without a permit; and 30 TAC §115.421(a)(9)(A)(ii) and the Code, §382.085(b), by using noncompliant coatings which exceeded the volatile organic compound emission of 3.5 pounds per gallon; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(3) COMPANY: Frank Duncan and Joe Hackler dba Alpha Utility Company; DOCKET NUMBER: 2000-0822-PWS-E; IDENTIFIER: PWS Number 0320014; LOCATION: Pittsburg, Camp County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i) - (iv), and the Code, §341.0315(c), by failing to meet a well capacity of 0.6 gallons per minute (gpm) per connection, provide a total storage capacity of 200 gallons per connection, a service pump capacity such that each pump station or pressure plan has a total capacity of two gpm per connection, and provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.113 (now 30 TAC §290.118(b)), and the Code, §341.031(a), by failing to provide water of acceptable quality; and 30 TAC §290.46(e)(1) and the Code, §341.033(a), by failing to install an air line filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank, and ensure that the water system is at all times under the direct daily supervision of a competent waterworks operator; PENALTY: $5,950; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Aquila Gas Pipeline Corporation; DOCKET NUMBER: 2001-0086-AIR-E; IDENTIFIER: Air Account Number FC-0109-C; LOCATION: Rutersville, Fayette County, Texas; TYPE OF FACILITY: natural gas compressor; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to certify compliance for Air Permit Number O-00139; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Aquila Storage and Transportation, L.P.; DOCKET NUMBER: 2001-0031- AIR-E; IDENTIFIER: Air Account Number FG-0266-K; LOCATION: Katy, Fort Bend 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 compliance within the required 30 days after the end of the certification period; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(6) COMPANY: Bank of America; DOCKET NUMBER: 2001-0135-PWS-E; IDENTIFIER: PWS Number 1012455; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(c) (now 30 TAC §290.117(c)), by failing to conduct the second round of initial lead and copper monitoring; PENALTY: $363; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Beaumont; DOCKET NUMBER: 2000-1415-MWD-E; IDENTIFIER: Enforcement Identification Number 15660; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: the Code, §26.121, by failing to prevent the unauthorized discharge of approximately 9,000 gallons of water treatment chemicals; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Mr. Cecil Broomfield dba Cecil's Wheels; DOCKET NUMBER: 2001-0277- AIR-E; IDENTIFIER: Air Account Number SI-0109-E; LOCATION: Center, Shelby County, Texas; TYPE OF FACILITY: used car sales; RULE VIOLATED: 30 TAC §114.20(b) and (c)(1), and the Code, §382.085(b), by failing to equip a 1986 Ford F250 Pickup engine with an air injection pump that was originally a part of the motor vehicle; PENALTY: $360; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: City of Como; DOCKET NUMBER: 2000-0611-MWD-E; IDENTIFIER: Water Quality Permit Number 11313-001 and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 1133-001; LOCATION: Como, Hopkins County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §319.9(c), §305.125(1), and Water Quality Permit Number 11313-001, by failing to collect and test duplicate samples of effluent for chlorine residual, submit noncompliance report for effluent violations, and meet permitted effluent limits for biochemical oxygen demand, minimum dissolved oxygen, minimum chlorine residual, and total suspended solids; and 30 TAC §305.536, §305.125(1), Water Quality Permit Number 11313-001, and TPDES Permit Number 11313-001, by failing to submit annual sludge disposal reports; PENALTY: $11,875; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Davis Gas Processing Company; DOCKET NUMBER: 2001-0330-AIR-E; IDENTIFIER: Air Account Number FJ-0045-A; LOCATION: Pearsall, Frio County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit the 1998 and the 1999 annual Title V compliance certifications; and 30 TAC §122.145(2) and the Code, §382.085(b), by failing to submit semi-annual deviation reports; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480 (210) 490-3096.

(11) COMPANY: City of DeKalb; DOCKET NUMBER: 2000-1246-MWD-E; IDENTIFIER: TPDES Permit Number 10062-002; LOCATION: DeKalb, Bowie County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10062-002, and the Code, §26.121, by failing to meet the permitted limits; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: Derby Water Supply Corporation; DOCKET NUMBER: 2000-1236-PWS-E; IDENTIFIER: PWS Number 0820016; LOCATION: Derby, Frio County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(1)(A) and (s), (now 30 TAC §290.46(d)(1)(A) and (s)), by failing to operate the chlorination facilities to maintain a minimum free chlorine residual of 0.2 milligram per liter (mg/L) and issue a boil water notice; and 30 TAC §290.43(c)(7), by failing to provide the potable water storage tank with a means of removing accumulated silt and deposits; PENALTY: $630; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-7839; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Duke Energy Field Services, LLC; DOCKET NUMBER: 2001-0062-AIR-E; IDENTIFIER: Air Account Numbers JE-0200-H and JE-0203-B; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §§117.211(a)(4), 117.520(a)(1)(C), 122.143(4), 122.145(2), 122.146(5)(D), 122.511(b)(12), and the Code, §382.085(b), by failing to conduct an initial demonstration of compliance and submit a final control plan and submit a correct certification of compliance and deviation report for General Operating Permits O-01812 and O-00285; PENALTY: $9,352; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: EBCO Land Development, Ltd.; DOCKET NUMBER: 2001-0140-WR-E; IDENTIFIER: Enforcement Identification Number 15764; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: residual development and golf course construction; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain authorization for the impoundment and use of state water from Mound Creek; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: EPGT Texas Pipeline, L.P. (Formerly PG&E Texas Pipeline, L.P.); DOCKET NUMBER: 2000-1387-AIR-E; IDENTIFIER: Air Account Number KJ-0019-V; LOCATION: Kingsville, Kleberg County, Texas; TYPE OF FACILITY: natural gas compressor; RULE VIOLATED: 30 TAC §122.146(2), (5)(D), and the Code, §382.085(b), by failing to submit the 1998 Title V compliance certification for federal Operating Permit Number O-00279 and identify the untimely submittal of the 1998 Title V compliance certification; and 30 TAC §122.145(2) and the Code, §382.085(b), by failing to submit a deviation report; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(16) COMPANY: City of Elkhart; DOCKET NUMBER: 1999-0591-MWD-E; IDENTIFIER: Water Quality Permit Number 10735-001; LOCATION: Elkhart, Anderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), Water Quality Permit Number 10735-001, and the Code, §26.121, by discharging sewage, municipal, recreational, agricultural, or industrial waste into or adjacent to any water in the state and failing to ensure that all automatic flow measuring, recording devices, or totalizing meters for measuring flows are accurately calibrated; 30 TAC §317.2(d)(5)(E), §305.125(1) and (5), and Water Quality Permit Number 10735-001, by failing to provide dual pump units at pumping stations; and 30 TAC §317.4(j)(9), §305.125(1) and (5), and Water Quality Permit Number 10735-001, by failing to ensure that the soil used in the embankment walls for the wastewater stabilization ponds is free of foreign material; PENALTY: $21,000; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239- 4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: Fort Davis Estates, Inc.; DOCKET NUMBER: 2000-1095-PWS-E; IDENTIFIER: PWS Number 1220015 and Certificate of Convenience and Necessity Number 12309; LOCATION: Fort Davis, Jeff Davis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and (e)(2), §290.103(5), (now 30 TAC §290.109(c) and (g), and §290.122), and the Code, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and provide public notice of monthly bacteriological sampling; 30 TAC §291.76, by failing to pay outstanding water regulatory assessment fees; 30 TAC §290.46(d)(2)(A), (e)(3)(D), (h), (i), (l), (m), (t), and (v), by failing to operate the chlorination equipment so as to maintain a free chlorine residual of 0.2 mg/L; provide facilities for determining the amount of disinfectant used daily and the amount remaining for use; maintain, on hand, a supply of calcium hypochlorite disinfectant; have the system under the direct supervision of a certified waterworks operator; adopt an adequate plumbing ordinance, plumbing regulations, or service agreement with adequate provisions; flush dead end mains monthly; initiate a maintenance program; post a legible sign at the well and ground storage tank; and have all system electrical wiring installed securely in mounted conduit; 30 TAC §290.41(c)(1)(D), (3)(K) and (O), by failing to maintain livestock at a distance greater than 50 feet from the public water supply, seal the wellhead with the use of gaskets or pliable crack-resistant compound, provide the well with a 16-mesh or finer corrosion-resistant casing vent, and protect the well unit with an intruder-resistant fence or a locked, ventilated well house; 30 TAC §290.43(c)(1) and (4), and (e), by failing to protect the vent openings, protect the ground storage tank with an intruder-resistant fence, and equip the ground storage tank with a water level indicator; and 30 TAC §290.42(e)(4) and (6), by failing to provide a full-face, self-contained breathing apparatus or supplied air respirator and have available a small bottle of ammonia solution to test for possible chlorine leakage, and provide the chlorination room with both high level and floor level screened vents; and 30 TAC §290.110(c)(5)(B), by failing to maintain records of weekly chlorine residual tests and possess a diethyl-p-phenylenediamine method chlorine test kit; PENALTY: $6,188; ENFORCEMENT COORDINATOR: Michelle Harris, (512) 239-0492; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4940.

(18) COMPANY: Fortson Contracting, Incorporated; DOCKET NUMBER: 2001-0041-MLM-E; IDENTIFIER: Air Account Number NB-0150-I; LOCATION: Rice, Navarro County, Texas; TYPE OF FACILITY: highway guardrail repair; RULE VIOLATED: 30 TAC §111.201 and the Code, §382.085(b), by conducting unauthorized outdoor burning; and 30 TAC §335.4 and the Code, §26.121, by improperly disposing of hazardous wastes generated from the outdoor burning; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(19) COMPANY: Harris County Municipal Utility District No. 189; DOCKET NUMBER: 2001- 0081-MWD-E; IDENTIFIER: TPDES

Permit Number 12237-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12237-001, and the Code, §26.121, by exceeding its permit limits for carbonaceous biochemical oxygen demand; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200103617
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 26, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 6, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 6, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: The City of Grapevine; DOCKET NUMBER: 2000-1403-WR-E; TNRCC ID NUMBER: 08-2362; LOCATION: Upper Trinity River Segment of the Trinity River Basin, Grapevine, Tarrant County, Texas; TYPE OF FACILITY: golf course; RULES VIOLATED: §297.59(c), TWC, §11.135(a), and Certificate of Adjudication Number 08-2362, by failing to treat water and make all water potable before use; PENALTY: $1,250; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010- 6499, (817) 588-5800.

(2) COMPANY: Fernco Development, LTD., Lenco Development, LTD., and Norco Development, LTD.; DOCKET NUMBER: 2000-1357-MWD-E; TNRCC ID NUMBER: 11051- 001; LOCATION: 7200 White Oak Circle, Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment facility (facility); RULES VIOLATED: §305.125(1), TWC, §26.121(a)(1), and Texas pollutant Discharge Elimination System (TPDES) Permit Number 11051-001, by allowing the facility's effluent to exceed Effluent Limitations and Monitoring Requirements 1 and 2 of the Permit by exceeding the daily average ammonia nitrogen; §319.7(d), and TPDES Permit Number 11051-001, by failing to submit discharge monitoring reports; PENALTY: $3,750; STAFF ATTORNEY: Dwight Martin, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Gin Wey Lim dba Lim Apartments; DOCKET NUMBER: 2000-1281- PWS-E; TNRCC ID NUMBER: 1012438; LOCATION: 8828 East Mount Houston, Houston, Harris County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: §290.109(c), and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit routine monthly water samples; §290.109(g), by failing to provide public notice related to the failure to collect and submit routine monthly water samples; PENALTY: $150; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R-4, (817) 588- 5877; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: McCormick Marketing dba McDs, Downtown 66, and Westside 66; DOCKET NUMBER: 1999-1543-PST-E; TNRCC ID NUMBERS: 10494, 10491, and 10492; LOCATION: McDs located at 3800 College; Downtown 66, located at 1619 25th Street; and Westside 66, located at 2000 25th Street, Snyder, Scurry County, Texas; TYPE OF FACILITY: retail gasoline stations (stations); RULES VIOLATED: §334.50(b)(1)(A), and TWC, §26.3475, by failing to provide a method of release detection capable of detecting a release from any portion of the underground storage tanks (UST) system which contained regulated substances for all three locations; §334.7(d)(3), and TWC, §26.3475, by failing to amend, update, or change the station's UST registration information regarding release detection for all three locations; PENALTY: $18,000; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC R-4, (817) 588-5888; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Blvd., Abilene, Texas 79602-7833, (915) 698-9674.

(5) COMPANY: NYTA Enterprises, Inc. dba Pine Place Courts; DOCKET NUMBER: 1999-1448-MWD-E; TNRCC ID NUMBERS: 12428-001 and TX0087840; LOCATION: approximately 2.5 miles east of U.S. Highway 59 at 6532 East Mount Houston Road, Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121, and NPDES Permit Number TX0087840, by failing to comply with the NH3-N daily average concentration limit of 3 mg/L and 5 mg/L; NH3-N daily maximum limit of 10 mg/L and 6mg/L; total suspended solids (TSS) daily average loading limit of 0.94 lbs/day; and carbonaceous biochemical oxygen demand (CBOD5) daily average loading limit of 0.63 lbs/day; TWC, §26.121, and TNRCC Water Quality Permit Number 12428-001, by failing to comply with the TSS daily average loading limit of 0.9lbs/day; and CBOD5 daily average concentration limit of 10 mg/L; PENALTY: $750; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Restructure Petroleum Marketing Services, Inc. dba Luke's Little Market Number 1; DOCKET NUMBER: 2000-1425-PST-E; TNRCC ID NUMBER: 15610; LOCATION: 8227 Stewart Road, Galveston, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline (facility);

RULES VIOLATED: §115.245(2), and THSC, §382.085(b), by failing to perform the annual Pressure Decay Test; §115.246(4), and THSC, §382.085(b), by failing to provide documentation/certification that a facility representative completed the required Stage II training; PENALTY: $2,000; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Restructure Petroleum Marketing Services, Inc. dba Rendon Chevron; DOCKET NUMBER: 2000-1359-PST-E; TNRCC ID NUMBER: 0036562; LOCATION: 12201 Rendon Road, Burleson, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline (facility); RULES VIOLATED: §334.49(a), and TWC, §26.3475, by failing to provide corrosion protection for the underground storage tank system (UST); §334.72(3), by failing to notify the TNRCC within 24 hours after the statistical inventory reconciliation report showed "inconclusive" results, thus indicating that a release might have occurred; §334.7(d)(3), by failing to amend the UST registration information incorrectly indicated that the facility has in place financial assurance; PENALTY: $4,500; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(8) COMPANY: Tajuddin Jiwani dba Quick & Easy Number 2; DOCKET NUMBER: 2000- 0608-PWS-E; TNRCC ID NUMBER: 2410044; LOCATION: 4014 Highway 59 Wharton Loop North, Wharton, Wharton County, Texas; TYPE OF FACILITY: public water system (facility); RULES VIOLATED: §290.106, and TWC, §341.033(d), by failing to submit to the Commission water samples from the facility for bacteriological analysis; PENALTY: $3,250; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Vancouver Management Inc.; DOCKET NUMBER: 2000-1049-MWD-E; TNRCC ID NUMBER: 11051-001; LOCATION: 7200 White Oak Circle, Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment facility (facility); RULES VIOLATED: §305.125(9), and TWC, §26.121(a)(1), by failing to report and clean up an unauthorized discharge of waste water; TPDES Permit Number 11051-001, by failing to ensure that effluent remained within permitted limits; Solids Management Plan (SMP), Ordering Provision 2.b., TNRCC Agreed Order of December 23, 1999, Docket Number 1999-0596-MUD-E, by failing to maintain solids in the facility within the parameters stipulated; §325.410(d)(2), and TPDES Permit Number 11051-001, by failing to employ a wastewater treatment operator with a Class C license to operate its Class C facility; §305.125(1), and TPDES Permit Number 11051-001, by failing to meet permitted effluent limits for residual chlorine; TPDES Permit Number 11051-001, by failing to submit to the TNRCC its Discharge Monitoring Reports; PENALTY: $8,750; STAFF ATTORNEY: Dwight Martin, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200103626
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 26, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of June 8, 2001 through June 15, 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.

AKZO NOBEL CHEMICAL, INC. has applied for a renewal of NPDES Permit No.TX0006688, which authorizes the discharge of uncontaminated storm water, process area wash water, treated domestic wastewater, and cooling tower blowdown at a daily average flow not to exceed 30,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0006688 issued on October 11, 1985, which correspond to the expired TNRCC Permit No. 01689. The applicant operates an organometallic compound manufacturing facility. The plant site is located east of and adjacent to State Highways 134, approximately 2500 feet north of the intersection of State Highway 134 and 225, in the City of Deer Park, Harris County, Texas.

CENTRAL POWER AND LIGHT COMPANY which operates the La-Palma Steam Electric Power Station, has applied for a major amendment to TPDES Permit No. 01256 to authorize an intake credit for total suspended solids (TSS) to calculate less stringent TSS limitations at Outfall 001, to reduce in the monitoring frequency for oil and grease at Outfall 001, and to reduce monitoring frequencies for all constituents at Outfalls 002 and 003. The current permit authorizes the discharge of cooling tower blowdown commingled with low volume wastes, metal cleaning wastes, and storm water at a daily average flow not to exceed 1,120,000 gallons per day via Outfall 001; the discharge of wastewater from maintenance drains (cooling tower units 4 and 5) on an intermittent and flow variable basis via Outfall 002; and the discharge of wastewater from maintenance drains (cooling tower unit 6) on an intermittent and flow variable basis via Outfall 003. The facility is located adjacent to the Missouri Pacific Railroad and State Route 77, approximately 0.5 miles northwest of Resaca de Los Fresnos, in the City of San Benito, Cameron County, Texas.

CORPUS CHRISTI PEOPLES BAPTIST CHURCH, INC. has applied for a renewal of TPDES Permit No. 11134-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately one mile west of the intersection of Farm-to-Market Road 665 and Farm-to-Market Road 763 and south of Farm-to-Market Road 665 in Nueces County, Texas.

GRAND MISSION MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14231-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility site will be located approximately 0.9 mile south and 0.5 mile west of the intersection of Farm-to-Market Road 1093 and Harlem Road in Fort Bend County, Texas.

CITY OF HEMPHILL has applied for a renewal of TPDES Permit No. 10493-002, 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 0.75 mile south of the Hemphill City Hall on Beckcom Road in Sabine County, Texas.

LAKE LAVON BAPTIST ENCAMPMENT has applied for a new permit, Proposed Permit No. 14192-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 625

gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The applicant is requesting a variance to the buffer zone requirements according to 30 TAC Section 309.13(f). The facility and disposal site are located 400 feet south of Farm-to-Market Road 982 and 15,000 feet south of the intersection of Farm-to- Market Road 982 and Farm-to-Market Road 546 in Collin County, Texas.

CITY OF LAKEPORT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0071871 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10939-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The plant site is located approximately 1550 feet northeast of the intersection of State Highway 149 and State Highway 322 and adjacent to the east bank of the Sabine River in the northern part of the City of Lakeport in Gregg County, Texas.

MAHARD EGG FARMS, INC. has applied to the TNRCC for a new permit, Proposed Permit No. 04043 to authorize the disposal of process wastewater at a daily average flow not to exceed 4000 gallons per day via evaporation and irrigation etc. of 80 acres.. The applicant proposes to operate an egg farm. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located approximately 1.6 miles north of the intersection of County Road 90N and Texas Farm-to-Market Road 2379, on the east side of County Road 90N, Wilbarger County, Texas. The plant site and disposal area are located in the drainage basin of , in Segment No. 0206, of the Red River Above Pease River.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13462-006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 510,000 gallons per day. The facility is located approximately 1/2 mile east of the intersection of Balli Road and Farm-to-Market Road 907 and approximately 500 feet west of the intersection of Balli Road and Tower Road in Hidalgo County, Texas. The treated effluent is discharged to Arroyo Colorado Above Tidal in Segment No. 2202 of the Nueces-Rio Grande Coastal Basin.

CITY OF QUITMAN has applied for a renewal of TPDES Permit No. 10254-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 0.3 mile west-northwest of the intersection of State Highway 37 and State Highway 154 (City of Quitman) and 700 feet north of State Highway 154 in Wood County, Texas.

CITY OF SAN AUGUSTINE has applied for a renewal of TNRCC Permit No. 10268-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 5,000 feet northeast of the intersection of U.S. Highway 96 and Farm-to-Market Road 147 in San Augustine County, Texas.

SILVERLEAF RESORTS INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0089362 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 12482-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 68,000 gallons per day. The plant site is located approximately 7600 feet south and 2400 feet east of the intersection of Farm-to-Market Road 49 and Farm-to-Market Road 2869 and 9.0 miles north of the Town of Hawkins in Wood County, Texas.

STEPHEN F. AUSTIN STATE UNIVERSITY has applied for a renewal of TPDES Permit No. 13161-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 5,000 feet south-southwest of the intersection of Farm-to-Market Roads 705 and 3127 in San Augustine County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TPDES Permit No. 13613-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 500 feet east of Buggy Whip Creek and approximately 7,800 feet north of Posey on State Highway 71 in Hopkins County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT AND SABINE RIVER AUTHORITY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit No. 13857-001, which authorizes the disposal of treated domestic wastewater at a daily average seasonal flow not to exceed a 30-day average flow of 4,375 gallons per day (gpd) from November through April, 7,500 gallons per day during May and October, and 12,500 gallons per day from June through September, via surface irrigation of 3.0 acres of land. The facility and disposal site are located approximately 3,500 feet south-southeast of Spring Point and approximately 4,000 feet northwest of Autumn Point near White Deer Reach on the southwest shore of Lake Tawakoni in Hunt County, Texas.

CITY OF TROUP has applied for a renewal of TPDES No. 10304-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 308,000 gallons per day. The facility is located approximately 0.25 mile south of the Cherokee-Smith county line and 0.38 mile east of State Highway 110 and south of the City of Troup in Cherokee County, Texas.

WEST HARDIN COUNTY CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 11274-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located immediately south of the intersection of State Highway 105 and Farm-to-Market Road 770 and approximately 1000 feet east of Pine Island Bayou in Hardin County, Texas.

WESTWOOD WATER SUPPLY CORPORATION has applied for a renewal of TNRCC Permit No. 11337-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 4.5 miles north of the intersection of State Highway 63 and Farm-to-Market Road 255 adjacent to Sam Rayburn Reservoir and 15 miles northwest of the City of Jasper in Jasper County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 89 has applied for a major amendment to TNRCC Permit No. 12939-001 to authorize a decrease in the discharge of treated domestic wastewater from a daily average flow not to exceed 500,000 gallons per day to a daily average flow not to exceed 250,000 gallons per day and to authorize to move the wastewater treatment facility approximately 250 feet north of the current site. The plant site is located north of Fellows Road, approximately 3,600 feet west of the intersection of Fellows Road and Farm-to-Market Road 518 (Cullen Boulevard) in Harris County, Texas.

TRD-200103508

LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 21, 2001

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Notice of Water Rights Application

Intercontinental Terminals Company, 1943 Battleground Road, Deer Park, Texas 77536, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a temporary water use permit, for a period of one year, to divert and use 80 acre-feet of water at a maximum diversion rate of 3.34 cfs (1500 gpm) from the Houston Ship Channel, San Jacinto River Basin, for industrial (hydrostatic testing) purposes. Water will be diverted from a point located within Deer Park, Harris County, approximately 15 miles east of Houston. Should this permit be granted, 100 percent of the water diverted from the Houston Ship Channel will be returned to the Houston Ship Channel at a point located at applicant's facility.

Notice of the application is being mailed to the two water right holders located downstream of the applicant's diversion point to the terminus of the channel at Tabb's Bay. The temporary permit, if issued, will be junior in priority to all senior and superior water rights in the San Jacinto River Basin.

The application was received on February 20, 2001 and accepted for filing on February 28, 2001. The Executive Director of the TNRCC has reviewed the application and has declared it to be administratively complete on February 28, 2001.

Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by July 2, 2001. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by July 2, 2001. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

Daldav Associates, L.P., Two Corporate Center, 1390 Willow Pass Road #410, Concord, California 94520, applicant, seeks a permit pursuant to Texas Water Code Chapter 11.143 and Texas Natural Resource Conservation Commission Rules 30 TAC §295.1, et seq. Daldav Associates, L.P. submitted Application No. 5740 on March 22, 2001. The application was declared administratively complete on May 29, 2001. The Executive Director recommends that public notice of the application be published, pursuant to 30 TAC §295.152, allowing for a 30 day comment period. Pursuant to 30 TAC §295.153, this notice is being mailed to the downstream water right owners in the Trinity River Basin.

The applicant seeks authorization to maintain an existing dam and reservoir (Silveron Lake), originally constructed for domestic and livestock purposes, on an unnamed tributary of Denton Creek, tributary of East Fork Trinity River, tributary of the Trinity River, Trinity River Basin. The reservoir will be used for in-place recreational purposes in a public park and greenbelt area in a commercial campus in Denton County, Texas. The exempt reservoir covers a surface area of approximately 4.8 acres and impounds a total of 25 acre-feet of water at normal maximum operating level of 528.7 feet mean sea level. The top of the dam elevation is 533.5 feet msl.

Station 1+00 on the center point of the dam is located Latitude 32.988 degrees N, Longitude 97.054 degrees also being N 72.073 degrees, 2,825 feet from the southwest corner of the Joseph Knight Original Survey, Abstract No. 692, approximately 16 miles southeast of Denton, Texas.

To replace evaporative losses and to allow all inflows to which they are not entitled to pass through downstream, applicant has indicated the normal maximum operating level of the reservoir will be maintained using groundwater.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing on the above notices, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the TNRCC will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200103510
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 21, 2001

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Revised Notice of a Public Meeting and Proposed General Permit Authorizing the Discharge of On-site Wastewater Treatment Systems for Single Family Residences Located Within the San Jacinto River Basin in Harris County

The Texas Natural Resource Conservation Commission (TNRCC) proposes to issue a general permit (Proposed General Permit No. TXG530000) covering discharges from on-site wastewater treatment systems for single family residences located in the San Jacinto River Basin in Harris County Texas, under §26.040 of the Texas Water Code. House Bill 1574, Texas 76th Legislative Session, requires the TNRCC

to issue a general permit for the discharge of treated sewage into or adjacent to water in the state by a sewage treatment and disposal system if: the system produces less than 5,000 gallons per day (gpd); is located in a county with a population of 2.8 million or more that is an authorized agent under Chapter 366 of Health and Safety Code; the connection to an existing or proposed waste collection system is not feasible; is on property that: was subdivided and developed before January 1, 1979; and is of insufficient size to accommodate on-site disposal in compliance with the law.

The Executive Director has prepared a draft general permit, which sets the effluent limitations and treatment plant design requirements. The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the draft general permit and fact sheet are available for viewing and copying at the TNRCC Office of the Chief Clerk located at the TRNCC's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TNRCC's Regional 12 Office at 5425 Polk Avenue Suite H, Houston, Texas, and are available at http://www.tnrcc.state.tx.us/permitting/waterperm/wwperm/index.html

Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087 by July 20, 2001.

After the comment period, the Executive Director will consider all the public comments and prepare a response. The response to comments will be mailed to everyone who submitted public comments or who asked to be on a mailing list for this general permit. The general permit will then be set for the Commissioners' consideration at a scheduled Commission meeting.

In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing lists to which you wish to be added and send your request to the TNRCC Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

If you need more information about this general permit or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Further information may also be obtained by calling Louis C. Herrin, III at (512) 239-4552.

TRD-200103509
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 21, 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 June 19, 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 GEXA Corporation for Retail Electric Provider (REP) certification, Docket Number 24283 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than July 13, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200103525
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2001

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Notice of Application for Designation as an Eligible Telecommunications Provider and Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.417 and §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 15, 2001, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of nii communications, Ltd. (NII) for Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417 and Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 24265.

The Application: NII is requesting ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal services in Texas. NII seeks ETP and ETC designation for numerous local exchanges within the service territory of Southwestern Bell Telephone Company (SWBT), in the state of Texas. NII holds Service Provider Certificate of Operating Authority Number 60240.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by July 21, 2001. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may 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 (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All correspondence should refer to Docket Number 24265.

TRD-200103615
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 20, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Stonebridge Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24287 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, switched access service, PBX Trunking, exchange access services and optional features, exchange usage services and operator, directory assistance, busy line verification/interrupt services, and carrier access services to other common carriers.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than July 11, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200103527
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2001

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Notice of Application for Waiver of Reporting Requirement in P.U.C. Substantive Rule §25.236(g)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 21, 2001, for waiver of the reporting requirement imposed by P.U.C. Substantive Rule §25.236(g) regarding the filing of a final fuel reconciliation.

Docket Title and Number: Application of Southwestern Public Service Company (SPS) for Waiver of Requirement Imposed by P.U.C. Substantive Rule §25.236(g). Docket Number 24295.

The Application: The commission adopted P.U.C. Substantive Rule §25.236(g) establishing a schedule for each utility to file its final fuel reconciliation as required by the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 64.158 (Vernon 1998 & Supplement 2000) (PURA). The schedule set out in the rule requires that SPS file its final fuel reconciliation on August 1, 2002. SPS reports that with the enactment of House Bill 1692 (HB 1692), the Texas Legislature has delayed electric industry restructuring for SPS until at least January 1, 2007. SPS further affirms that HB 1692 exempts SPS from the final fuel reconciliation authorized in PURA §39.202(c). Therefore, pursuant to P.U.C. Substantive Rule §25.3, SPS seeks a good cause exception to P.U.C. Substantive Rule §25.236(g).

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 at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 24295.

TRD-200103620
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2001

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Notice of Application of Administrative Tariff Changes Pursuant to P.U.C. Substantive Rule §26.207

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application of Verizon Southwest for Administrative Tariff Changes filed on May 17, 2001. A summary of the application follows:

Docket Style and Number: Application of Verizon Southwest for Administrative Tariff Changes Pursuant to P.U.C. Substantive Rule §26.207. Docket Number 24125.

The Application: Verizon Southwest (Verizon) filed tariff revisions to reflect changes in Reserved Telephone Numbers. Verizon stated the Federal Communications Commission (FCC) released the Second Part and Order, Order on Reconsideration in CC Docket Number 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket Number 99-200 on December 29, 2000 to extend the number reservation service period to 180 days. This filing is being made to reflect the 180-day period. Verizon is deleting the monthly charge for this service.

Persons who wish to comment on this administrative filing 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 toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200103528
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2001

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On June 22, 2001, BroadBand Office Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60321. Applicant intends to relinquish its certificate.

The Application: Application of BroadBand Office Communications, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 24302.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than July 11, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text

telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24302.

TRD-200103607
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 2001

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Notice of Workshop on PUC Investigation of the Need for Planning Reserve Margin Requirements

The staff of the Public Utility Commission of Texas (commission) will hold a workshop concerning the need for planning reserve margin requirements on Tuesday, July 10, 2001, at 9:00 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 24255, *PUC Investigation of the Need for Planning Reserve Margin Requirements*, was established for the purpose of investigating whether the adequacy of generating capacity reserve margins should be left to the market forces, or whether other means should be created to help ensure a minimum reserve margin and, if so, what means should be used. At the workshop, the staff of the commission will seek comment on the capacity markets and reserve margin requirements that have been implemented in other jurisdictions, including the lessons learned and the alternatives that could be implemented in Texas. Commission staff will also seek comment on the relevant policy issues that should be addressed.

Five days prior to the workshop, the commission will make available in Central Records under Project Number 24255 an agenda for the format of the workshop. Questions concerning the workshop or this notice should be referred to Richard Greffe, Market Oversight Division, (512) 936-7404. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200103623
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2001

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Public Notice of Amendment to Interconnection Agreement

On June 19, 2001, Southwestern Bell Telephone Company and MCI WorldCom Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 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 24279. 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 24279. 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 July 19, 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 24279.

TRD-200103524
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2001

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Public Notice of Amendment to Interconnection Agreement

On June 19, 2001, Southwestern Bell Telephone Company and McLeodUSA Telecommunications Services, Inc. doing business as CapRock Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 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 24285. 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 24285. 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 July 19, 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 24285.

TRD-200103526
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2001

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Public Notice of Amendment to Interconnection Agreement

On June 21, 2001, Southwestern Bell Telephone Company and 1-800-Reconex, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 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 24298. 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 24298. 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 July 23, 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 24298.

TRD-200103593
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Verizon Southwest's Application for Approval of LRIC Study for ISDN PRI One Year Contract Pursuant to P.U.C. Substantive Rule §26.215 on or about June 29, 2001, Docket Number 24284.

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 24284. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200103592
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2001

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Public Notice of Interconnection Agreement

On June 18, 2001, Valor Telecommunications of Texas, LP and FamilyTel of Texas, LLC, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 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 24272. 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 24272. 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 July 19, 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 24272.

TRD-200103522
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2001

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Public Notice of Interconnection Agreement

On June 18, 2001, Southwestern Bell Telephone Company and SelectPath, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 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 24275. 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 24275. 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 July 19, 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 24275.

TRD-200103523
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2001

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Public Notice of Interconnection Agreement

On June 21, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and IVIT Communications Group, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 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 24300. 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 24300. 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 July 23, 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 24300.

TRD-200103594
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2001

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Public Notice of Interconnection Agreement

On June 21, 2001, Southwestern Bell Telephone Company and DMJ Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 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 24301. 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 24301. 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 July 23, 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 24301.

TRD-200103619
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2001

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Public Notice of Workshop Regarding Establishment of Uniform Cost Recovery Methods for 9-1-1 Dedicated Transport

The Public Utility Commission of Texas (commission) will hold a workshop regarding establishment of uniform cost recovery methods for 9-1-1 dedicated transport on Tuesday, July 31, 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 24305, *Rulemaking Relating to Establishment of Uniform Cost Recovery Methods for 9-1-1 Dedicated Transport* has been established for this proceeding. The commission, with the help of the telecommunications industry, hopes to develop uniform, consistent, and fair methods or mechanisms by which telecommunications providers may recover costs for 9-1-1 dedicated transport. This notice is not a formal notice of proposed rulemaking; however, the workshop will assist the commission in developing policy, with the expectation that a rule will be developed for publication and comment.

Questions concerning the workshop or this notice should be referred to John Mason, Legal Division, (512) 936-7287. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200103616
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 2001

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Texas Department of Transportation

Public Notice

Public Notice: Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: **http://www.dot.state.tx.us**

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200103634
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 27, 2001

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Texas Turnpike Authority Division of the Texas Department of Transportation

Record of Decision

On February 22, 2001, the Federal Highway Administration issued a Record of Decision for proposed State Highway 45 in Travis and Williamson Counties, Texas. On April 4, 2001, the Board of Directors of the Texas Turnpike Authority, a division of the Texas Department of Transportation, adopted the federally-issued Record of Decision. Following is the text of the Record of Decision as issued by the Federal Highway Administration and adopted by the Texas Turnpike Authority Board of Directors.

RECORD OF DECISION

Decision

The Texas Turnpike Authority Division of the Texas Department of Transportation (TTA) and the Federal Highway Administration (FHWA) have approved a Final Environmental Impact Statement (FEIS) for the construction of State Highway (SH) 45 from Anderson Mill Road to Farm-to-Market Road (FM) 685 in northern Travis County and southern Williamson County. The alternative selected is a combination of segment alternatives W-II/C-V/E-II. The route location and preliminary design of the selected alternative is shown in Plates 1-1 through 1-7 in the FEIS. The total length of the selected alternative is 14.56 miles and would extend from E1 Salido Parkway to FM 685, as a 6-lane freeway, with frontage roads and HOV lanes (ultimate design). The proposed facility is being studied by TTA as a candidate toll road.

The SH 45 project was developed in accordance with the National Environmental Policy Act (NEPA) of 1969, CEQ Regulation for Implementing the Procedural Provisions of the NEPA (40 CFR 1500-1508), FHWA Environmental Impact and Related Procedures (23 CFR Part 771), TTA Environmental Review and Public Involvement rules (43 TAC Chapter 52), and other related federal and state requirements.

As part of the project development process, federal, state, and local government agencies were consulted prior to and during the preparation of the FEIS. Resource agencies were initially notified of the project at an interagency scoping meeting held on July 30, 1997. In addition, a Notice of Intent to prepare the Draft Environmental Impact Statement (DEIS) was mailed to individual agencies and published in the *Federal Register* (October 2, 1998), *Texas Register* (October 9, 1998), and local papers. Public meetings for the proposed project were held on September 23, 1997 and October 7, 1998. Meetings were held with individuals, local government representatives, and local businesses throughout the project development process. The DEIS was prepared and made

available to the public and circulated for agency comment. Notice of the availability for review of the DEIS was published in the *Texas Register* on October 15, 1999 and in the *Federal Register* on October 22, 1999. The notice was also published in local newspapers. Copies of the DEIS were also made available for public review. A Public Hearing was held on November 9, 1999. An FEIS was prepared and made available for public review and circulated for agency comment in July 2000.

Alternatives Considered

A number of preliminary route alternatives were evaluated for SH 45. All of these route alternatives included the following design concepts for the SH 45 ultimate facility:

a typical 400-foot right-of-way corridor;

limited access, barrier-separated mainlanes;

grade-separated intersections with U-turn lanes for existing and CAMPO-planned major arterials;

high-speed, direct-connector ramps at major interchanges;

ultimate build-out to provide for:

- three-lane urban, one-way frontage roads;

- six mainlanes (minimum), plus one to four auxiliary lanes;

- two HOV lanes with full shoulders;

sidewalks between frontage roads and right-of-way lines, where feasible and appropriate;

bicycle and pedestrian facilities, where safe, reasonable and feasible.

To simplify the study of the various potential route alternatives for the proposed project, the study area was divided into three segments: western, central, and eastern. The preliminary route alternatives for SH 45 were composed of three alternative segments in the west (W-I, W-II and W-III), five alternative segments in the central area (C-I through C-V), and three alternative segments in the east (E-I through E-III). Segment Alternatives W-I, W-III and C-I were eliminated from consideration as primary alternatives. These segments are described as follows:

Western Segment Alternatives Extend from a transitional zone located west of the project terminus (Anderson Mill Road) eastward along RM 620 to a common point with the Central Alternatives located approximately 1,400 feet east of the FM 734/Parmer Lane/RM 620 intersection. (Note: The recommended route alternative was modified following the Public Hearing and is thus a modification of the preliminary alternatives shown).

Central Segment Alternatives Extend eastward along RM 620 from the western common point described above. Alternatives leave RM 620 at various points, using new location right-of-way until joining FM 1325 and a common point with the eastern alternatives, a distance of approximately 3.7 miles.

Eastern Segment Alternatives Extend eastward from the common point described above along FM 1325, cross IH 35 and follow Louis Henna Boulevard east to its end, continuing eastward on new location, then across (or along) Wilke Lane to the eastern terminus (FM 685) and a brief eastern transitional zone along Kelly Lane, a length of approximately 7.5 miles.

No Build Alternative The No Build Alternative was considered during the current study within the SH 45 corridor. The No Build Alternative would leave the current transportation network to handle future demand. Since this alternative involves no construction activities, most of the direct environmental impacts associated with the other alternatives such as relocations, impacts to karst features and conversion of various land uses for transportation purposes would not occur. A direct positive benefit of the No Build Alternative is that it would not require the commitment of between $527-551 million in funding that will be needed to develop SH 45. The No Build Alternative would not meet the purpose and need of the proposed SH 45 project, as described in greater detail in the FEIS.

A recommended route consisting of combined segment alternatives W-II/C-V/E-II was identified as a result of the selection process described in the FEIS.

Comparison of Western Segment Alternatives

Alternative W-II was the only one of the three preliminary western segment alternatives carried forward as a primary alternative. Based upon comments received at the Public Hearing, Alternative W-II was modified to reduce the right-of-way requirements by approximately 44.6 acres, thereby decreasing impacts to adjacent businesses and developable property within Cedar Park. The modified W-II transitions from a 400-foot right-of-way west of Ridgeline Drive to approximately 252 feet east of Lake Creek Parkway. The reduced right-of-way remains at approximately 238 feet from Lake Creek Parkway west to Hatch Road, then transitions back to the existing 120 foot right-of-way between Hatch Road and El Salido Parkway.

Comparison of Central Segment Alternatives

The central segment of the study area posed the greatest number of environmental constraints to project development of the three segments studied. Numerous archeological sites, more than 100 karst features and numerous other resources (woodlands, lakes, Edwards Aquifer Recharge Zone) were identified during project planning. Of the four primary route alternatives, the dominant factors in decision making were impacts to karst features and cost. Alternative C-IV was the least expensive option, with an estimated construction cost (not including right-of-way acquisition cost) of $102.10 million, compared to $109.49 million for C-V, $117.76 million for C-II, and $116.97 million for C-III. With regard to karst features, Alternative C-V would entail the fewest impacts (10 features; 4 within right-of-way, 6 within a 150 foot buffer zone adjacent to the roadway which may be adversely impacted), compared to 13 (6 within the right-of-way, 7 within the buffer zone) for C-II, 14 (7 within the right-of-way, 7 within the buffer zone) for C-III, and 14 (4 within the right-of-way, 10 within the buffer zone) for C-IV. Of these options, the preferred alternative selected by the study team was Alternative C-V, based upon the lowest potential for environmental impacts.

Comparison of Eastern Segment Alternatives

All of the eastern primary route alternatives are very similar with regard to costs, traffic feasibility, and human and environmental impacts. The northernmost alternative (E-I) appears to pose fewer constraints to a Pflugerville ISD school currently under construction along Kelly Lane east of FM 685 while avoiding impacts to residences and existing roadways. Alternative E-II would run adjacent to (but not directly impact) an NRHP eligible house along Wilke Lane. A meeting held with residents living along Wilke Lane indicated strong support for Alternative E-II, and was the primary factor in identifying E-II as the preferred route alternative within the eastern segment.

Measures to Minimize Harm/Commitments

Karst Features/ Karst Invertebrates

TTA and FHWA have completed a Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) regarding impacts to the Bone

Cave harvestman (*Texella reyesi*). As detailed in the Biological Opinion dated February 21, 2001, TTA and FHWA will commit to the following reasonable and prudent measures to minimize impacts of incidental take of the Bone Cave harvestman:

1. Karst preserve. Establish an approximately 160-acre karst preserve, as proposed in the Biological Assessment (BA) prepared by FHWA (Conservation Options 8. Karst Preserve Acquisition) and amended project description submitted by letter on January 29, 2001. The preserve will be established and dedicated for karst conservation for the life of the SH 45 project, before any construction or land clearing activities occur on SH 45. This karst preserve will minimize the impacts of the proposed action to construct SH 45 by avoiding and eliminating many of the edge effects on the karst and terrestrial ecosystems that can result from urban development, such as highway construction, near cave openings.

2. Storm water quality protection. Install the best available storm water quality treatment measures and hazardous materials traps to provide for nondegradation of water quality runoff from the proposed project, consistent with the BA (*Conservation Options 2. State of the Art Stormwater Treatment*, p. 12). These protective measures should be emphasized throughout the action area in karst zones 1 and 2, during both construction and operation of the proposed SH 45 project. Protection of high quality runoff of storm water will minimize the potential for habitat degradation within the karst ecosystem of the project area.

3. Construction monitoring. Follow the previous procedural recommendations made by the Service and restated in the BA (*Conservation Options 7. Construction monitoring*, p. 13), to ensure any unknown caves that may be encountered during construction are identified and it is determined whether listed species may be present. This will ensure that incidental take of Bone Cave harvestman does not exceed the level authorized by the incidental take statement in the BO and ensure other listed karst invertebrates are not present in newly discovered caves.

4. Right-of-way maintenance. Consistent with the BA (*Conservation Options 3. Xeriscape/Invasive Species Controls*, p. 12), TTA will maintain the ROW areas within 200 meters of the proposed karst preserve specifically to avoid and minimize the use of contaminants (fertilizers, pesticides, and herbicides) and to avoid the introduction of non-native species, primarily fire ants, and implement specific actions to control fire ants within the ROW. The ROW should be managed by use of low-maintenance native vegetation.

5. Construction controls. No construction or land clearing activities shall be allowed in areas identified as karst zones 1 or 2 outside of the areas for construction of the highway and related facilities as identified in the BA (*Conservation Options 4. Construction Contractor controls*, p. 12), without prior approval from the Service.

In addition, during any land clearing or excavation (trenching, scraping, bulldozing, etc.) in zones 1 and 2 a qualified geologist or geohydrologist will remain on-site to ensure detection of any caves, karst features, or subterranean voids that may be encountered. Excavation on the remainder of the property will not require a site geologist be present, but the procedures below will still be followed if any caves, karst features, or subterranean voids are encountered. If any caves, karst features, or subterranean voids are encountered during construction, then construction work within 500 feet of the encountered voids will halt until project environmental consultants have completed necessary evaluations. The U.S. Fish and Wildlife Service (USFWS) will be notified immediately. TTA will have a qualified geologist or geohydrologist familiar with karst invertebrates respond immediately to evaluate the void geologically to determine if it has the potential to contain endangered karst invertebrate habitat. If the potential for habitat is evident, TTA will have the feature examined by a qualified karst invertebrate biologist, approved by the USFWS, for the presence of the listed karst invertebrates. Three biological collection surveys will be conducted on three separate days over a period not greater than one week to determine the presence or absence of the listed invertebrates or other species of concern. Between surveys, voids should be covered to prevent drying, but still allow nutrient input. A report of the surveys, including climate data inside and outside of the cave, will be submitted to the Service immediately. If no endangered, threatened or species of concern are determined to be present in an encountered feature, environmental consultants will issue specific instructions in accordance with standard TNRCC accepted practices, as applicable, for any particular void. If sealed, voids will not allow any impacts or contamination into the karst ecosystem. The USFWS will be notified of methods used for dealing with the void. Construction activity will then resume with the carrying out of those specific instructions. The USFWS will be notified of findings prior to resuming construction activities. If endangered, threatened or species of concern are determined to be present within an encountered feature, TTA will consult with USFWS to determine avoidance or mitigation measures to be implemented either on or off-site, depending in part, on the species involved and the extent of effect. Upon completion or implementation of the avoidance procedures (following inspection and approval by the environmental consultants), the work may resume.

Golden-cheeked Warbler

One tract of land, transected by the proposed project, was identified as possible habitat for the warbler. To date, two years of surveys for the species have been conducted on the tract with no indication of the presence of the warbler. A third year of surveys will be completed in spring of 2001 (prior to any construction activities for SH 45) to confirm the no effect determination. If the species is encountered during the survey, FHWA will reinitiate consultation regarding potential impacts to this species. FHWA and TTA will also notify all construction contractors of the potential for habitat of the golden-cheeked warbler in the vicinity of the project.

Other Impact Minimization Measures

All practical measures to minimize environmental harm have been incorporated into the planning and design of the selected alternative. Where impacts could not be avoided, they have been minimized:

The selected alternative will require seven residential relocations, two church displacements and 39 business displacements. TxDOT's acquisition and relocation assistance program will provide assistance to residences and businesses that are required to relocate. The relocation assistance program would be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Qualified persons will be provided with relocation benefits that are intended to assist the displaced person(s) in purchasing or renting comparable housing.

Modeling of noise levels for the completed facility indicated that noise abatement measures would be both feasible and reasonable at three locations. Noise reduction barriers are proposed to be constructed at these locations as discussed in Section 4.9 of the FEIS, if desired by affected residents. Noise levels during construction will be mitigated by various methods including the use of mufflers, timing of construction activities, location of equipment, and minimizing the idling of machinery.

Work in the stream channels will be minimized and trees and other vegetation will be protected, where practicable, to preserve the riparian corridor. Wetlands, springs, and other sensitive features will be avoided where practicable. Pre-construction notification of the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act

will be undertaken prior to construction, if necessary, as required by current Nationwide Permit requirements.

Disturbance due to haul roads and construction traffic will be minimized. Disturbed areas will be re-seeded with a grass seed mix containing native species. Where landscaping is to be performed, native trees and shrubs will be used. Large trees outside the safety zone, which are not affected by construction, will be preserved. Once completed, vegetation management on the right-of-way will follow TxDOT standards and procedures for pesticide and herbicide application. If areas are identified as harboring oak wilt, infestation will be thoroughly cleared and all plant material will be disposed of as soon as possible. All working surfaces (blades, buckets, etc.,) of equipment used in clearing and grading such areas will be cleaned with a strong bleach or chlorine (hypochlorite) solution prior to use in the other areas.

Prior to beginning construction, a storm water pollution prevention plan and a water pollution abatement plan will be developed according to Environmental Protection Agency and Texas Natural Resource Conservation Commission rules and guidelines, respectively. The plans will include procedures for installing, maintaining and removing the temporary storm water controls to be used during construction.

Storm water control measures on the construction site will be inspected at least once every 14 days or within 24 hours after a rainfall event of 0.5 inch or greater. Sediment will be removed from devices and damaged devices repaired as soon as practical. The Contractor will remove silt accumulations and deposit the spoils in an area designated by the engineer. All damaged and/or ineffective temporary erosion control devices will be repaired at the earliest date possible, but no later than seven days after the defective controls have been noted in the inspection notes.

Disturbed areas will be seeded or otherwise stabilized within 14 days after the final grade has been attained. Temporary seeding and/or mulch will be utilized where or when it is not practical to establish permanent vegetation.

For the portion of the project over the Edwards Aquifer recharge zone, storm water runoff from the completed roadway will be directed to permanent storm water quality control structures that will be designed in accordance with TNRCC requirements. These control structures will include a combination of grassy swales and water quality ponds that are aimed at removing 80% of the incremental increase in the annual mass loading of total suspended solids from the site resulting from the new roadway.

Following right-of-way acquisition and prior to construction, TTA will coordinate with the Texas Historical Commission (THC) regarding additional cultural resource investigations within the preferred alternative alignment. These investigations will be conducted by qualified archeologists. Survey methodologies will address the potential of the alluvial terraces along the major and minor streams for containing buried deposits which might not be visible to surface investigations. Systematic mechanically assisted subsurface prospecting, combined with geomorphic evaluation, will provide a more complete site inventory, as well as aid in the assessment of the research potential and National Register eligibility of all sites encountered in alluvial settings.

The development of research issues for historic context, field surveys, testing and subsequent data recovery efforts, as necessary, will be coordinated with and in consultation with the Texas Historical Commission under the terms and conditions of the Programmatic Agreement between TxDOT, THC, FHWA, and the Advisory Council on Historic Preservation (ACHP). The mitigation of cultural resource sites will be pursued, as necessary, in compliance with Section 106 of the National Historic Preservation Act and the Texas Antiquities Code.

Monitoring or Enforcement Programs

Monitoring to ensure that all commitments made in the FEIS are carried-out will be performed in the design and construction phases of the project. This will include effective communication between FHWA, TTA, the engineering contractor(s), and the construction contractor(s). Plans will be developed and reviewed in coordination with environmental staff persons.

Prior to construction, significant environmental issues and commitments will be discussed with the construction contractor(s). The construction contractor(s) will be required to follow all environmental requirements shown in the plans. In addition, the TxDOT engineer (or TTA designated contractor) responsible for daily oversight of the construction of the project will also be made aware of these environmental issues and commitments.

The water pollution abatement plan developed for the project will be submitted to the Texas Natural Resource Conservation Commission for review and approval. Water quality management measures will be developed to meet Environmental Protection Agency and Texas Natural Resource Conservation Commission requirements. These agencies also have the authority to ensure compliance with their respective rules.

FHWA and TTA will comply with all Terms and Conditions contained in the USFWS' Biological Opinion, including the development of a karst preserve management plan, submittal of the WPAP to USFWS for review and comment, submittal of a written report to the Service following completion of excavation and grading of areas within karst zones 1 and 2, preparation of a right-of-way maintenance plan for areas within karst zones 1 and 2, and notification of contractors regarding controls on construction-related activities within karst zones 1 and 2.

Summary of Comments Made on the Final EIS

No comments were received as a result of the circulation of the Final Environmental Impact Statement.

TRD-200103650
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: June 27, 2001

The University of Texas System

Notice of Intent to Seek Consulting Services for Strategic Planning

The University of Texas System Administration, in accordance with the provisions of Government Code, Chapter 2254, will be seeking competitive sealed proposals to hire a consultant to advise the U. T. System Board of Regents on the best process to establish policies and procedures that will result in an effective System-wide strategic planning process. The consultant will be expected to produce a report that identifies the roles and responsibilities of the key participants in the planning process, establishes deadlines for critical events in the process, and identifies the types of information to be used to make strategic decisions. The consultant will also be expected to identify the most critical planning issues currently facing the U. T. System and to suggest strategies for addressing those issues during the initial stages of implementing the process.

The award for the services will be made by a review of competitive sealed proposals that will result in the best value to the University.

Parties interested in a copy of the Request for Proposal should contact:

Mr. Arthur Martinez
Associate Director
Office of Business and Administrative Services
The University of Texas System
201 West 7th Street
Austin, Texas 78701
Voice: 512/499-4584
Email: Amartinez@utsystem.edu

The proposal submission deadline will be Friday, July 13, 2001 at 3:00 p.m. Central Daylight Savings Time.

TRD-200103606
Francie Frederick
Counsel and Secretary to the Board of Regents
The University of Texas System
Filed: June 25, 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).

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13. Cultural Resources
16. Economic Regulation
19. Education
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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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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