TEXAS REGISTER

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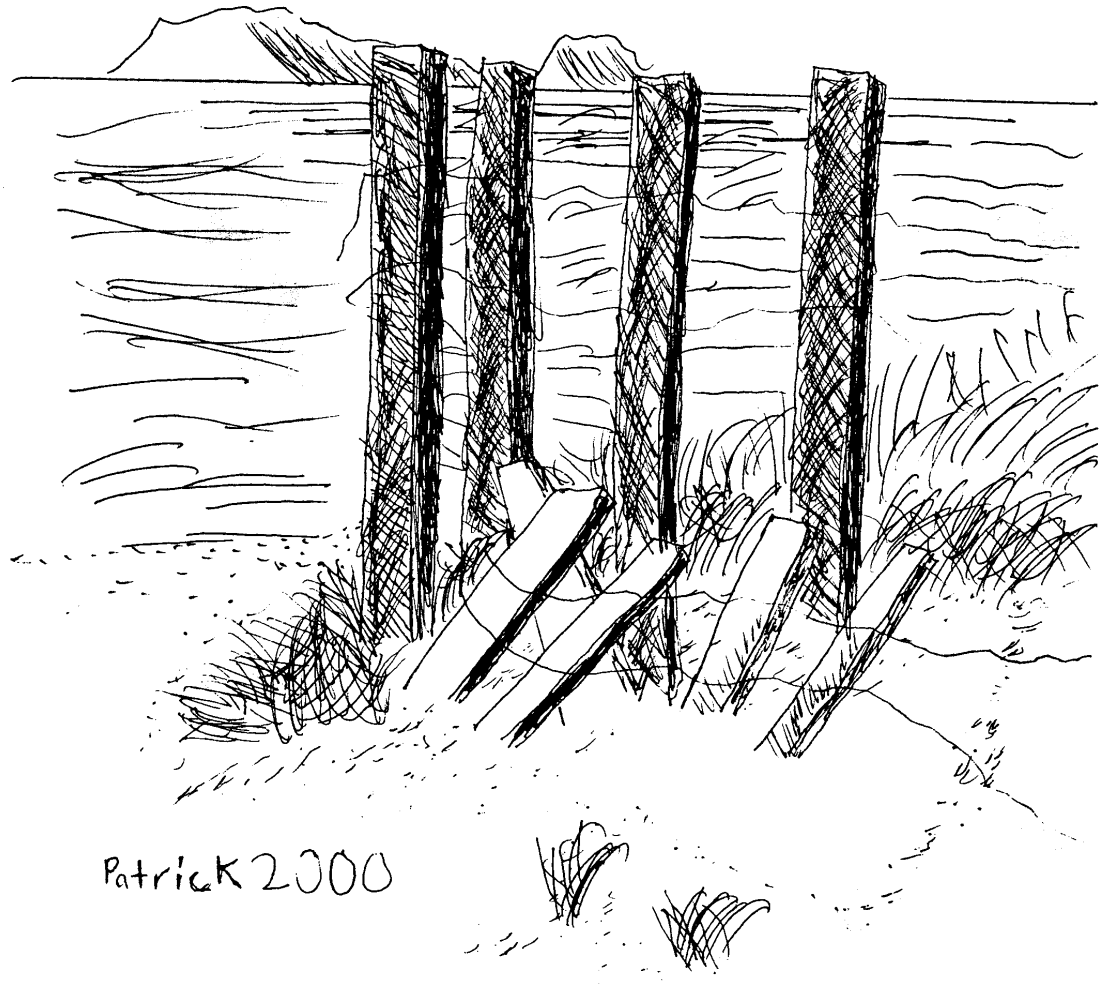

This month's front cover artwork:

Artist: *Patrick Hubbard*
2nd grade
Trinity School

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

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

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

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WITHDRAWN RULES

ADOPTED RULES

Texas Natural Resource Conservation Commission

Texas Department of Public Safety

Public Utility Commission of Texas

State Depository Board

Texas Department of Transportation

Texas A&M University, Board of Regents

The University of Texas System

Texas Water Development Board

THE GOVERNOR

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

Appointments

Appointment for June 1, 2001

Designated as Chairman of the Texas Rehabilitation Commission for a term at the pleasure of the Governor, Alvis Kent Waldrep of Plano (replaced Jerry Kane of Corpus Christi whose term has expired).

Appointments for June 8, 2001

Appointed to the State Employee Charitable Campaign Advisory Committee for a term to expire January 1, 2002, Cynthia Y. Benson of Midland (replaced Clara Cooper of Houston who resigned).

Appointed to the Health Care Information Council for a term to expire September 1, 2003, Billy E. Davis of Houston (replaced George Crowling of Irving who no longer qualifies).

Appointed to the Texas Workforce Commission for a term to expire February 1, 2007, Diane Doehne Rath of Austin (reappointed).

Designated as Chair of the Texas Workforce Commission for a term at the pleasure of the Governor, Diane D. Rath of San Antonio (reappointed).

Appointments for June 13, 2001

Designated as Chair of the Texas Parks and Wildlife Commission for a term to expire January 31, 2003, Katharine Armstrong Idsal of San Antonio (replaced Lee Bass of Fort Worth whose term expired).

Appointed to the Public Utility Commission of Texas for a term to expire September 1, 2005, Mario Max Yzaguirre of South Padre Island (replaced Judy Walsh of Austin whose term expired).

Appointment for June 21, 2001

Appointed as Adjutant General of Texas for a term to expire February 1, 2007, Major General Daniel James, III of Austin.

Appointments for June 22, 2001

Appointed to the Correctional Managed Health Care Committee for a term to expire February 1, 2007, James Dale Griffin, M.D. of Dallas (reappointed).

Appointed to the Texas Department of Transportation Motor Vehicle Board:

for a term to expire January 31, 2005, Stuart J. Hamilton of San Antonio (replaced Joe W. Park of Dallas who resigned);

for terms to expire January 31, 2007: Frank Breazeale of Gilmer (replaced Manual Marrufo of El Paso whose term expired), Patricia Fincher Harless of Spring (reappointed), and James R. Leonard of Abilene (reappointed).

Appointments for June 26, 2001

Appointed to the Public Utility Commission of Texas for a term to expire September 1, 2001, Rebecca Armendariz Klein of Austin (replaced Pat Wood of Austin who resigned).

Designated as Presiding Officer of the Public Utility Commission of Texas for at term at the pleasure of the Governor, Mario Max Yzaguirre (replaced Patrick Wood, III who no longer serves on the commission).

Appointed as Public Counsel of the Office of Public Utility Counsel for a term to expire February 1, 2003, Suzi Ray McClellan of Austin (reappointed).

Appointments for June 28, 2001

Appointed to the Texas Aerospace Commission for terms to expire February 1, 2007: Richard N. Azar of El Paso (replaced T.C. Selman of Angleton whose term expired), Richard L. "Larry" Griffin of Hunt (replaced David W. Carr of Austin whose term expired), and Holly Steger Stevens of Georgetown (replaced Anne McNamara of Dallas whose term expired).

Appointed to the Texas Commission on Alcohol and Drug Abuse for terms to expire February 1, 2007: Beverly Barron of Odessa (reappointed) and John F. Longoria of Corpus Christi (replaced James Oberwetter of Dallas whose term expired).

Designated as Chair of the Texas Commission on Alcohol and Drug Abuse for a term at the pleasure of the Governor, Robert A. Valadez of San Antonio (replaced James Oberwetter of Dallas).

Appointments for July 5, 2001

Appointed to the General Services Commission for terms to expire January 31, 2007: Gilbert A. Herrera of Houston (replaced Dionicio Vidal Flores of Houston whose term expired) and Macedonio (Massey) Villarreal of Missouri City (replaced Fred N. Moses of Plano whose term expired)

Designated as Chairman of the General Services Commission for a term at the pleasure of the Governor, Macedonio (Massey) Villarreal of Missouri City (replaced Alfred Shull of Tyler who continues to serve on the board).

Appointments for July 6, 2001

Appointed to the office of Chief Justice of the Court of Appeals, 14th District for a term until the next General Election and until his successor shall be duly elected and qualified, Scott Andrew Brister of Houston (replaced Chief Justice Paul Murphy who resigned).

Appointed to the Texas Commission of Licensing and Regulation for terms to expire February 1, 2007, William Young Fowler, IV of Valley Spring (reappointed) and Gina Parker of Waco (reappointed).

Appointed to the Municipal Retirement System Board of Trustees for terms to expire February 1, 2007: Carolyn Liner of San Marcos (reappointed) and Rick Menchaca of Midland (reappointed).

Appointed to the State Board of Nurse Examiners:

for a term to expire January 31, 2003, Deborah Hughes Bell of Abilene (replaced John Fonteno of Houston who resigned);

for terms to expire January 31, 2007: Virginia Milam Campbell of Mesquite (replaced Kenneth Lowrance of Clifton whose term expired), Lawrence J. Canfield of Temple (replaced Mary Brown of Dallas whose term expired), and Phyllis Caves Rawley of El Paso (replaced Nancy Boston of Belton whose term expired).

Designated as Presiding Officer of the Texas State Board of Examiners of Professional Counselors for a term at the pleasure of the Governor, Judith Powell of The Woodlands (replaced Anthony Picchioni who no longer serves on the board).

Appointments for July 11, 2001

Appointed to the Texas Historical Commission for terms to expire February 1, 2007: Lareatha H. Clay of Dallas (replaced T.R. Fehrenbach of San Antonio whose term expired), David A. Gravelle of Dallas (replaced Susan Mead of Dallas whose term expired), Frank Daniel Yturria of Brownsville (replaced Bruce Aiken of Brownsville whose term expired), Frank W. Gorman, Jr. of El Paso (reappointed), Shirley W. Caldwell of Albany (reappointed), and Jane Cook Barnhill of Brenham (reappointed).

Appointment for July 25, 2001

Appointed to the office of Judge of the 106th Judicial District Court, Dawson, Gaines, Garza, and Lynn Counties for a term until the next General Election and until her successor shall be duly elected and qualified, Carter Tinsley Schildknecht of Lamesa (replaced Judge George Hansard who resigned).

TRD-200104432

Rick Perry, Governor

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Executive Order

RP 2

Relating to the Governor's Advisory Council on Physical Fitness

WHEREAS, the health and welfare of its citizens is a vital concern and interest of the state; and

WHEREAS, too many Texans are diagnosed with or die from heart disease, certain kinds of cancers, stroke, and diabetes; and

WHEREAS, seventy-nine percent of adult Texans report that they do not participate in regular exercise; and

WHEREAS, statistical indicators at the Texas Department of Health reflect an increase in the prevalence of obesity since 1990; and

WHEREAS, regular physical activity reduces the risk for developing or dying from coronary heart disease, Type 2 diabetes, hypertension, and colon cancer; reduces symptoms of anxiety and depression; contributes to the development and maintenance of healthier bones, muscles, and joints; and helps control weight; and

WHEREAS, recent legislation underscores the importance of exercise among children and within Texas schools; and

WHEREAS, according to the United States Surgeon General, physical activity also may help older adults maintain the ability to live independently and help prevent injury; and

WHEREAS, the increased focus by the state on the need for physical activity and proper nutrition will help Texans improve their general health and long-term well-being.

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

1. Creation of Council. A Governor's Advisory Council on Physical Fitness ("the Council") is hereby created to advise the Governor on matters related to physical fitness.

2. Composition and Terms. The Council shall consist of eleven (11) members appointed by the Governor. All appointees will serve at the pleasure of the Governor.

Members shall be appointed to two-year terms and may continue to serve thereafter until their successors have been appointed. The Governor may fill any vacancy that may occur.

The Governor will designate one member to serve as chair.

The membership of the Council should reflect various interests, such as business and labor, health care, education, state and local governments, senior citizens, persons with special needs, and the general public.

The administrative heads of the Department of Health, Department on Aging, Texas Education Agency, and Employees Retirement System shall serve as ex officio, non-voting members of the Council. The Governor may appoint other ex officio, non-voting members as needed.

3. Duties. The Council shall:

(a) advise the Governor on matters relating to physical fitness, sports, health and nutrition education, and exercise;

(b) identify and review the activities of the various state programs related to physical fitness;

(c) complement and encourage local community efforts to increase opportunities for physical activity;

(d) develop an annual work plan to recommend strategies encouraging better nutrition and physical fitness;

(e) promote physical activity and good nutrition including outreach to children, senior citizens, and persons with special needs and emphasize the need for physical activity and good nutrition.

4. Report. The Council shall prepare and publish an annual report of its findings, activities, and recommendations to the Governor.

5. Cooperation by State Agencies. State agencies, including but not limited to, the Texas Department of Health, Texas Education Agency, Texas Workforce Commission, Texas Department on Aging, and the Employees Retirement System, shall assist the Council with its duties and responsibilities. State officials and employees serving on the Council shall do so in addition to the regular duties of their respective offices or positions.

6. Administrative Support. The Office of the Governor shall provide administrative support for the Council.

7. Other Provisions. The Council shall adhere to all applicable state laws and rules as well as other guidelines and procedures prescribed by the Office of the Governor. All members of the Council shall serve without compensation. Necessary expenses may be reimbursed when such expenses are incurred in direct performance of official duties of the Council.

8. Effective Date. This order shall take effect immediately.

This executive order supersedes all previous orders and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor. Given under my hand this the 26th day of July, 2001.

Rick Perry, Governor

TRD-200104433

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Proclamation

BY THE GOVERNOR OF THE STATE OF TEXAS (41-2883)

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the Texas Senate in the membership of District 30, which consists of part of Archer, Armstrong, Baylor, Briscoe, Carson, Castro, Childress, Clay, part of Collin, Collingsworth, Cooke, Cottle, part of Denton, Dickens, Donley, Fisher, Floyd, Foard, Grayson, Hall, Hardeman, Haskell, Jones, Kent, King, Knox, Montague, Motley, Scurry, Stonewall, Swisher, part of Taylor, Throckmorton, Wheeler, Wichita, and Wilbarger Counties; and

WHEREAS, Tex. Elec. Code Ann. §203.002 (Vernon 1986) requires that a special election be ordered upon such vacancy; and

WHEREAS, Tex. Elec. Code Ann. §203.004 (Vernon 1986 & Supp. 2001) requires that, absent a finding of an emergency, the special election be held on the next uniform election date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, November 6, 2001 is the next such uniform election date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, Tex. Elec. Code Ann. §3.003 (Vernon 1986) requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in District 30 on Tuesday, the 6th day of November, 2001, for the purpose of electing a State Senator for District 30 to serve out the unexpired term of the Honorable Tom Haywood.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Tuesday, the 9th day of October, 2001, in accordance with Tex. Elec. Code Ann. §201.054(a) and §1.006 (Vernon 1986).

Early voting by personal appearance shall begin on Monday, October 22, 2001 or earlier if ordered by the County Clerk of each County, in accordance with Tex. Elec. Code Ann. §85.001(c) (Vernon Supp. 2001).

A copy of this order will be mailed immediately to each County Judge in the district, and all appropriate writs will be issued and all proper proceedings will be followed to the end that said election may be held to fill the vacancy in District 30 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 30th of July, 2001.

Rick Perry, Governor

TRD-200104434

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TEXAS ETHICS COMMISSION

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

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

Advisory Opinion Request

AOR-478. The Texas Ethics Commission has been asked to consider whether a law firm may pay a signing bonus to an individual who is currently a state employee, and related questions.

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

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

TRD-200104325
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: July 26, 2001

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

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

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1080 - 21.1091

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

The Texas Higher Education Coordinating Board adopts the emergency repeal of §§21.1080 - 21.1091 concerning the Educational Aide Exemption Program.

The repeal of the rules is adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The repeal of the rules is being proposed for emergency action to modernize the formatting of program rules and clarify current eligibility requirements in response to legislation.

The repeal of the rules is adopted on an emergency basis under Texas Education Code, §54.214.

§21.1080. Purpose.
§21.1081. Administration.
§21.1082. Delegation of Powers and Duties.
§21.1083. Definitions.
§21.1084. Eligible Institution.
§21.1085. Eligible Students.
§21.1086. The Application Process.
§21.1087. Selection Criteria.
§21.1088. Award Announcements.
§21.1089. Award Cycle.
§21.1090. Reimbursement for Exemptions.
§21.1091. Program Review Requirements.

This agency hereby certifies that the emergency adoption 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 July 27, 2001.

TRD-200104362
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective Date: July 27, 2001
Expiration Date: November 24, 2001
For further information, please call: (512) 427-6558

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19 TAC §§21.1080 - 21.1089

The Texas Higher Education Coordinating Board adopts emergency new rules §§21.1080 through 21.1089 concerning the Educational Aide Exemption Program. The new rules are to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rule is being proposed for emergency action to modernize the formatting of program rules and clarify current eligibility requirements in response to legislation.

The new rule is adopted on an emergency basis under Texas Education Code, §54.214.

§21.1080. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.214, which states that the Coordinating Board shall adopt rules as necessary to implement the educational aides program.

(b) Scope. The rules set forth in this subchapter are applicable to determining the eligibility of students to receive awards through the educational aides program.

(c) Purpose. The purpose of the Educational Aide Exemption Program is to encourage certain educational aides to complete full teacher certification by providing need-based tuition and mandatory fee exemptions at Texas public institutions of higher education.

§21.1081. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The commissioner of higher education, the chief executive officer of the board.

(3) Cost of Attendance--A board-approved estimate of the expenses incurred by a typical financial aid student in attending college. Includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(4) Financial need--Based on the federal formula, the cost of education at an institution of higher education less the expected family contribution and any gift aid for which the student is entitled, or based on adjusted gross annual income for the most recent tax year as follows:

(A) single independent students must have an adjusted gross income of $25,000 or less,

(B) married independent students must have a combined gross income of $50,000 or less, and

(C) dependent students must have an adjusted gross income for the family of $50,000 or less.

(5) Program officer--The individual on a college campus who is designated by the institution's Chief Executive Officer to represent a program described in this subchapter on that campus. Unless otherwise designated by the Chief Executive Officer, the Director of Student Financial Aid shall serve as program officer.

(6) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included.

§21.1082. Eligible Institutions.

(a) All public institutions of higher education are eligible to participate.

(b) The chief executive officer of an eligible institution shall designate a program officer who shall be the board's on-campus agent to certify all institutional transactions, activities and reports with respect to the program described in this subchapter. Unless otherwise indicated by the chief executive officer of the institution, the Director of Financial Aid shall serve as the program officer.

§21.1083. Eligible Students.

To receive an award through the Educational Aide Exemption Program, a student must:

(1) be a resident of Texas;

(2) have at least one school year of experience as an educational aide during the five years preceding the term or semester for which the person receives the exemption;

(3) be employed in some capacity by a school district in Texas during the school year for which the person receives the award;

(4) show financial need;

(5) be enrolled in courses required for teacher certification at the institution granting an exemption under this subchapter;

(6) meet the academic progress standards of his/her institution; and

(7) follow application procedures and schedules as indicated by the board.

§21.1084. The Application Process.

(a) Application forms and instructions will be distributed primarily through school district offices throughout the state, although financial aid offices of eligible institutions will also be provided copies of the forms.

(b) Applications will be processed once a year, with award announcements made as soon as possible after the priority deadline named by the board.

(c) Part I of the application is to be completed and signed by the applicant, who is to forward the form to an authorized officer of the school or school district by which the applicant is employed.

(d) Part II of the application is to be completed and certified by an authorized officer of the school or school district by which the applicant is employed, who is to forward the application to the financial aid office of the college or university the applicant plans to attend.

(e) Part III of the application is to be completed and certified by the financial aid office of the relevant institution of higher education, which is responsible for forwarding the completed application to the board by the deadline indicated in the instructions.

(f) Due to limited funding, each institution will be allowed to submit only a certain number of applications to the board. This allotment will be announced to the institutions at least a month prior to the deadline for submitting applications.

(g) In order to be given priority consideration, applications with Parts I, II and III completed and duly certified must be received by the board by the established deadline. Applications received after that date will be given consideration only if funds remain available after all applications received by the deadline have been processed.

§21.1085. Selection Criteria.

From the pool of applicants submitted by participating institutions, the board will select recipients for the exemptions. Selection will be based on the following criteria:

(1) the financial need of each student,

(2) the number of years the individual has been employed as an educational aide,

(3) the priority assigned each applicant by the institution, and

(4) the student's anticipated date for certification as a teacher.

§21.1086. Award Announcements.

As soon as possible after the priority deadline for submitting applications, the board will select award recipients and announce the selections to the institutions, the selected recipients, and the school districts employing the recipients. The number of awards made each year will depend on the funding available for reimbursing institutions for the exemptions they grant. No institution is required to award an exemption for which reimbursement funds are not available.

§21.1087. Award Cycle.

(a) Fall awards. Each individual selected for an award through this subchapter will be exempted from the payment of tuition and mandatory fees other than class or laboratory fees for the fall term for which the award was requested.

(b) Spring awards. At the end of the fall term and upon confirmation by the institution that the student continues to be eligible, the student will also be granted an exemption for tuition and mandatory fees other than class or laboratory fees for the spring term of that same academic year.

(c) A summer exemption may be granted if program funding is sufficient to meet summer expenses and if the student continues to meet program requirements. The availability of funding for summer awards will be announced to institutions by the board by March 1 of each year.

(d) Students who have received awards may compete for awards in subsequent years but must follow the same application process as students applying for the first time.

§21.1088. Reimbursement for Exemptions.

(a) Source of funding. The funds to be used to reimburse institutions for the exemptions awarded under this subchapter will come from the foundation school fund.

(b) To request reimbursements. After granting exemptions authorized by the board, the institutions may request reimbursement from the board by completing and submitting the reimbursement form prescribed and distributed by the board.

(c) Reimbursements. At least once a year the board will request a transfer of funds from the foundation school fund for use in reimbursing participating institutions and forward amounts to institutions in keeping with the reimbursement forms received from the schools.

§21.1089. Program Review Requirements.

Any institution of higher education whose students receive awards through the program described in this subchapter will be subject to a program review.

This agency hereby certifies that the emergency adoption 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 July 27, 2001.

TRD-200104360
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective Date: July 27, 2001
Expiration Date: November 24, 2001
For further information, please call: (512) 427-6162

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.833

The Comptroller of Public Accounts adopts on an emergency basis a new §3.833, concerning the creation of certified capital companies and premium tax credits by insurers and other persons that invest in them. This new section is the result of Insurance Code, new Subchapter B, Articles 4.51 - 4.74. This section provides guidelines for investments of certified capital in certified capital companies by certified investors. It describes the procedure by which an entity makes application to the Comptroller of Public Accounts to be certified as a certified capital company and the requirements for maintaining its status as a certified capital company and the process for decertification for failure to comply with requirements. It provides for premium tax credits for insurance companies to promote investment in certified capital companies that fund qualified businesses, early stage businesses or strategic investment businesses and describes the methods for claiming tax credits. It details the annual review conducted by the comptroller and the required reports certified capital companies must file with the comptroller. The section implements Senate Bill 601 passed by the 77th Legislature, 2001. A company may qualify for a premium tax credit for investments made after February 15, 2002. However, under the terms of Senate Bill 601, implementation of this program is contingent upon certification by the Comptroller of Public Accounts that revenue will be available to fund these credits in addition to other appropriations of revenue. For specific information see Insurance Code, Article 4.74. As of the date this section is submitted to the Texas Register, that requirement has not been satisfied and the date of implementation of this program cannot be determined.

Senate Bill 601, §3, requires that the Texas Comptroller adopt rules implementing this act within 60 days of the effective date of the legislation. The Governor signed the legislation on May 28, 2001, therefore requiring the adoption of this rule on an emergency basis by July 27, 2001.

James LeBas, Chief Revenue Estimator, has determined that, for the first five-year period the rule will be in effect, the rule will have no significant revenue impact on the state or local government.

Mr. LeBas 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 in providing guidance to insurers investing in certified capital companies with respect to a premium tax credit. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

This new section 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 new section implements Insurance Code, Articles 4.51 - 4.74, as added by Senate Bill 601, 77th Legislature (2001).

§3.833. Certified Capital Companies and Certified Investor Premium Tax Credits.

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

(1) Affiliate means:

(A) a person who is an affiliate for purposes of Insurance Code, §2, Article 21.49-1 that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the insurance company or insurance affiliated group;

(B) a person who directly or indirectly:

(i) owns 10% or more of the outstanding voting securities or other voting or management interests of another person, whether through rights, options, convertible interests, or otherwise; or

(ii) controls or holds power to vote 10% or more of the outstanding voting securities or other voting or management interests of the other person;

(C) a person who directly or indirectly owns 10% or more of the outstanding voting securities or other voting or management interests of which are directly or indirectly:

(i) beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

(ii) controlled or held with power to vote by the other person;

(D) a partnership in which the other person is a general partner; or

(E) an officer, director, employee, or agent of the other person, or an immediate family member of the officer, director, employee, or agent of the other person.

(2) Allocation date means the date on which the comptroller allocates certified capital to certified investors of a certified capital company under this subchapter, except that in the case of a pro rata reallocation pursuant to subsection (f)(4)(B)(ii) of this section, the allocation date shall be the date of the reallocation.

(3) CAPCO means the same as a certified capital company as defined herein.

(4) Certified capital means an investment of cash by a certified investor in a certified capital company that fully funds the purchase price of an equity interest in the company or a qualified debt instrument issued by the certified capital company.

(5) Certified capital company means a partnership, corporation, trust, or limited liability company, whether organized on a profit or not-for-profit basis, that is in good standing with the State of Texas, is headquartered in this state, and has as its primary business activity the investment of cash in qualified businesses and that is certified as meeting the criteria of this section.

(6) Certified investor means an insurance company or health maintenance organization licensed by the Texas Department of Insurance or other person that has state premium tax liability, other than a title insurance company subject to Insurance Code, Chapter 9, that invests certified capital pursuant to an allocation of premium tax credits under this section.

(7) Early stage business means a qualified business that satisfies at least one of the following criteria:

(A) is involved, at the time of a certified capital company's first investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes;

(B) was initially organized less than two years before the date of the certified capital company's first investment; or

(C) during the fiscal year immediately preceding the year of the certified capital company's first investment had, on a consolidated basis with its affiliates, gross revenues of not more than $2 million as determined in accordance with generally accepted accounting principles.

(8) Headquartered in this state means the following requirements, at a minimum, are met with respect to Texas CAPCOs:

(A) The CAPCO has its principal office in Texas for operations covered under this section, in which the main investment and administrative functions of the CAPCO are conducted;

(B) the original principal books and records of the CAPCO are maintained in Texas; and

(C) a minimum of 40% of the CAPCO expenses are spent in Texas, but for the purposes of this subparagraph such expenses do not include underwriting fees, closing cost, and those expenses that the CAPCO demonstrates cannot be reasonably obtained in this state.

(9) Initially organized means the date that an entity's organizational documents were first accepted as filed by the appropriate official in the state of its incorporation or organization, as applicable, or, in the case of an entity that is not required to file its organizational documents with any state official, the date on which its members, partners, or owners, as applicable, originally executed such entity's organizational documents.

(10) Person means a natural person or entity, including a corporation, general or limited partnership, trust, or limited liability company.

(11) Premium tax credit allocation claim means a claim for allocation of Texas premium tax credits on a form provided by the comptroller.

(12) Primarily under this section means at least 80%.

(13) Principal Office means the workplace of a majority of employees of the CAPCO.

(14) Qualified business means a business that, at the time of a certified capital company's first investment in the business:

(A) is headquartered in this state or relocates its headquarters and principal business operations to this state within 90 days, and based on a copy of its business plan, intends to remain in this state after receipt of an investment by the certified capital company;

(B) has its principal business operations in this state and intends to maintain business operations in this state after receipt of an investment by the certified capital company;

(C) has agreed to use the qualified investment primarily:

(i) to support business operations in this state, other than advertising, promotion, and sales operations, which may be conducted outside of this state; or

(ii) in the case of a start-up company, to establish and support business operations in this state, other than advertising, promotion, and sales operations, which may be conducted outside of this state;

(D) has not more than 100 employees and:

(i) employs at least 80% of its employees in this state; or

(ii) pays 80% of its payroll to employees in this state;

(E) is primarily engaged in:

(i) manufacturing, processing, or assembling products;

(ii) conducting research and development; or

(iii) providing services;

(F) does not incur more than 20% of its expenses and receive more than 20% of its income from:

(i) retail sales;

(ii) real estate development;

(iii) the business of insurance, banking, or lending; or

(iv) the provision of professional services provided by accountants, attorneys, or physicians; and

(G) meets the qualifications as a qualified business but if subsequently acquired by or merged into an entity headquartered outside of Texas, the business continues to operate within the remaining guidelines for a qualified business as stated in this subsection.

(15) Qualified debt instrument means a debt instrument issued by a certified capital company, at par value or a premium, that:

(A) has an original maturity date of at least five years after the date of issuance;

(B) has a repayment schedule that is not faster than a level principal amortization over five years; and

(C) has no interest, distribution, or payment features that are related to the profitability of the certified capital company or the performance of the certified capital company's investment portfolio.

(16) Qualified distribution means any distribution or payment from certified capital by a certified capital company in connection with:

(A) the reasonable costs and expenses of forming, syndicating, managing, and operating the company, during a calendar year, provided that the distribution or payment is not made directly or indirectly to a certified investor, including:

(i) reasonable and necessary fees paid for professional services, including legal and accounting services, related to the formation and operation of the company; and

(ii) an annual management fee in an amount that does not exceed two and one-half percent of the certified capital of the company according to the following schedule:

(I) beginning with the year certified capital is received and continuing through the end of the third calendar year of the program, the annual management fee is 2.5% of the certified capital, or as provided in subclause (IV) of this clause;

(II) beginning with the fourth year and continuing through the end of the fifth calendar year of the program, the annual management fee is 2.0% of the certified capital, or as provided in subclause (IV) of this clause;

(III) beginning with the sixth year and continuing through the end of the tenth calendar year of the program, the annual management fee is 1.5% of the certified capital, or as provided in subclause (IV) of this clause; however

(IV) the management fee shall not apply in any year after the year in which qualified investments equal 100% of the total certified capital.

(B) any projected increase in federal income or state taxes based on income, including penalties and interest related to those taxes, of the equity owners of the company resulting from the earnings or other tax liability of the company to the extent that the increase is related to the ownership, management, or operation of the company in this state.

(17) Qualified investment means the investment of cash by a certified capital company in a qualified business for a minimum period of one year for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including a debt instrument or security that has the characteristics of debt but that provides for conversion into equity or equity participation instruments such as options or warrants.

(18) State premium tax liability means:

(A) any gross insurance premium tax or health maintenance organization gross receipts tax liability incurred by any person under the Insurance Code; or

(B) if the premium tax liability imposed under the Insurance Code on January 1, 2001 is eliminated or reduced, any substitute tax liability imposed on an insurance company or other person that had premium tax liability or health maintenance organization gross receipts tax liability under the Insurance Code on that date.

(19) Strategic investment area means an area of this state that qualifies as a strategic investment area under Tax Code, Subchapter O, Chapter 171, or, after the expiration of that subchapter, an area that qualified as a strategic investment area under that subchapter immediately before its expiration.

(20) Strategic investment business means a qualified business that has its principal business operations located in one or more strategic investment areas and otherwise intends to maintain business operations in the strategic investment areas after receipt of an investment by the certified capital company as documented in the business plan or other business records that were generated at or before the time of the investment.

(b) Application Process. Any entity that seeks to operate in Texas as a CAPCO under the provisions of the Insurance Code shall comply with the application procedures set forth in this section. The comptroller will begin accepting applications for certification as a CAPCO on November 1, 2001, except as provided by subsection (k) of this section.

(1) An applicant must file with the comptroller the following:

(A) a completed Application for Certification on a form provided by the comptroller,

(B) a nonrefundable application fee of $7,500;

(C) an audited balance sheet with an unqualified opinion from an independent certified public accountant, as of a date not more than 35 days before the date of application;

(D) evidence of an equity capitalization of at least $500,000 in the form of unencumbered cash or cash equivalents;

(E) evidence that at least two principals or persons employed or engaged to manage the funds of the applicant have at least four years of experience in the venture capital industry;

(F) a commitment that if certified, the CAPCO will establish in Texas its principal office for CAPCO operations within 60 days of certification; and

(G) biographical, financial, investment, and historical data for each manager, principal, and the entity itself that provides the following, as applicable:

(i) information on prior venture capital firms with which the manager or principal was employed that specifically includes detail on:

(I) the valuation of portfolio investments, including the manager or principal's ability to structure and execute timely and effective exits from portfolio investments;

(II) historical investment performance of prior firms managed by the same managers or principals;

(III) historical performance of the CAPCO and each of its managers or principals relating to investments in early stage businesses;

(IV) the investment philosophy of the firm;

(V) the firm's history and strategy of obtaining investors and making investments, particularly in the targeted areas of early stage businesses and strategic investment businesses;

(VI) disclosure of any fines, penalties, or other sanctions or actions by any state, federal, or other regulatory entity, including the Securities and Exchange Commission, relating to violations of any type; and

(ii) any other information that the comptroller may later request to determine the quality of the firm's management, reputation, investment strategy and practices.

(2) The date of receipt of an application is the postmark date or the date of the independent delivery receipt.

(3) The comptroller shall review the application and all required documents to ensure that the applicant satisfies the requirements for certification as a CAPCO. Within 30 days of the date of receipt of an application, the comptroller shall:

(A) issue the certification; or

(B) refuse to issue the certification and provide to the applicant the grounds for the refusal.

(c) Requirements for renewal and continuance of certification. A CAPCO must comply with the requirements for renewal and continuance of certification set forth in this section.

(1) Each CAPCO shall pay a nonrefundable renewal fee of $5,000 to the comptroller not later than January 31 of each year, except that a renewal fee is not required within six months of the date on which the certification is issued.

(2) If a CAPCO fails to pay its renewal fee on or before January 31 of each year, the company must pay, in addition to the renewal fee, a late fee of $5,000 to continue its certification.

(3) If a CAPCO fails to pay the renewal fee and late fee as stated in paragraph (2) of this subsection within 60 days after January 31, the certified capital company shall be subject to decertification.

(4) To continue to be certified, a CAPCO must make qualified investments of certified capital received from certified investors according to the following schedule.

(A) Before the third anniversary of its allocation date, a CAPCO must have made qualified investments in an amount cumulatively equal to at least 30% of its certified capital; and

(B) before the fifth anniversary of its allocation date, a CAPCO must have made qualified investments in an amount cumulatively equal to at least 50% of its certified capital, subject to the following:

(i) at least 50% of the dollar amount of qualified investments required in paragraph (4)(B) of this subsection must be placed in early stage businesses;

(ii) at least 30% of the dollar amount of qualified investments required in paragraphs (4)(A) and (4)(B) of this subsection must be placed in strategic investment businesses.

(5) The aggregate cumulative amount of all qualified investments made by the CAPCO after its allocation date shall be considered in the computation of the percentage requirements in paragraph (4) of this subsection and subsection (a)(16)(A)(ii) of this section. Any proceeds received by the CAPCO from a qualified investment may be invested in another qualified investment and count toward any requirement in this section with respect to investments of certified capital.

(6) A business that is classified as a qualified business at the time that the CAPCO first invests in the business remains classified as a qualified business and may receive follow-on investments from any certified capital company, even though the qualified business may not meet the definition of a qualified business at the time of the follow-on investment, unless the qualified business no longer has its principal business operations in this state.

(7) A CAPCO may not make a qualified investment greater than 15% of the total certified capital of the CAPCO at the time of investment.

(8) A CAPCO shall invest any certified capital not invested in qualified investments only in the following:

(A) cash deposited with a federally insured financial institution located in this state that is not affiliated with the CAPCO;

(B) certificates of deposit in a federally insured financial institution located in this state that is not affiliated with the CAPCO;

(C) investment securities that are obligations of the United States or its agencies or instrumentalities or obligations that are guaranteed fully as to principal and interest by the United States, provided that the investment securities are not procured through a financial institution affiliated with the CAPCO;

(D) debt instruments rated at least "A" or its equivalent by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "A" or its equivalent by a nationally recognized credit rating organization, and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the guarantor provided that the debt instruments are not procured through a financial institution affiliated with the CAPCO;

(E) obligations of this state or any municipality or political subdivision of this state provided that such obligations are not procured through a financial institution affiliated with the CAPCO;

(F) a mutual fund consisting of any combination of investments permitted in subparagraphs (A)-(E) of this subsection, provided that such mutual funds are not procured through a financial institution affiliated with the CAPCO; or

(G) any other investments approved in advance and in writing by the comptroller.

(9) If a qualified business moves its principal business operations outside Texas before the 90th day after a certified capital company makes an investment in it, the investment is not considered a qualified investment for the purposes of the percentage requirements in paragraph (4) of this subsection and subsection (a)(16)(A)(ii) of this section.

(d) Annual review. Each CAPCO is subject to review as specified in this section to determine compliance with rules and statutes.

(1) The comptroller shall conduct an annual review of each CAPCO to:

(A) ensure that the CAPCO continues to satisfy the requirements of this section and Insurance Code, Articles 4.51 - 4.74;

(B) ensure that the CAPCO has not made any investment in violation of this section and Insurance Code, Articles 4.51 - 4.74; and

(C) determine the eligibility status of its qualified investments.

(2) Each CAPCO shall pay the cost of the annual review to be billed by the comptroller or, if the review is conducted by an independent examiner under the authority of the comptroller, the CAPCO shall pay the cost of the annual review directly to the independent examiner.

(e) Decertification. A CAPCO may be decertified for violations of this section or the Insurance Code, and premium tax credits may be recaptured and forfeited to the extent expressly set forth in this section or in the Insurance Code.

(1) A material violation of Insurance Code, Articles 4.56, 4.58, or 4.59, may result in decertification of a CAPCO. The comptroller will notify the officers of the CAPCO in writing of the violations and that the company may be decertified after 120 days from the date on which the notice is mailed, unless the violations are corrected as determined by the comptroller. A hearing is available to a CAPCO as provided in the §§1.1-1.42 of this title (relating to Rules of Practice & Procedure).

(2) After the expiration of 120 days after the comptroller mails the notice of violations, the comptroller may decertify a CAPCO if the violations have not been corrected.

(3) Decertification is effective on the date on which the company receives notice of decertification from the comptroller.

(4) Premium tax credits previously claimed shall be recaptured and future premium tax credits shall be forfeited following decertification of a CAPCO as follows:

(A) decertification of a company on or before the third anniversary of its allocation date causes the recapture of any premium tax credit previously claimed and the forfeiture of any future premium tax credit to be claimed by a certified investor with respect to the company;

(B) for a company that meets the requirements for continued certification under subsection (c)(4)(A) of this section but fails to meet the requirements for continued certification under subsection (c)(4)(B) of this section, any premium tax credit that has been or will be taken by a certified investor on or before the third anniversary of the allocation date is not subject to recapture or forfeiture, but any premium tax credit that has been or will be taken by a certified investor after the third anniversary of the allocation date is subject to recapture or forfeiture;

(C) for a company that meets the requirements for continued certification under subsections (c)(4)(A) and (c)(4)(B) of this section but is subsequently decertified, any premium tax credit that has been or will be taken by a certified investor on or before the fifth anniversary of the allocation date is not subject to recapture or forfeiture, but any premium tax credit to be taken by a certified investor after the fifth anniversary of the allocation date is subject to recapture or forfeiture only if the company is decertified on or before the fifth anniversary of its allocation date;

(D) for a CAPCO that has invested an amount equal to 100% of its certified capital in qualified investments, any premium tax credit claimed or to be claimed by a certified investor is not subject to recapture or forfeiture.

(5) The comptroller will send a written notice to each certified investor whose tax credit is subject to recapture or forfeiture for failure of the certified capital company to maintain certification eligibility.

(6) The comptroller may impose an administrative penalty on a CAPCO that violates the provisions of this section. Each day a violation continues or occurs is a separate violation. The maximum penalty may not exceed $25,000 for each violation.

(A) Each of the following is a separate violation that is subject to a penalty of $5,000, which may be doubled if not corrected within 30 days:

(i) failure to file annual reports by January 31;

(ii) failure to maintain in the principal office in this state all financial, administrative, management and investment records, including details of both qualified investments and unqualified investments;

(iii) failure to report names and addresses of certified investors, including the date and amount of investments;

(iv) failure to file an audited financial statement by April 1; and

(v) failure to provide detailed financial and investment information that supports each annual report.

(B) Each of the following is a separate violation that is subject to a penalty of $10,000, which may be doubled if the violation is not corrected within 30 days:

(i) failure to maintain the primary CAPCO office in this state;

(ii) investment in a business that is found to be unqualified, without first requesting from the comptroller an evaluation of the business as provided under subsection (g) of this section; and

(iii) failure to provide information about the CAPCO's operation within 30 days after the comptroller requests the information.

(f) Premium Tax Credits. A certified investor who makes an investment of certified capital shall, in the year of the investment, earn a premium tax credit that is equal to the amount of the investment, subject to the other provisions in this section. A maximum of 10% of these tax credits may be taken each year, beginning in the year of the investment, until all credits have been used.

(1) A premium tax credit allocation claim form for certified investors must be prepared and executed by each CAPCO receiving an investment commitment, on a form provided by the comptroller. Such form shall include an affidavit of the certified investor which legally binds the investor to make an investment of certified capital in an amount allocated by the comptroller. The forms are due from each CAPCO by February 15, 2002, or such other date as may be required under subsection (k) of this section.

(2) A certified investor's tax credits are limited to the amount of certified capital as allocated or as subsequently reallocated by the comptroller and funded by the certified investor. The maximum investment for which a premium tax credit may be allocated or reallocated to any one individual certified investor and its affiliates may not exceed the greater of:

(A) $10 million; or

(B) 15% of the aggregate amount of annual premium tax credits, multiplied by 10, that are allocated under paragraph (3) of this subsection, or reallocated under paragraph (4) of this subsection.

(3) The total amount of credits that this subsection allows is $200 million for all years. Total annual credits are limited to the lesser of $20 million per year, or 10% of the total amount of investment under this subsection.

(4) Pro rata allocation of credits.

(A) The comptroller shall perform a pro rata allocation of the total amount of premium tax credits under this subsection if:

(i) the total amount of certified capital under paragraph (1) of this subsection exceeds the total limit on credits under paragraph (3) of this subsection; or

(ii) if an allocation of credits under subparagraph (A)(i) of this paragraph has occurred and a CAPCO notifies the comptroller that it did not receive an investment of certified capital equal to the amount of the investment commitment from one or more investors, as provided on the premium tax credit allocation form that is filed under paragraph (1) of this subsection.

(B) the pro rata allocation for each certified investor shall be computed as follows:

(i) for an allocation under paragraph (4)(A)(i) of this subsection, a fraction, the numerator of which is the value determined in paragraph (1) of this subsection for each certified investor and the denominator of which is the total amount of all premium tax credit allocation claims that are filed under paragraph (1) of this subsection, for all certified investors, multiplied by the total limit on credits of $200 million as provided by paragraph (3) of this subsection.

(ii) for a reallocation under paragraph (4)(A)(ii) of this subsection, the comptroller shall reallocate the forfeited capital investment allocation among the other certified investors in all CAPCOs that originally received an allocation, in such amounts as will ensure that the result after reallocation is to be the same as if the original allocation under this subsection had been fully funded.

(5) Tax credits under this subsection may be transferred as provided by rules of the comptroller.

(6) If a CAPCO is decertified, the comptroller will adjust any tax report records that are impacted by the recapture or forfeiture of premium tax credits and will enforce the collection of additional premium taxes as a result of the recapture or forfeiture. For purposes of this section in the recapture of tax credits taken, the provisions of Tax Code, §111.207 shall apply as if the limitation period had been tolled before the end of the limitation under Tax Code, §111.204. These provisions shall apply to all insurers and persons, including those who received a transfer or assignment of the credits to be adjusted or recaptured.

(g) Evaluation of Business. Before it makes an investment, a CAPCO may request that the comptroller determine whether the business is a qualified business, an early stage business, or a strategic investment business. The CAPCO shall provide all information it has gathered on such business, including its plan of operation and plans for future expansion.

(1) Not later than 15 business days following receipt of a request, the comptroller shall issue a determination of whether the business meets the definition of a qualified business, early stage business or strategic investment business.

(2) The comptroller may notify the CAPCO that an additional 15 days will be needed to review and make the determination.

(3) If the comptroller fails to notify the CAPCO as provided under either paragraph (1) or (2) of this subsection, the business is considered to be a qualified business, early stage business, or a strategic investment business, as appropriate.

(h) Qualified distributions; repayment of debt. A CAPCO may make a qualified distribution at any time. A CAPCO may make a distribution or payment that is not a qualified distribution only if the CAPCO has made original, non-duplicative, qualified investments in an amount cumulatively equal to 100% of its certified capital.

(1) A CAPCO may make repayments of principal and interest on its indebtedness without regard to subsection (h) of this section and without restriction, including repayments of indebtedness of the CAPCO on which certified investors earned premium tax credits. Such repayment does not relieve the CAPCO of the requirements for renewal and continuance of certification under subsection (c) of this section.

(2) If a business in which a qualified investment has been made, relocates its principal business operations outside this state during the term of the CAPCOs investment in the business, the cumulative amount of qualified investments made by the CAPCO for purposes of satisfying the requirements of subsection (h) of this section, is reduced by the amount of the CAPCOs qualified investments in this business. This provision shall not apply if the business demonstrates that it has returned its principal business operations to this state not later than 90 days after the date of its relocation.

(i) Required reports. Each CAPCO shall report to the comptroller:

(1) as soon as practicable after receipt of certified capital, but not to exceed 45 days

(A) the certified investors name, address and taxpayer identification number, and

(B) the date of and amount of investment received by the CAPCO.

(2) an annual report due each January 31 that contains:

(A) the amount of the CAPCO's certified capital, including details of all investments, at the end of the preceding year;

(B) a detailed listing of investment violations under this section;

(C) each qualified investment that the CAPCO made during the preceding year and, with respect to each qualified investment, the number of employees of the qualified business at the time the qualified investment was made;

(D) a copy of the business plan or plan of operation for each of the qualified businesses in which the CAPCO has invested; and

(E) any other information the comptroller requires by notification or instructions to each CAPCO.

(3) an annual audited financial statement by April 1 that includes the opinion of an independent certified public accountant. The audit shall address the methods of operation and conduct of the business of the company to determine whether:

(A) the company is complying with the Insurance Code with respect to the CAPCO requirements and the rules adopted in this section;

(B) the funds received by the company have been invested as required within the time provided by Insurance Code, Article 4.56(a); and

(C) the company has invested the funds in qualified businesses.

(j) Report to the Legislature. The comptroller shall prepare a biennial report to the Legislature with respect to results of implementation of this section. This report shall be filed with the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 15 of each even-numbered year. Such report shall include:

(1) the names and number of CAPCOs holding certified capital;

(2) the amount of certified capital invested in each CAPCO;

(3) the amount of certified capital the CAPCO has invested in qualified business, including the names and locations of such businesses, as of January 1, 2004 and each subsequent year;

(4) the amount of tax credits granted based on certified investments along with the tax credits taken by year;

(5) the performance of each CAPCO under this section for each year a tax credit was granted;

(6) concerning qualified businesses in which CAPCOs have invested;

(A) the classification of the businesses, along with the industrial sector and size of each business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs; and

(7) a list of the CAPCOs that have been decertified or that have failed to renew the certification and the reason for any decertification.

(k) Delay in implementation. If the comptroller has not certified that revenues are available for the implementation of this section before October 1, 2001, the application process under subsection (b) of this section will be delayed and will begin 60 days following the certification, provided that the certification is complete before January 15, 2002. If the certification is not made before January 15, 2002, this section will not be implemented.

(l) The allocation claim form date shall be on the first of the month next following the third month after the start of the application process.

(2) As applicable, the pro rata allocation of credits shall be completed the first of the month next following the allocation claim form date.

(l) Certification of partial credits. If the comptroller determines before the implementation of this section that revenues are anticipated to support a part, but not all, of the premium tax credits authorized under Insurance Code, Article 4.67, the comptroller shall reduce the total amount of tax credits allowed in the amount necessary to comply with certification. A certification by the comptroller resulting in a reduction in the credits under this section shall require an amendment to this section as provided by Insurance Code, Article 4.74.

This agency hereby certifies that the emergency adoption 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 July 27, 2001.

TRD-200104382
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective Date: July 27, 2001
Expiration Date: November 24, 2001
For further information, please call: (512) 463-4062

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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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

13 TAC §17.1, §17.3

The Texas Historical Commission (THC) proposes new §§17.1 and 17.3 of Chapter 17 (Title 13, Part II of the Texas Administrative Code) concerning the Preservation Trust Fund Grants and the Texas Preservation Trust Fund.

F. Lawerence Oaks, 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.

Mr. Oaks has also determined that for each year of the first five year period the rule amendments are in effect the public benefit anticipated as a result of the new rules will be an increase in the number, and scale of potentially important archeological projects that can apply for grants under the Texas Preservation Trust Fund. Additionally, Mr. Oaks as determined that there will be no effect on small businesses.

Comments on the proposal may be submitted to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new sections are proposed under §442.005(q), Title 13 Part II of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of this chapter.

These new sections implement §§442.015 and 442.0155 of the Texas Government Code.

§17.1. Preservation Trust Fund Grants.

(a) Eligible property. To be considered eligible for grant assistance, a property must:

(1) be included in the National Register of Historic Places; or

(2) be designated as a recorded Texas historic landmark; or

(3) be designated as a State Archeological Landmark; or

(4) be determined by the commission to qualify as an eligible property under criteria for inclusion in the National Register of Historic Places or for designation as a recorded Texas historic landmark or a State Archeological Landmark; or

(5) have a permanent conservation easement.

(b) Eligible Applicants: Any public or private entity, including those whose purposes include historic preservation, and that is either the owner, manager, lessee, maintainer, or potential purchaser of an eligible historic property is eligible for fund assistance. If applicant is not the owner of the historic property, written approval must be submitted by the owner at time of application agreeing to follow all rules and conditions of the commission required for receipt of funds.

(1) Grants are awarded on a competitive basis to eligible properties judged by the Commission to provide the best use of limited grant funds.

(2) Meeting the eligibility criteria and submissions of a grant application does not guarantee award of a grant in any amount.

(c) Types of preservation grants. Preservation grants shall be awarded only for:

(1) development ("preservation," "restoration," "rehabilitation," and "reconstruction," as defined by the Secretary of the Interior's Standards for The Treatment of Historic Properties, 1992 or latest edition); the costs include professional fees to prepare an acceptable project proposal and supervise actual construction, the costs of construction, and related expenses approved by the commission; or

(2) acquisition of absolute ownership of an eligible property (that is what is defined in subsection (a) of this section of these rules) and related costs and professional fees approved by the commission; or

(3) planning costs necessary for the preparation of property specific historic structure reports, historic or cultural resource reports,

preservation plans, maintenance studies, and/or feasibility studies as approved by the commission; or

(4) education costs necessary for training individuals and organizations about historic resources and historic preservation techniques.

(d) Eligible match for grant assistance. Applicants eligible to receive grant assistance shall provide a minimum of one dollar in cash match to each state dollar for approved project costs. The commission, by written policy, may approve up to 50 percent in-kind match for projects involving highly significant and endangered properties.

(e) Grant applications.

(1) Application deadline is 5:00 p.m. on June 1 of each year, or 5:00 p.m. of the last regular work day of May if June 1 should fall on a weekend or holiday, or at other times as announced by the Texas Historical Commission; application forms are to be received by the commission at its offices by this deadline.

(2) To remain eligible for potential funding, applicants must complete the grant application form and include all required attachments as stated in the grant application instruction booklet.

(3) Grant applications that are incomplete and/or received after the application deadline are ineligible for funding.

(4) Grant applications with budgets showing a high percentage of administrative costs will be considered to be less competitive than applications having little or no administrative costs.

(f) Initial grant allocations. Grants shall be allocated by vote of the commission at large upon the recommendation of the Trust Fund Committee at any duly noticed meeting of the commission. Reallocation of returned funds may be made by the executive committee of the commission upon the recommendation of the architecture and/or archeological committees of the commission. Grant allocations will generally be in the amount of $2,500 or more, but shall not exceed $100,000.

(g) Final grant approval.

(1) Submission of project proposal.

(A) For architectural projects to remain eligible for the grant allocation, an acceptable project proposal, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, 1992 or most recent edition, and consisting of plans/specifications, appraisal, unexecuted contract documents, and/or other material as required shall be submitted to the commission for review and approval.

(B) An acceptable project proposal must be submitted within three months of the allocation by the commission unless otherwise approved in writing by the commission.

(2) Review and approval of project proposal. Upon completion of the review of the project proposal, approved projects will be notified of the assigned project start date, as well as the project expenses eligible for grant funding (allowable expenses) and those expenses not eligible (unallowable expenses).

(A) For archeological projects to remain eligible for the grant allocation, modifications to the scope of work and research design as required by the commission shall be submitted to the commission for review and approval.

(B) Review and approval of scope of work and research design. Upon completion of the review of the scope of work and research design, approved projects will be notified of the assigned project start date, as well as the project expenses eligible for grant funding (allowable expenses) and those expenses not eligible (unallowable expenses).

(C) For educational projects to remain eligible for the grant allocation, an acceptable project proposal must be submitted within three months of the allocation by the commission unless otherwise approved in writing by the commission.

(D) Approved projects will be notified of the assigned project start date, as well as the project expenses eligible for grant funding (allowable expenses) and those expenses not eligible (unallowable expenses).

(E) For planning projects to remain eligible for the grant allocation, an acceptable project proposal must be submitted within three months of the allocation by the commission unless otherwise approved in writing by the commission.

(F) Approved projects will be notified of the assigned project start date, as well as the project expenses eligible for grant funding (allowable expenses) and those expenses not eligible (unallowable expenses).

(3) Commencement of project work. Project work as approved shall commence within 60 days of the assigned start date unless otherwise approved in writing by the commission.

(4) Forfeiture of grant allocation. Failure to comply with the deadline for submission of an acceptable project proposal, or to meet the deadline for starting the project work, or to perform any part of the project work as approved, or to receive permission from the commission before commencing additional work, shall result in forfeiture of the full grant amount.

(h) Award of contract.

(1) Architectural development grant projects. All project work as approved in the project proposal shall be awarded subsequent to formal advertising for bids.

(2) Architectural planning grant projects. Contract for work described in the approved project proposal shall be awarded subsequent to interview with at least three professional firms.

(3) Commencement of project work. Approved project work may not begin before the assigned project start date, except for planning work connected with development projects.

(i) Grant reimbursement procedures.

(1) Reimbursement of allowable project expenses. The only expenditures made before a start date that are reimbursable are for planning work done on development projects performed subsequent to initial project application submittal.

(2) All payment of grant funds shall be strictly on a reimbursement basis. Reimbursement may be made after the competitive award of contract and submission of proof of all incurred allowable expenses and corresponding payments totaling more than 50% but less than 75% of the total project cost, and/or at the completion of the project after an acceptable required completion report and/or planning documents have been received by the commission.

(3) Deadline for submission of requests for reimbursement. Allowable project expenses equal to two times the grant amount shall be incurred by the following July 15 unless otherwise announced by the commission. Proof of those incurred expenses and corresponding payments shall be submitted to the commission by the following August 1 unless otherwise announced by the commission.

(4) Forfeiture of grant. Failure to expend the full grant amount by the July 15 deadline or other deadline as announced by the

commission or to submit to the commission all required material by the August 1 deadline or other deadline as announced by the commission shall result in forfeiture of the remaining grant amount unless otherwise approved in writing by the commission.

(j) Deed restrictions/designations/conservation easements. Acquisition and development projects shall be encumbered, prior to reimbursement of any project expenses, with a protective designation, deed restriction or conservation easement in a format acceptable to the commission requiring the owner and successors in interest, if any, to maintain the site in the condition or state of repair as at the time of completion of grant-assisted work, to secure the approval of the commission or its duly authorized representative for any proposed changes beyond normal maintenance to the site, and, in the case of political subdivisions of the state, to meet the requirements of the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783. The deed restriction shall run with the land, be enforceable by the State of Texas, and its duration will be based upon the cumulative amount of grant assistance as follows:

(1) less than $10,000-10 years from start date of the deed restrictions set by the commission.

(2) $10,000-$50,000-30 years from start date of the deed restrictions set by the commission.

(3) greater than $50,000-50 years from start date of the deed restrictions set by the commission.

(k) Repayment penalty for resale of property within one year of acquisition. If a property acquired with a preservation grant is sold within one year of the purchase date, the project allocation agreement shall provide that the owner shall repay the State of Texas the amount of the grant allocation.

(l) Completion reports for acquisition and development projects. Projects assisted with acquisition or development grants will be required to submit a project completion report in triplicate, consisting of photo documentation and project summary prepared by the supervising project professional, to the commission no later than August 1, or as otherwise announced by the commission, of the current fiscal year. Final reimbursement of the grant allocation will be retained until receipt of an acceptable completion report by the commission.

(m) Professional standards.

(1) Project personnel for development and planning grants. Project proposal documents for development and planning grants shall be prepared by, and development work supervised by, appropriate personnel in compliance with the following criteria:

(A) History. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(B) Archeology. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(i) at least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management;

(ii) at least four months of supervised field and analytic experience in general North American archeology; and

(iii) demonstrated ability to carry research to completion.

(iv) In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(C) Architectural history. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(D) Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a state license to practice architecture.

(2) Project personnel for acquisition grants. The single appraisal required for acquisition grants shall be prepared by a professional appraiser.

(n) Performance standards. All development and planning projects must be in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, 1992 or latest edition. All archeological projects must be in conformance with the Secretary of the Interior's Standards for Preservation Planning and Standards for Archeological Documentation, 1983 or latest edition.

(o) Compliance with requirements for accessibility to facilities by persons with disabilities. All projects must be in compliance with or in receipt of appropriate variance from the regulations issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes.

(p) Compliance with Uniform Grant and Contract Management Act. All projects by political subdivisions of the state must be in compliance with the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783.

§17.3. Texas Preservation Trust Fund.

(a) Definition. The Texas preservation trust fund (hereinafter referred to as trust fund or fund) is a fund in the state treasury, created by enactment of Senate Bill 294 by the 71st Texas Legislature (1989), which amended the Texas Government Code, Chapter 442, by adding §442.015. The trust fund shall consist of transfers made to the fund, including state and federal legislative appropriations, grants, donations, proceeds of sales, loan repayments, interest income earned by the fund, and any other monies received. Funds may be received from federal, state, or local government sources, organizations, charitable trusts and

foundations, private individuals, business or corporate entities, estates, or any other source.

(b) Purpose. The purpose of the Texas preservation trust fund is to serve as a source of funding for the Texas Historical Commission (THC) to provide financial assistance to qualified applicants for the acquisition, restoration, or preservation of historic properties in the State of Texas.

(c) Property eligibility. Historic properties must either be listed on the National Register of Historic Places, designated as recorded Texas historic landmark, or be determined by the commission to qualify as an eligible property under criteria for inclusion in the National Register of Historic Places, or for designation as a recorded Texas historic landmark. Priority shall be given to those properties determined by THC to be endangered by impending demolition, neglect, under use, looting, or other threat.

(d) Fund recipient eligibility. Any public or private entity, including those whose purposes include historic preservation, and that is the owner, manager, lessee, maintainer, or potential purchaser of an eligible historic property is eligible for fund assistance. If applicant is not the owner of the historic property, written approval must be submitted by the owner at time of application agreeing to follow all rules and conditions of the commission required for receipt of funds.

(e) Types of assistance. THC shall provide financial assistance in the form of grants or loans. Grant recipients shall be required to follow the terms and conditions of the Preservation Trust Fund Grants and other terms and conditions imposed by THC at the time of the grant award. Loans shall have a term not to exceed five years at an interest rate at the prime interest rate at the time the loan is made.

(f) Preservation easements and covenant. The owner of record (and the mortgagee, if applicable) of any property benefiting from fund assistance shall encumber the title of the property with a State Archeological Landmark designation, or conservation easement and covenant in a form prescribed by THC prior to disbursement of any fund monies or conservation easement (as defined in Title 8, Natural Resources Code, Chapter 183).

(g) Allowable use of trust fund monies. In all cases when no specification is made or the specified amount is less than $5,000 the proceeds and/or interest on such gifts or monies shall be unencumbered and shall accrue to the benefit of the entire fund. Money deposited to the fund for specific projects shall only be used for the projects specified provided that the specific project has received approval of the THC, there is or will be a dedicated account within the Trust Fund for that project, and all other requirements herein are met. Money deposited to specified projects in amounts of $5,000 or greater shall retain all proceeds or interest earned for that specified project unless the donor stipulates that all proceeds or interest earned shall be unencumbered and accrue to the benefit of the entire fund.

(h) Organization. The Texas preservation trust fund shall be administered by THC through its trust fund committee. The trust fund advisory board, and THC staff shall provide support and input as needed.

(i) Texas Historical Commission Preservation Trust Fund Committee (hereinafter referred to as trust fund committee). The executive committee of the Texas Historical Commission shall serve as the trust fund committee. All actions of the Texas trust fund committee are subject to ratification by the full Texas Historical Commission. Duties of the trust fund committee are:

(1) to appoint the advisory board after considering the recommendations of the Texas governor, lieutenant governor, and the speaker of the house, and to fill vacancies on the advisory board, as needed;

(2) to approve all rules, policies, and guidelines for the administration of the fund or any of its associated boards and committees;

(3) to approve the acceptance of grants or other donations of money, property, and/or services from any source. Money received shall be deposited to the credit of the Texas preservation trust fund;

(4) to provide final approval of all trust fund allocations based on advisory board and THC staff recommendations.

(j) Texas Preservation Trust Fund Advisory Board (hereinafter referred to as advisory board).

(1) In accordance with Texas Government Code §442.015, which created the Texas preservation trust fund, the advisory board shall consist of:

(A) one representative of a bank or savings and loan association;

(B) one attorney with a recognized background in historic preservation;

(C) two architects with substantial experience in historic preservation;

(D) two archeologists with substantial experience in Texas archeology;

(E) one real estate professional with experience in historic preservation;

(F) two persons with a demonstrated commitment to historic preservation; and

(G) two directors of nonprofit historic preservation organizations.

(2) Members of the advisory board shall serve a two-year term expiring on February 1 of each odd-numbered year. Advisory board members may be reappointed. Advisory board members will continue to serve until a new appointment is made or until reappointed. A member of the advisory board is not entitled to compensation for his service, but is entitled to reimbursement for reasonable expenses incurred while attending advisory board meetings subject to any limit provided by the General Appropriations Act. The advisory board shall elect a chairman for a two-year term from among its membership at its first regularly scheduled meeting. Subsequent elections for chairman shall be held at the end of the existing chairman's term. The chairman shall not serve in that capacity for more than two consecutive two-year terms. The advisory board shall meet annually in conjunction with the THC quarterly meeting in the fall of each year and at other times as determined by their chairman. Duties of the advisory board are:

(A) to make recommendations to THC through the trust fund committee on all trust fund project allocations, as per the trust fund statute;

(B) to consult with and advise the THC trust fund committee and THC staff on matters relating to more efficient utilization or enhancement of the trust fund in order to further the cause of historic preservation throughout Texas; and

(C) to provide advice and guidance in their respective area of expertise.

(k) Texas preservation trust fund staff. The executive director of the Texas Historical Commission shall organize and administer the staff for the Texas preservation trust fund.

(l) General provisions.

(1) Code of conduct--The THC Code of Conduct shall apply to members of the advisory board.

(2) Gender--As used herein, the masculine pronoun shall include the feminine.

(3) Vacancies--Any vacancy on a trust fund committee or board may be filled at any time in the same manner as the incumbent member was elected or appointed.

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 July 30, 2001.

TRD-200104395
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 463-5711

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.14, §3.78

The Railroad Commission of Texas proposes amendments to §3.14, relating to Plugging, and §3.78, relating to Fees, Performance Bonds and Alternate Forms of Financial Security Required to be Filed.

The Commission proposes the amendments to §3.78(b)(5) under the provisions of Section 3, Senate Bill 310, 77th Legislature (2001), which amends Texas Natural Resources Code, §81.0521, to authorize the Commission to collect a fee of $150 with each exception to any Commission rule. The amendments to §3.78(b)(5) reflect the statutory authorization to collect the $150 fee.

The Commission also proposes the amendments to §3.78(b)(12) under the provisions of Section 4, Senate Bill 310, 77th Legislature (2001), which amends Texas Natural Resources Code, §81.0522, to authorize the Commission to collect a fee of up to $150 with each application for a well category determination under the Natural Gas Policy Act (15 U.S.C. §§3301-3432). The amendments to §3.78(b)(12) reflect the statutory authorization to collect the $150 fee.

The Commission also proposes the amendments to §3.78(b)(1), (3), and (6) under the provisions of Section 9, Senate Bill 310, 77th Legislature (2001), which amends Texas Natural Resources Code, §85.2021, to authorize the Commission to collect a fee with each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well of: (1) $200 if the total depth of the well is 2,000 feet or less; (2) $225 if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet; (3) $250 if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet; or (4) $300 if the total depth of the well is greater than 9,000 feet. Additionally, amended Texas Natural Resources Code, §85.2021, authorizes the Commission to collect a fee of $150 when an applicant requests the Commission expedite an application for a permit to drill, deepen, plug back, or reenter a well, and a fee of $300 for each application for an extension of time to plug a well pursuant to Commission rules. The amendments to §3.78(b)(1), (3), and (6) reflect the statutory authorization to collect the increased fees.

The Commission also proposes the amendments to §3.78(b)(8) and (9) under the provisions of Section 17, Senate Bill 310, 77th Legislature (2001), which amends Texas Natural Resources Code, §91.1013, to authorize the Commission to collect a fee of $200 with each application for a fluid injection well permit and authorizes the Commission to collect a fee of $300 for each application to discharge to surface water. The amendments to §3.78(b)(8) and (9) reflect the statutory authorization to collect the increased fees.

The Commission also proposes the amendments to §3.78 under the provisions of Section 19, Senate Bill 310, 77th Legislature (2001), which amends Texas Natural Resources Code, §91.104, requiring operators to file financial security or alternate forms of financial security. The amended provisions of Texas Natural Resources Code, §91.104: (1) allow operators to submit a cash deposit to the Commission in the same amount that would be required for a bond or letter of credit; (2) add a new determination on the availability of bonds at reasonable prices before an operator with an acceptable record of compliance can choose to file a $1,000 annual fee in lieu of posting other acceptable forms of financial security; (3) increase the annual fee for operators with an acceptable record from $100 to $1,000; (4) eliminate the option of an operator meeting its financial security requirement by providing the Commission with a first lien on equipment; and (5) increase the nonrefundable cash alternative fee from 3% of the amount that would be required for a bond or letter of credit to 12.5%.

Commission records show that in the approximately six-month period between January 18, 2001, and June 26, 2001, an additional 117 operators have filed organizational bonds. This increase appears to be directly correlated to the Commission's previous amendment of §§3.14 and 3.78 to adopt financial security requirements for inactive wells effective November 1, 2000. The increase in operators filing organizational bonds also reflects a general availability of bonds for operators. Based on this increase in the number of operators filing organizational bonds, the Commission has determined that bonds are available at reasonable prices. This determination is included in proposed §3.78(f)(1) to satisfy the statutory requirement that the Commission make such a determination.

The Commission further recognizes that while this determination is generally applicable to operators throughout the state, that there may be specific operators who are unable to obtain bonds at a reasonable price. Accordingly, the Commission has included as proposed §3.78(f)(2) the opportunity for an operator to request a hearing to determine that it cannot obtain a bond at a reasonable price. Proposed §3.78(f)(2) also sets forth the minimum required evidentiary burden of proof to be submitted by the operator to support a determination that bonds are not obtainable at reasonable prices. The minimum evidentiary showing includes: (1) evidence that no fewer than three companies which have issued a bond filed with the Commission in the past 12 months will not issue a bond to the requesting operator for an

annual fee less than 12% of the face amount of the bond; (2) evidence that the operator possesses adequate financial assets or other resources necessary to plug any inactive wells as defined under §3.14(b)(2); and (3) evidence that the operator is otherwise eligible to file the $1,000 nonrefundable annual fee.

The proposed amendments to §3.78(l) also establish conditions for cash deposits. The Commission will place any cash deposits in a special account within the Oil Field Clean Up Fund Account. Any interest accruing on cash deposits will be deposited into the Oil Field Clean Up Fund pursuant to Texas Natural Resources Code, §91.111(c)(8). Cash deposits will not be refunded until an operator ceases all Commission-regulated activity or another form of financial security is accepted by the Commission.

The Commission also proposes the amendments to §3.14(b)(2) and (3) and §3.78(n) under the provisions of Sections 25 and 27, Senate Bill 310, 77th Legislature (2001), which amends Texas Natural Resources Code, §91.107 which requires operators acquiring an active or inactive well to file either an individual performance bond or a blanket performance bond with the Commission before operatorship of the well is transferred. The statutory amendments require changes to Commission rules which did not specify the type of financial security required to transfer a well. Prior Commission rules did not require the operator obtaining wells through a transfer to file a specific type of financial security. The proposed amendments to §3.14(b)(2) and (3) and §3.78(n) simply incorporate the statutory amendments.

The Commission also proposes the amendments to §3.78(c) under the provisions of Section 33, Senate Bill 310, 77th Legislature (2001), which amends Texas Natural Resources Code, §91.1041, to require operators filing an organization report with the Commission to submit a fee not to exceed $1,000 to be calculated as follows: (1) for an operator of not more than 25 wells, $300; (2) for an operator of more than 25 but not more than 100 wells, $500; (3) for an operator of more than 100 wells, $1,000; (4) for an operator of one or more natural gas pipelines, $100; (5) for an operator of one or more service activities or facilities, including liquids pipelines, who does not operate any wells, an amount to be determined by the Commission, but not less than $300 or more than $500; (6) for an operator of one or more service activities or facilities, including liquids pipelines, who also operates one or more wells, an amount to be determined by the Commission, but not less than $300 or more than $1,000; and (7) for an entity not currently performing operations under the jurisdiction of the Commission, $300. The amendments reflect the statutory authorization to collect an annual organization report fee based on the number of wells, service activities or facilities operated by the operator.

The required filing fee for operators who operate one or more service activities but no wells was set at $300 for pollution cleanup contractors, directional surveyors, approved cementers for plugging wells, and operators physically moving or storing crude or condensate. All other operators of other service activities or facilities, including liquids pipelines, are required to submit a fee of $500. The required filing fee for operators who operate both wells and one or more service activities or pipelines is based on the sum of any fee associated with the number of wells operated plus the separate fee charged for each category of service activity, facility or pipeline.

The Commission also proposes an amendment to §3.78(b)(15) requiring operators who submit a check that is not honored on presentment to submit any subsequent payments in the form of a credit card, cashier's check, or cash for a period of 24 months. The proposed amendment will promote administrative efficiency by reducing the number of dishonored checks submitted to the Commission.

The Commission also notes that under the provisions of Sections 21 and 23, Senate Bill 310, 77th Legislature (2001), which amend Texas Natural Resources Code, §91.1041 and §91.1042, the Commission is required to adopt rules setting a reasonable amount of financial security for each bay or offshore well above the base amount of financial security required to be submitted by each operator. The amount of financial security for each bay or offshore well above the base amount will be the subject of a separate rulemaking. The Commission has included in the proposed amendments to §3.78 definitions of bay, offshore and land wells in anticipation of the future amendments.

The proposed amendments to §§3.14 and 3.78 implement statutory changes made to financially strengthen and to better use the state's Oil Field Clean Up Fund ("OFCUF"). The statutory changes were recommended during the agency review process of the Commission by the Sunset Advisory Commission.

The financial strength of the OFCUF is increased by statutory changes and corresponding rule amendments raising the required amount for filing fees and by adding an annual organization report filing fee. Broadened financial security requirements will ensure that sufficient financial security is in place to adequately fund clean up and plugging operations. The expanded financial security requirements will allow the Commission to more effectively use a fiscally stronger OFCUF.

In addition to the substantive changes previously discussed, the Commission proposes to reorganize and clarify §3.78. The new format groups together in §3.78 both the existing and the amended provisions relating to fees charged by the Commission. Additionally, the new format of §3.78 incorporates the references in §3.14 to individual well bonds and letters of credit, and groups these references with the existing and the amended provisions related to financial security requirements in §3.78. Finally, proposed §3.78(p) is clarified by noting that the requirements date from the original enactment of the subsection.

The substantive changes in filing fees and financial security requirements are made in §3.78. The amendments to §3.14(a)(1)(F) and (M) and §3.14(b)(2) and (3) are proposed to conform with the substantive changes in §3.78. Other changes in §3.14(a)(1) are made to conform the definitions in this rule to *Texas Register* format requirements.

Leslie Savage, Planning and Administration, Oil and Gas Division, has determined that for the first year the amendments will be in effect, there will be no net fiscal implications for state government as a result of enforcing or administering the amendments. Senate Bill 310 amended Texas Natural Resources Code, §81.0522, which authorizes the Commission to collect a fee with each application for a well category determination under the Natural Gas Policy Act, 15 U.S.C. §§3301-3432 ("NGPA"), to allow the Commission to set the amount of the fee not to exceed $150 to recoup the Commission's costs. The proposed amendments in §3.78(b)(12) reflect the change in the statute by increasing the fee amount from $50 to $150 to cover the costs. These fees will be deposited into General Revenue and appropriated to the Commission to cover the cost of administering the well category determination program. Revenue for fiscal year 2002 is estimated to be $120,000. Expenses for fiscal year 2002 are estimated at $110,000 for contract employees and

approximately $10,000 in other expenses. For fiscal year 2003, Ms. Savage estimates that the revenue will total approximately $60,000, and expenses will be approximately $60,000 ($55,000 for contract employees and $5,000 for other associated costs). The well category determination program under the Natural Gas Policy Act is currently scheduled to end June 2003.

The remaining changes impact the Commission's Oil Field Cleanup Fund. Ms. Savage estimates that the proposed amendments implementing the statutory changes will increase the revenue to the Oil Field Cleanup Fund by approximately $4,471,000 in each of the fiscal years 2002 and 2003.

During the first year of implementation of the proposed amendments (fiscal year 2002), the Commission will expend money from these revenues to make the necessary changes described in subsequent paragraphs and to enforce the new requirements. The total expenditure during the first year of implementation (fiscal year 2002) is estimated to be approximately $225,578. This includes $79,756 for staff involved with document revision, process analysis, and processing of additional documents (letters of credit, cash deposits, and new P-5 organization fee). Costs will also be incurred for computer programming: to implement the changes to the fees; to implement new fees; to enable staff to determine the status and financial security required for wells that are transferred from one operator to another; to calculate fee and bonding/letter of credit or cash deposit amounts; and to modify the P-5 financial security options fact sheet. The technology costs are estimated to be a maximum of 1,000 hours at $120 per hour for contract programming for a total of $120,000. However, the Commission has not determined whether to use contract programmers and may be able to complete this work at a smaller cost using internal resources, if available. An estimated cost of approximately $145,822 will be incurred as a result of the proposed amendments for field staff compliance inspections and enforcement activity to respond to complaints resulting from an anticipated initial increase in noncompliance.

The fiscal year 2003 and 2004 costs include $74,256 for staff processing of additional documents (individual well bonds, letters of credit, and cash deposits) and $94,822 for field staff compliance inspections and enforcement activity to respond to complaints resulting from an anticipated initial increase in noncompliance each year for a total of $169,078.

Additional statutory changes enacted under the provisions of Section 3, Senate Bill 310, 77th Legislature (2001) establish financial security requirements which will not become effective until September 1, 2004. Revenue estimates will change as a result of these amendments and expenditures for activity in the areas noted above will again increase during the first year of implementation (fiscal year 2005). Staff will estimate the potential fiscal impacts at the time the Commission proposes the rule amendments implementing these statutory changes.

All of the new statutory fees (with the exception of the NGPA application fee) will be deposited into the OFCUF. The increased activity and resulting expenditures by the Commission for the first year of implementation of the amendments resulting from the statutory changes will be funded through the OFCUF. As this activity and the resulting incremental expenditures decrease in subsequent years, these funds will be available for well plugging and cleanup activity. Therefore, there is no net fiscal impact to state government.

There will be no effect on local government.

Ms. Savage has estimated that the cost of compliance with the proposed amendments for the individual, small business, or micro- business producer will be an increase in the fees for filing applications with the Commission as provided for by the statutory changes. An additional cost of compliance will result from the addition of the new organization report fee required from all operators subject to the Commission's jurisdiction. Finally, for those operators that have not previously opted to file an individual or blanket performance bond with the Commission, those operators may incur an additional business expense in the premium for the bond obtained. The Commission also anticipates that the premium expense may be offset by savings for those operators with inactive wells who had previously relied on alternative financial security provisions, because any operator who now opts to file an individual or blanket performance bond will no longer be required to file a separate fee to obtain plugging extensions for each inactive well. Additionally, operators who request a hearing to rebut the presumption that bonds are available at reasonable prices may incur costs associated with preparing for and attending the hearing, including but not limited to costs for hiring legal counsel and other experts, preparing documents and other evidence, and traveling to Austin for the hearing.

Mark Helmueller, Hearings Examiner, Oil and Gas Section, Office of General Counsel, has determined that for each year of the first five years that the amended sections will be in effect, the primary public benefit will be the implementation of the fee changes required by the Legislature, which should allow the Commission to plug more wells and to accelerate clean up and plugging operations in the areas of greatest need.

Mr. Helmueller has also determined that there is a public benefit in eliminating any potential confusion by amending §3.14 and §3.78 to group similar provisions. The new format will promote administrative efficiency and facilitate implementation of the statutory changes by clarifying requirements under both §3.14 and §3.78.

Comments may be submitted to Mark Helmueller, Hearings Examiner, Oil and Gas Section, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967 or via electronic mail to mark.helmueller@rrc.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to the docket number of this rulemaking proceeding: 20-0228899. For further information, call Mr. Helmueller at 512- 463-6802.

The Commission proposes the amendments to §§3.14 and 3.78 pursuant to subsection (b) of Texas Government Code, §2001.006 (*as added by Acts 1999, 76th leg., ch. 558, §1*), and pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, and under the provisions of Senate Bill 310, 77th Legislature (2001).

The Texas Natural Resources Code, §§81.051, 81.052, 81.0521, 81.0522, 85.202, 85.2021, 88.011, 91.101, 91.1013, 91.103, 91.104, 91.1041, 91.1042, 91.105-91.108, 91.1091, 91.111- 91.113, 91.142, and the provisions of Senate Bill 310, 77th Legislature (2001) are affected by the proposed amendments.

Issued in Austin, Texas on July 24, 2001.

§3.14. Plugging.

(a) Definitions and application to plug.

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

(A) Active operation--Regular [~~"Active operation" means regular~~] and continuing activities related to the production of oil and gas for which the operator has all necessary permits. In the case of a well that has been inactive for 12 consecutive months or longer and that is not permitted as a disposal or injection well, the well remains inactive for purposes of this section, regardless of any minimal activity, until the well has reported production of at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least three consecutive months.

(B) Bay well--Any [~~"Bay well" means any~~] well under the jurisdiction of the Commission [~~commission~~] for which the surface location is either:

(i) located in or on a lake, river, stream, canal, estuary, bayou or other inland navigable waters of the state; or,

(ii) located on state lands seaward of the mean high tide line of the Gulf of Mexico in water of a depth at mean high tide of not more than 100 feet that is sheltered from the direct action of the open seas of the Gulf of Mexico.

(C) Delinquent inactive well--An [~~"Delinquent inactive well" means an~~] unplugged well that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months and for which, after notice and opportunity for hearing, the Commission [~~commission~~] has not extended the plugging deadline.

(D) Funnel viscosity--Viscosity [~~"Funnel viscosity" means viscosity~~] as measured by the Marsh funnel, based on the number of seconds required for 1,000 cubic centimeters of fluid to flow through the funnel.

(E) Good faith claim--A [~~"Good faith claim" means a~~] factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

(F) Individual well bond--A bond or letter of credit issued:

(i) on a Commission-approved form;

(ii) by a third party surety, insurance company, or financial institution approved by the Commission; and

(iii) to secure the timely and proper plugging of a specified well and remediation of the wellsite in accordance with Commission rules. [~~"Individual well bond" means a bond or letter of credit issued on a commission-approved form, with a third party surety, insurance company or financial institution as principal, that has been approved by the Commission and is conditioned on the timely and proper plugging of a specified well or wells and remediation of the well (sites), in accordance with Commission rules.~~]

(G) Land well--Any [~~"Land well" means any~~] well subject to Commission jurisdiction for which the surface location is not in or on inland or coastal waters.

(H) Offshore well--Any [~~"Offshore well" means any~~] well subject to Commission jurisdiction for which the surface location is on state lands in or on the Gulf of Mexico, that is not a bay well.

(I) Operator designation form--A [~~"Operator designation form" means a~~] certificate of transportation authority and compliance or an application to drill, deepen, recomplete, plug back, or reenter which has been completed, signed and filed with the Commission [~~commission~~].

(J) Productive horizon--Any [~~"Productive horizon" means any~~] stratum known to contain oil, gas, or geothermal resources in producible quantities in the vicinity of an unplugged well.

(K) Reported production--Production [~~"Reported production" means production~~] of oil or gas, excluding production attributable to well tests, accurately reported to the Commission [~~commission~~] on a monthly producer's report.

(L) To serve surface notice--To [~~To "serve surface notice" means to~~] hand deliver a written notice identifying the well to be plugged and the projected date the well will be plugged to the intended recipient at least three days prior to the day of plugging or to mail the notice by first class mail, postage pre-paid, to the last known address of the intended recipient at least seven days prior to the day of plugging.

(M) Unbonded operator--An [~~"Unbonded operator" means an~~] operator that has a current and active organization report on file with the Commission but that does not have a current individual performance bond, blanket performance bond, [~~or~~] letter of credit, or cash deposit as its [~~organizational~~] financial security under §3.78 of this title (relating to Fees, Performance Bonds, and Alternate Forms of Financial Security Required to be Filed [~~filed~~]) (Statewide Rule 78).

(N) Usable quality water strata--All [~~"Usable quality water strata" means all~~] strata determined by the Texas Natural Resource Conservation Commission to contain usable quality water.

(O) Written notice--Notice [~~"Written notice" means notice~~] actually received by the intended recipient in tangible or retrievable form, including notice set out on paper and hand- delivered, facsimile transmissions, and electronic mail transmissions.

(2) The operator shall give the Commission [~~commission~~] notice of its intention to plug any well or wells drilled for oil, gas, or geothermal resources or for any other purpose over which the Commission [~~commission~~] has jurisdiction, except those specifically addressed in §3.100(f)(1) of this title (relating to Seismic Holes and Core Holes) (Statewide Rule 100), prior to plugging. The operator shall deliver or transmit the written notice to the district office on the appropriate form.

(3) The operator shall cause the notice of its intention to plug to be delivered to the district office at least five days prior to the beginning of plugging operations. The notice shall set out the proposed plugging procedure as well as the complete casing record. The operator shall not commence the work of plugging the well or wells until the proposed procedure has been approved by the district office. The operator shall not initiate approved plugging operations before the date set out in the notification for the beginning of plugging operations unless authorized by the district director. The operator shall notify the district office at least four hours before commencing plugging operations and proceed with the work as approved. The district director may grant exceptions to the requirements of this paragraph concerning the timing of notices when a workover or drilling rig is already at work on location, ready to commence plugging operations. Operations shall not be suspended prior to plugging the well unless the hole is cased and casing is cemented in place in compliance with Commission [~~commission~~] rules.

(4) The landowner and the operator may file an application to condition an abandoned well located on the landowner's tract for usable quality water production operations, provided the landowner assumes responsibility for plugging the well and obligates himself, his

heirs, successors, and assignees as a condition to the Commission's [~~commission's~~] approval of such application to complete the plugging operations. The application shall be made on the form prescribed by the Commission [~~commission~~]. In all cases, the operator responsible for plugging the well shall place all cement plugs required by this rule up to the base of the usable quality water strata.

(5) The operator of a well shall serve surface notice on the surface owner of the well site tract, or the resident if the owner is absent, before the scheduled date for beginning the plugging operations. A representative of the surface owner may be present to witness the plugging of the well. Plugging shall not be delayed because of the lack of actual notice to the surface owner or resident if the operator has served surface notice as required by this paragraph. The district director may grant exceptions to the requirements of this paragraph concerning the timing of notices when a workover or drilling rig is already at work on location ready to commence plugging operations.

(b) Commencement of plugging operations and extensions.

(1) The operator shall complete and file in the district office a duly verified plugging record, in duplicate, on the appropriate form within 30 days after plugging operations are completed. A cementing report made by the party cementing the well shall be attached to, or made a part of, the plugging report. If the well the operator is plugging is a dry hole, an electric log status report shall be filed with the plugging record.

(2) Plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed. Plugging operations on delinquent inactive wells shall be commenced immediately unless the well is restored to active operation. For good cause, a reasonable extension of time in which to start the plugging operations may be granted pursuant to the following procedures.

(A) Wells that have been inactive for less than 36 months.

(i) The Commission [~~commission~~] or its delegate may administratively grant an extension of up to one year of the deadline for plugging a well that is operated by an unbonded operator and has been inactive, without a return to active operation, for a period of less than 36 months if the following criteria are met:

(I) The well and associated facilities are in compliance with all other laws and Commission rules;

(II) The operator's organization report is current and active;

(III) The operator has, and upon request provides evidence of, a good faith claim to a continuing right to operate the well;

(IV) The operator has paid the proper fee as provided in §3.78 of this title (relating to Fees, Performance Bonds, and Alternative Forms of Financial Security Required To Be Filed) (Statewide Rule 78);

(V) The operator has tested the well in accordance with the provisions of subparagraph (E) of this section and files with its application proof of either:

(-a-) a fluid level test conducted within 90 days prior to the application for a plugging extension demonstrating that any fluid in the wellbore is at least 250 feet below the base of the deepest usable quality water strata; or,

(-b-) a hydraulic pressure test conducted during the period the well has been inactive demonstrating the mechanical integrity of the well; and,

(VI) The requested plugging extension will not extend beyond the thirty-sixth month of inactivity.

(ii) A plugging extension granted under this subparagraph may not extend the period of inactivity beyond 36 months.

(B) Wells that have been inactive for 36 months or longer [~~and transfer wells~~].

(i) The Commission or its delegate may administratively grant an extension of up to one year of the deadline for plugging a well [~~that is being transferred to an unbonded operator or~~] that is operated by an unbonded operator and has been inactive, without a return to active operation, for a period of 36 months or longer if the criteria set out in subclauses (I)-(IV) of subsection (b)(2)(A)(i) of this section are met, and, in addition:

(I) The operator has tested the well in accordance with the provisions of subparagraph (E) of this paragraph and files with its application proof of either:

(-a-) a fluid level test conducted within 90 days prior to the application for a plugging extension demonstrating that any fluid in the wellbore is at least 250 feet below the base of the deepest usable quality water strata, or,

(-b-) a hydraulic pressure test conducted during the period the well has been inactive and not more than four years prior to the date of application demonstrating the mechanical integrity of the well; and,

(II) The operator files an individual well bond in the amount provided for in §3.78(m) of this title (relating to Fees, Performance Bonds, and Alternative Forms of Financial Security Required To Be Filed) (Statewide Rule 78). [~~face amount of the estimated plugging cost of the well for which a plugging extension is requested. The estimated plugging cost for wells for which a plugging extension is sought will be presumed to be as follows:~~]

[~~(-a-) for land wells, the product of the total depth of the well multiplied by $3 per foot;~~]

[~~(-b-) for bay wells, $60,000; and,~~]

[~~(-c-) for offshore wells, $250,000.~~]

(ii) An operator may rebut the presumed estimated plugging costs for a specific well for which a plugging extension is sought at hearing by clear and convincing evidence establishing a higher or lower prospective plugging cost for the well. The operator, Commission staff, or any owner of the surface or mineral estate on which the well is located may initiate a hearing on the prospective plugging cost for a well for the purpose of setting the amount of an individual well bond by filing a request for hearing.

[~~*(ii)* The presumptive estimated plugging costs for a specific well for which a plugging extension is sought may be rebutted at hearing by clear and convincing evidence establishing a higher or lower prospective plugging cost for the well. A hearing concerning the prospective plugging cost for a well for purposes of setting the amount of an individual well bond may be initiated by the operator, Commission staff, or any owner of the surface or mineral estate on which the well is located.~~]

[~~*(iii)* Once an individual well bond is required for a well under the terms of this subparagraph, an individual well bond must be continuously maintained for the well until it is plugged or returned to active operation, unless the operator posts a valid, Commission-approved individual performance bond, blanket performance bond, or letter of credit as provided in §3.78 of this title (relating to Fees, Performance Bonds, and Alternate Forms of Financial Security Required to be Filed) (Statewide Rule 78) as its organizational financial assurance.~~]

(C) Plugging of inactive wells operated by bonded operators. An operator that maintains valid, Commission-approved [~~organizational~~] financial security [~~assurance~~] in the form of an individual performance bond, blanket performance bond, [~~or~~] letter of credit, or cash deposit as provided in §3.78 of this title (relating to Fees, Performance Bonds, and Alternate Forms of Financial Security Required to be Filed) (Statewide Rule 78) will be granted a one-year plugging extension for each well it operates that has been inactive for 12 months or more at the time its annual organizational report is approved by the Commission if the following criteria are met:

(i) The well and associated facilities are in compliance with all laws and Commission rules; and,

(ii) The operator has, and upon request provides evidence of, a good faith claim to a continuing right to operate the well.

(D) Revocation or denial of plugging extension.

(i) The Commission or its delegate may revoke a plugging extension if the operator of the well that is the subject of the extension fails to maintain the well and all associated facilities in compliance with Commission rules; fails to maintain a current and accurate organizational report on file with the Commission; fails to provide the Commission, upon request, with evidence of a continuing good faith claim to operate the well; or fails to obtain or maintain a valid individual well bond or organizational bond or letter of credit as required by this subsection.

(ii) If the Commission or its delegate declines to grant or continue a plugging extension or revokes a previously granted extension, the operator shall either return the well to active operation or, within 30 days, plug the well or request a hearing on the matter.

(E) The operator of any well more than 25 years old that becomes inactive and subject to the provisions of this paragraph and the operator of any well for which a plugging extension is sought under the terms of subparagraph (A) or (B) of this paragraph shall plug or test such well to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

(i) In general, a fluid level test is a sufficient test for purposes of this subparagraph. The operator must give the district office written notice specifying the date and approximate time it intends to conduct the fluid level test at least 48 hours prior to conducting the test; however, upon a showing of undue hardship, the district office may grant a written waiver or reduction of the notice requirement for a specific well test. The Commission [~~commission~~] or its delegate may require alternate methods of testing if the Commission [~~commission~~] deems it necessary to ensure the well does not pose a potential threat of harm to natural resources. Alternate methods of testing may be approved by the Commission [~~commission~~] or its delegate by written application and upon a showing that such a test will provide information sufficient to determine that the well does not pose a threat to natural resources.

(ii) No test other than a fluid level test shall be acceptable without prior approval from the district office. The district office shall be notified at least 48 hours before any test other than a fluid level test is conducted. Mechanical integrity test results shall be filed with the district office and fluid level test results shall be filed with the Commission [~~commission~~] in Austin. Test results shall be filed on a Commission-approved [~~commission-approved~~] form, within 30 days of the completion of the test. Upon request, the operator shall file the actual test data for any mechanical integrity or fluid level test that it has conducted.

(iii) Notwithstanding the provisions of clause (ii) of this subparagraph, a hydraulic pressure test may be conducted without prior approval from the district office, provided that the operator gives the district office written notice specifying the date and approximate time for the test at least 48 hours prior to the time the test will be conducted, the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata, or 100 feet below the top of cement behind the production casing, whichever is deeper, and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(iv) If the operator performs a hydraulic pressure test in accordance with the provisions of clause (iii) of this subparagraph, the well shall be exempt from further testing for five years from the date of the test, except to the extent compliance with paragraph (2) of subsection (b) of this section requires more frequent testing. Further, the Commission [~~commission~~] or its delegate may require the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources. The Commission [~~commission~~] or its delegate may approve less frequent well tests under this subparagraph upon written request and for good cause shown provided that less frequent testing will not increase the threat of harm to natural resources.

(v) Wells that are returned to continuous production, as evidenced by three consecutive months of reported production of at least 10 barrels of oil or 100 mcf of gas per month, need not be tested.

(3) Transfer of operatorship. A transfer of operatorship submitted for any well or lease will not be approved unless the operator acquiring the well or lease has on file with the Commission financial security as provided in §3.78 of this title (relating to Fees, Performance Bonds, and Alternate Forms of Financial Security Required to be Filed) (Statewide Rule 78). [~~of inactive wells. An unbonded operator seeking to assume operatorship of a well that has been inactive for 12 months or longer and has not been returned to active operation must obtain a plugging extension under the terms of §3.14(b)(2)(B) before the transfer of operatorship can be approved.~~]

(4) The Commission [~~commission~~] may plug or replug any dry or inactive well as follows:

(A) After notice and hearing, if the well is causing or is likely to cause the pollution of surface or subsurface water or if oil or gas is leaking from the well, and:

(i) Neither the operator nor any other entity responsible for plugging the well can be found; or

(ii) Neither the operator nor any other entity responsible for plugging the well has assets with which to plug the well.

(B) Without a hearing if the well is a delinquent inactive well and:

(i) the Commission [~~commission~~] has sent notice of its intention to plug the well as required by §89.043(c) of the Texas Natural Resources Code; and

(ii) the operator did not request a hearing within the period (not less than 10 days after receipt) specified in the notice.

(C) Without notice or hearing, if:

(i) The Commission [~~commission~~] has issued a final order requiring that the operator plug the well and the order has not been complied with; or

(ii) The well poses an immediate threat of pollution of surface or subsurface waters or of injury to the public health and the operator has failed to timely remediate the problem.

(5) The Commission [~~commission~~] may seek reimbursement from the operator and any other entity responsible for plugging the well for state funds expended pursuant to paragraph (4) of this subsection.

(c) Designated operator responsible for proper plugging.

(1) The entity designated as the operator of a well specifically identified on the most recent Commission-approved [~~commission-approved~~] operator designation form filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with this section and all other applicable Commission [~~commission~~] rules and regulations concerning plugging of wells.

(2) As to any well for which the most recent Commission-approved [~~commission-approved~~] operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well in accordance with this section and all other applicable Commission [~~commission~~] rules and regulations concerning plugging of wells. The presumption of responsibility may [~~only~~] be rebutted only at a hearing called for the purpose of determining plugging responsibility.

(d) General plugging requirements.

(1) Wells shall be plugged to insure that all formations bearing usable quality water, oil, gas, or geothermal resources are protected. All cementing operations during plugging shall be performed under the direct supervision of the operator or his authorized representative, who shall not be an employee of the service or cementing company hired to plug the well. Direct supervision means supervision at the well site during the plugging operations. The operator and the cementer are both responsible for complying with the general plugging requirements of this subsection and for plugging the well in conformity with the procedure set forth in the approved notice of intention to plug and abandon for the well being plugged. The operator and cementer may each be assessed administrative penalties for failure to comply with the general plugging requirements of this subsection or for failure to plug the well in conformity with the approved notice of intention to plug and abandon the well.

(2) Cement plugs shall be set to isolate each productive horizon and usable quality water strata.

(3) Cement plugs shall be placed by the circulation or squeeze method through tubing or drill pipe. Cement plugs shall be placed by other methods only upon written request with the written approval of the district director or the director's delegate.

(4) All cement for plugging shall be an approved API oil well cement without volume extenders and shall be mixed in accordance with API standards. Slurry weights shall be reported on the cementing report. The district director or the director's delegate may require that specific cement compositions be used in special situations; for example, when high temperature, salt section, or highly corrosive sections are present.

(5) Operators shall use only cementers approved by the assistant director of well plugging or the assistant director's delegate, except when plugging is conducted in accordance with subparagraph (B)(ii) of this paragraph or paragraph (6) of this subsection. Cementing companies, service companies, or operators may apply for designation as approved cementers. Approval will be granted on a showing by the applicant of the ability to mix and pump cement in compliance with this rule. An approved cementer is authorized to conduct plugging operations in accordance with Commission [~~commission~~] rules in each Commission [~~commission~~] district.

(A) A cementing company, service company, or operator seeking designation as an approved cementer shall file a request in writing with the district director of the district in which it proposes to conduct its initial plugging operations. The request shall contain the following information:

(i) the name of the organization as shown on its most recent approved organizational report;

(ii) a list of qualifications including personnel who will supervise mixing and pumping operations;

(iii) length of time the organization has been in the business of cementing oil and gas wells;

(iv) an inventory of the type of equipment to be used to mix and pump cement; and

(v) a statement certifying that the organization will comply with all Commission [~~commission~~] rules.

(B) No request for designation as an approved cementer will be approved until after the district director or the director's delegate has:

(i) inspected all equipment to be used for mixing and pumping cement; and

(ii) witnessed at least one plugging operation to determine if the cementing company, service company, or operator can properly mix and pump cement to the specifications required by this rule.

(C) The district director or the director's delegate shall file a letter with the assistant director of well plugging recommending that the application to be designated as an approved cementer be approved or denied. If the district director or the director's delegate does not recommend approval, or the assistant director of well plugging or the assistant director's delegate denies the application, the applicant may request a hearing on its application.

(D) Designation as an approved cementer may be suspended or revoked for violations of Commission [~~commission~~] rules. The designation may be revoked or suspended administratively by the assistant director of well plugging for violations of Commission [~~commission~~] rules if:

(i) the cementer has been given written notice by personal service or by registered or certified mail informing the cementer of the proposed action, the facts or conduct alleged to warrant the proposed action, and of its right to request a hearing within 10 days to demonstrate compliance with Commission [~~commission~~] rules and all requirements for retention of designation as an approved cementer; and

(ii) the cementer did not file a written request for a hearing within 10 days of receipt of the notice.

(6) An operator may request administrative authority to plug its own wells without being an approved cementer. An operator seeking such authority shall file a written request with the district director and demonstrate its ability to mix and pump cement in compliance with this subsection. The district director or the director's delegate will determine whether such a request warrants approval. If the district director or the director's delegate refuses to administratively approve this request, the operator may request a hearing on its request.

(7) The district director may require additional cement plugs to cover and contain any productive horizon or to separate any water stratum from any other water stratum if the water qualities or

hydrostatic pressures differ sufficiently to justify separation. The tagging and/or pressure testing of any such plugs, or any other plugs, and respotting may be required if necessary to insure that the well does not pose a potential threat of harm to natural resources.

(8) For onshore or inland wells, a 10-foot cement plug shall be placed in the top of the well, and casing shall be cut off three feet below the ground surface.

(9) Mud-laden fluid of at least 9-1/2 pounds per gallon with a minimum funnel viscosity of 40 seconds shall be placed in all portions of the well not filled with cement. The hole shall be in static condition at the time the cement plugs are placed. The district director may grant exceptions to the requirements of this paragraph if a deviation from the prescribed minimums for fluid weight or viscosity is necessary to insure that the well does not pose a potential threat of harm to natural resources.

(10) Non-drillable material that would hamper or prevent reentry of a well shall not be placed in any wellbore during plugging operations, except in the case of a well plugged and abandoned under the provisions of §3.35 or §3.94(e) of this title (relating to Procedures for Identification and Control of Wellbores in Which Certain Logging Tools Have Been Abandoned (Statewide Rule 35); and Disposal of Oil and Gas NORM Waste (Statewide Rule 94), respectively). Pipe and unretrievable junk shall not be cemented in the hole during plugging operations without prior approval by the district director.

(11) All cement plugs, except the top plug, shall have sufficient slurry volume to fill 100 feet of hole, plus 10% for each 1,000 feet of depth from the ground surface to the bottom of the plug.

(12) The operator shall fill the rathole, mouse hole, and cellar, and shall empty all tanks, vessels, related piping and flowlines that will not be actively used in the continuing operation of the lease within 120 days after plugging work is completed. Within the same 120 day period, the operator shall remove all such tanks, vessels, related surface piping, and all subsurface piping that is less than three feet beneath the ground surface, remove all loose junk and trash from the location, and contour the location to discourage pooling of surface water at or around the facility site. The operator shall close all pits in accordance with the provisions of §3.8 of this title (relating to Water Protection (Statewide Rule 8)). The district director may grant a reasonable extension of time of not more than an additional 120 days for the removal of tanks, vessels and related piping.

(e) Plugging requirements for wells with surface casing.

(1) When insufficient surface casing is set to protect all usable quality water strata and such usable quality water strata are exposed to the wellbore when production or intermediate casing is pulled from the well or as a result of such casing not being run, a cement plug shall be placed from 50 feet below the base of the deepest usable quality water stratum to 50 feet above the top of the statum. This plug shall be evidenced by tagging with tubing or drill pipe. The plug must be respotted if it has not been properly placed. In addition, a cement plug must be set across the shoe of the surface casing. This plug must be a minimum of 100 feet in length and shall extend at least 50 feet above and below the shoe.

(2) When sufficient surface casing has been set to protect all usable quality water strata, a cement plug shall be placed across the shoe of the surface casing. This plug shall be a minimum of 100 feet in length and shall extend at least 50 feet above the shoe and at least 50 feet below the shoe.

(3) If surface casing has been set deeper than 200 feet below the base of the deepest usable quality water stratum, an additional cement plug shall be placed inside the surface casing across the base of the deepest usable quality water stratum. This plug shall be a minimum of 100 feet in length and shall extend from 50 feet below the base of the deepest usable quality water stratum to 50 feet above the top of the stratum.

(f) Plugging requirements for wells with intermediate casing.

(1) For wells in which the intermediate casing has been cemented through all usable quality water strata and all productive horizons, a cement plug meeting the requirements of subsection (d)(11) of this section shall be placed inside the casing and centered opposite the base of the deepest usable quality water stratum, but extend no less than 50 feet above and below the stratum.

(2) For wells in which intermediate casing is not cemented through all usable quality water strata and all productive horizons, and if the casing will not be pulled, the intermediate casing shall be perforated at the required depths to place cement outside of the casing by squeeze cementing through casing perforations.

(g) Plugging requirements for wells with production casing.

(1) For wells in which the production casing has been cemented through all usable quality water strata and all productive horizons, a cement plug meeting the requirements of subsection (d)(11) of this section shall be placed inside the casing and centered opposite the base of the deepest usable quality water stratum and across any multi-stage cementing tool.

(2) For wells in which the production casing has not been cemented through all usable quality water strata and all productive horizons and if the casing will not be pulled, the production casing shall be perforated at the required depths to place cement outside of the casing by squeeze cementing through casing perforations.

(3) The district director may approve a cast iron bridge plug to be placed immediately above each perforated interval, provided at least 20 feet of cement is placed on top of each bridge plug. A bridge plug shall not be set in any well at a depth where the pressure or temperature exceeds the ratings recommended by the bridge plug manufacturer.

(h) Plugging requirements for well with screen or liner.

(1) If practical, the screen or liner shall be removed from the well.

(2) If the screen or liner is not removed, a cement plug in accordance with subsection (d)(11) of this section shall be placed at the top of the liner.

(i) Plugging requirements for wells without production casing and open-hole completions.

(1) Any productive horizon or any formation in which a pressure or formation water problem is known to exist shall be isolated by cement plugs centered at the top and bottom of the formation. Each cement plug shall have sufficient slurry volume to fill a calculated height as specified in subsection (d)(11) of this section.

(2) If the gross thickness of any such formation is less than 100 feet, the tubing or drill pipe shall be suspended 50 feet below the base of the formation. Sufficient slurry volume shall be pumped to fill the calculated height from the bottom of the tubing or drill pipe up to a point at least 50 feet above the top of the formation, plus 10% for each 1,000 feet of depth from the ground surface to the bottom of the plug.

(j) The district director shall review and approve the notification of intention to plug in a manner so as to accomplish the purposes of this section. The district director may approve, modify, or reject the operator's notification of intention to plug. If the proposal is modified

or rejected, the operator may request a review by the director of field operations. If the proposal is not administratively approved, the operator may request a hearing on the matter. After hearing, the examiner shall recommend final action by the Commission [~~commission~~].

(k) Plugging horizontal drainhole wells. All plugs in horizontal drainhole wells shall be set in accordance with subsection (d)(11) of this section. The productive horizon isolation plug shall be set from a depth 50 feet below the top of the productive horizon to a depth either 50 feet above the top of the productive horizon, or 50 feet above the production casing shoe if the production casing is set above the top of the productive horizon. If the production casing shoe is set below the top of the productive horizon, then the productive horizon isolation plug shall be set from a depth 50 feet below the production casing shoe to a depth that is 50 feet above the top of the productive horizon. In accordance with subsection (d)(7) of this section, the Commission [~~commission~~] or its delegate may require additional plugs.

§3.78. Fees, Performance Bonds and Alternate Forms of Financial Security Required To Be Filed.

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

(1) Violation--Noncompliance with a Commission [~~commission~~] rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(2) Outstanding violation--A violation for which:

(A) either:

(i) a Commission [~~commission~~] order finding a violation has been entered and all appeals have been exhausted; or

(ii) an agreed order between the Commission [~~commission~~] and the organization relating to a violation has been entered; and

(B) one or more of the following conditions still exist:

(i) the conditions that constituted the violation have not been corrected;

(ii) all administrative, civil, and criminal penalties, if any, relating to the violation of such Commission [~~commission~~] rules, orders, licenses, permits, or certificates have not been paid; or

(iii) all reimbursements of any costs and expenses assessed by the Commission [~~commission~~] relating to the violation of such Commission [~~commission~~] rules, orders, licenses, permits, or certificates have not been paid.

(3) An acceptable record of compliance--

(A) A record of compliance showing:

(i) No enforcement orders issued; and

(ii) No outstanding violations; or

(B) A record of compliance showing:

(i) Only one enforcement order, provided the order specifies that it shall not be considered to meet the elements of subparagraph (A) of this definition and provided the requirements of the order are met;

(ii) No enforcement orders issued other than those that are resolved in the order referenced in clause (i) of this subparagraph;

(iii) No outstanding violations other than those resolved in the order referenced in clause (i) of this subparagraph.

(4) Commercial facility--A facility whose owner or operator receives compensation from others for the storage, reclamation, treatment, or disposal of oil field fluids or oil and gas wastes that are wholly or partially trucked or hauled to the facility and whose primary business purpose is to provide these services for compensation if:

(A) the facility is permitted under §3.8 of this title (relating to Water Protection);

(B) the facility is permitted under §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials);

(C) the facility is permitted under §3.9 of this title (relating to Disposal Wells) and a collecting pit permitted under §3.8 is located at the facility; or

(D) the facility is permitted under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) and a collecting pit permitted under §3.8 is located at the facility.

(5) Financial security--An individual performance bond, blanket performance bond, letter of credit, or cash deposit filed with the Commission.

(6) Alternate form of financial security--Payment of a nonrefundable annual fee to the Commission.

(7) Individual well bond--A bond or letter of credit issued:

(A) on a Commission-approved form;

(B) by a third party surety, insurance company, or financial institution approved by the Commission; and

(C) to secure the timely and proper plugging of a specified well and remediation of the wellsite, in accordance with Commission rules.

(8) Bay well--Any well under the jurisdiction of the Commission for which the surface location is either:

(A) located in or on a lake, river, stream, canal, estuary, bayou, or other inland navigable waters of the state; or,

(B) located on state lands seaward of the mean high tide line of the Gulf of Mexico in water of a depth at mean high tide of not more than 100 feet that is sheltered from the direct action of the open seas of the Gulf of Mexico.

(9) Land well--Any well subject to Commission jurisdiction for which the surface location is not in or on inland or coastal waters.

(10) Offshore well--Any well subject to Commission jurisdiction for which the surface location is on state lands in or on the Gulf of Mexico, that is not a bay well.

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the Commission [~~commission~~] a nonrefundable fee of:

(A) $200 [~~$100~~] if the proposed total depth of the well is 2,000 feet or less;

(B) $225 [~~$125~~] if the proposed total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;

(C) $250 [~~$150~~] if the proposed total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet; or

(D) $300 [$200] if the proposed total depth of the well is greater than 9,000 feet.

(2) An application for a permit to drill, deepen, plug back, or reenter a well will be considered materially amended if the amendment is made for a purpose other than:

(A) to add omitted required information;

(B) to correct typographical errors;

(C) to correct clerical errors.

(3) An applicant shall submit an additional nonrefundable fee of $150 [$50] when requesting that the Commission [commission] expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(4) With each individual application for an exception to any rule in this chapter, the applicant shall submit to the Commission a nonrefundable fee of $150.

[(4) With each application for an extension of time to plug a well pursuant to commission rules, an applicant shall submit to the commission a nonrefundable fee of $100, unless the applicant has filed a bond or letter of credit pursuant to subsection (c) of this section.]

(5) If an applicant does not request an exception to any rule in this chapter and a Commission review determines that an exception to §3.37 of this title (relating to Statewide Spacing Rule) (Statewide Rule 37) or §3.38 of this title (relating to Well Densities) (Statewide Rule 38) is required, the applicant shall submit a nonrefundable fee of $200.

[(5) With each application for an exception to any commission statewide rule, the applicant shall submit to the commission a nonrefundable fee of $50. If the permit application is for an exception to §§3.37, 3.38, or 3.39 of this title (relating to Statewide Spacing Rule; Well Densities; and Proration and Drilling Units: Contiguity of Acreage and Exception Thereto) (Statewide Rule 37, 38, or 39), or for any combination of exceptions to such rules, the applicant shall submit one nonrefundable fee of $50.]

(6) With each application for an extension of time to plug a well pursuant to Commission rules, an applicant who has filed an alternate form of financial security as provided for under this rule, shall submit to the Commission a nonrefundable fee of $300.

(7) [(6)] With each application for an oil and gas waste disposal well permit, the applicant shall submit to the Commission [commission] a nonrefundable fee of $100 per well.

(8) [(7)] With each application for a fluid injection well permit, the applicant shall submit to the Commission [commission] a nonrefundable fee of $200 [$100] per well. Fluid injection well means any well used to inject fluid or gas into the ground in connection with the exploration or production of oil or gas other than an oil and gas waste disposal well.

(9) [(8)] With each application for a permit to discharge to surface water other than a permit for a discharge that meets national pollutant discharge elimination system (NPDES) requirements for agricultural or wildlife use, the applicant shall submit to the Commission [commission] a nonrefundable fee of $300 [$200].

(10) [(9)] If a certificate of compliance has been canceled, the operator shall submit to the Commission [commission] a nonrefundable fee of $100 before the Commission [commission] may reissue the certificate pursuant to §3.58 of this title (relating to Oil, Gas, or Geothermal Resource Producer's Reports) (Statewide Rule 58).

(11) [(10)] With each application for issuance, renewal, or material amendment of an oil and gas waste hauler's permit, the applicant shall submit to the Commission [commission] a nonrefundable fee of $100.

(12) [(11)] With each Natural Gas Policy Act (15 United States Code §§3301-3432) application, the applicant shall submit to the Commission [commission] a nonrefundable fee of $150 [$50].

(13) Hazardous waste generation fee. A person who generates hazardous oil and gas waste, as that term is defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), shall pay to the Commission the fees specified §3.98(z) of this title.

(14) [(12)] A check or money order for any of the aforementioned fees shall be made payable to the Railroad Commission [state treasurer] of Texas. If the check accompanying an application is not honored upon presentment, the permit issued on the basis of that application, the allowable assigned, the exception to a statewide rule granted on the basis of the application, the extension of time to plug a well, or the Natural Gas Policy Act category determination made on the basis of the application may be suspended or revoked.

(15) If an operator submits a check that is not honored on presentment, the operator shall, for a period of 24 months after the check was presented, submit any payments in the form of a credit card, cashier's check, or cash.

(c) Organization Report Fee. An organization report required by Texas Natural Resources Code, §91.142, shall be accompanied by a fee as follows:

(1) for an operator of:

(A) not more than 25 wells, $300;

(B) more than 25 but not more than 100 wells, $500; or

(C) more than 100 wells, $1,000;

(2) for an operator of one or more natural gas pipelines, $100;

(3) for an operator of one or more of the following service activities: pollution cleanup contractor; directional surveying; approved cementer for plugging wells; or physically moving or storing crude or condensate, $300;

(4) for an operator of all other service activities or facilities, including liquids pipelines, $500;

(5) for an operator of wells who also operates one or more service activities, facilities, or pipelines as classified by the Commission, the sum of the fees that would be separately charged for each category of service activity, facility, pipeline, or number or wells operated, provided that such fee shall not exceed $1,000; or

(6) for an entity not currently performing operations under the jurisdiction of the Commission, $300.

(d) [(c)] Financial security and alternate forms of financial security. Any person, including any firm, partnership, joint stock association, corporation, or other organization, required by Texas Natural Resources Code, §91.142, to file an organization report with the Commission [commission] must also file [a performance bond or alternate form of] financial security in one of the following forms [. A person may choose to file]:

(1) an individual performance bond;

(2) a blanket performance bond;

(3) a nonrefundable annual fee of $1,000, if: [~~$100, if~~]

(A) the Commission determines that individual and blanket performance bonds as specified by this section are not obtainable at reasonable prices as provided for under subsection (f) of this section;

(B) the person can demonstrate to the Commission [~~commission~~] an acceptable record of compliance with all Commission [~~commission~~] rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person has no outstanding violations; and [~~additionally,~~]

(C) if the person is a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25% ownership interest or any trustee must also not have any outstanding violations.

(4) a nonrefundable annual fee equal to 12.5% [~~3.0%~~] of the face amount of the performance bond that otherwise would be required; or

(5) a letter of credit or cash deposit in the same amount as required for an individual performance bond or blanket performance bond [~~a first lien on tangible personal property associated with oil and gas production whose salvage value equals the value of the bond that otherwise would be required~~].

[~~(d) Letter of credit. A letter of credit may be submitted in lieu of either an individual or blanket performance bond, subject to the same requirements for bonds where applicable.~~]

(e) Eligibility for nonrefundable $1,000 fee.

(1) For the purposes of this subsection, "officers and owners" include directors, general partners, owners of more than 25% ownership interest, or any trustee of an organization.

(2) A person filing an organization report for the first time in order to perform any Commission-regulated operations is a new organization and is not eligible to file the nonrefundable fee of $1,000.

(3) A person who filed an initial organization report less than 48 months prior to the current filing is not eligible to file the nonrefundable fee of $1,000.

(4) A change in name, without any other organizational change, of a person registered with the Commission does not indicate a new organization. If the Commission determines that only a name change has occurred, then a person operating under a new name may file the nonrefundable fee of $1,000 if the person meets all other eligibility requirements.

(5) An individual registered with the Commission as a sole proprietor or who is a general partner of a partnership that is registered with the Commission and who reorganizes his or her oil and gas operations under a new legal entity or establishes a new and separate entity will be considered to have satisfied the 48- month eligibility requirement for filing the nonrefundable fee of $1,000.

(6) A surviving or new corporation or other entity resulting from a merger under the Texas Business Corporation Act, Part Five, may file the nonrefundable fee of $1,000 if:

(A) the existing record of compliance for each entity that is a party to the merger qualifies;

(B) the records of compliance for the officers and owners of the surviving or new entities qualify; and

(C) the number of surviving or new entities eligible does not exceed the number of parties registered with the Commission at the time of the merger.

(7) In any Commission enforcement proceeding, if a person is determined not to be the responsible party for a violation and is dismissed from the proceeding for that reason, that violation shall not be considered in determining whether that person has an acceptable record of compliance.

(f) Availability of bonds.

(1) In determining the applicability of the $1,000 nonrefundable fee as provided for under this section, the Commission presumes that individual and blanket performance bonds are obtainable at reasonable prices.

(2) An operator may request a hearing to determine that individual and blanket performance bonds are not obtainable at reasonable prices. In order to support a determination that bonds are not obtainable at reasonable prices, the operator must show:

(A) that no fewer than three companies which have issued a bond filed with the Commission in the past 12 months will not issue a bond to the requesting operator for an annual fee less than 12% of the face amount of the bond;

(B) that the operator possesses adequate financial assets or other resources necessary to plug any inactive wells as defined under §3.14(b)(2) of this title (relating to Plugging); and

(C) that the operator is otherwise eligible under this section to file a $1,000 nonrefundable annual fee.

(g) [~~(e)~~] Forms for financial security. Operators shall submit [~~Performance~~] bonds [~~, liens,~~] and letters of credit [~~shall be submitted~~] on forms prescribed by the Commission [~~commission~~].

(h) [~~(f)~~] Filing deadlines for financial security. Operators shall submit required [~~Performance bonds or an alternate form of~~] financial security [~~shall be filed~~] at the time of filing an initial organization report or upon yearly renewal, or as required under subsection (m) of this section.

(i) [~~(g)~~] New [~~well~~] operators. A person filing an organization report for the first time [~~in order to operate wells~~] is a new organization and is not eligible to file an individual performance bond for the first year of operation.

(j) [~~(h)~~] Amount of bond, letter of credit, or cash deposit [~~Bond amount~~].

(1) A person [~~required to file a bond~~] who operates one or more wells may file an individual performance bond, letter of credit or cash deposit in an amount equal to $2.00 for each foot of total well depth for each well, plus an additional amount to be determined by the Commission in a subsequent rulemaking for each bay and offshore well operated.

(2) A person operating wells [~~required to file a bond~~] may file a blanket bond, letter of credit or cash deposit to cover all wells [~~and other commission-regulated operations~~] for which a bond, letter of credit or cash deposit is required in an amount equal to the sum of [~~as follows~~]:

(A) A base amount determined by the total number of wells operated, as follows:

(i) a person who operates 10 or fewer wells or performs other operations shall have a base amount of $25,000;

(ii) a person who operates more than 10 but fewer than 100 wells shall have a base amount of $50,000; and

(iii) a person who operates 100 or more wells shall have a base amount of $250,000, plus; [a person who operates 10 or fewer wells or performs other operations shall file a $25,000 blanket bond;]

(B) an additional amount, to be determined by the Commission in a subsequent rulemaking, for each bay well operated, plus [a person who operates more than 10 but fewer than 100 wells shall file a $50,000 blanket bond; and]

(C) an additional amount, to be determined by the Commission in a subsequent rulemaking, for each offshore well operated [a person who operates 100 or more wells shall file a $250,000 blanket bond].

(3) A person operating wells and performing other operations, who chooses to cover all operations by a blanket performance bond, letter of credit or cash deposit shall file a bond, letter of credit or cash deposit in an amount determined by the total number of wells, but not less than $25,000. Only one blanket performance bond, letter of credit or cash deposit is required for a person performing multiple operations, unless the person is operating a commercial facility subject to the financial security requirements of subsection (p) of this section.

(4) Financial security [Bond] amounts are the minimum amounts required by this section to be filed. A person may file [a bond in] a greater amount if desired.

[(i) Expiration of bond obligations. Obligations to pay part or all of a bond amount are deemed released after four years from the expiration date of the bond if no noncompliant operations or activities subject to a bond have been discovered by the commission within that four-year period, and no enforcement action against any operations or activities subject to a bond is pending. A person whose activities are covered by a bond, as the principal, and the surety on a bond may also be relieved of their obligations to pay part or all of a bond amount by written agreement between the Railroad Commission of Texas, principal and surety.]

(k) [(j)] Bond Conditions. Any financial security [Each performance bond] required under this section is subject to the conditions that the operator [principal] will plug and abandon all wells and control, abate, and clean up pollution associated with the oil and gas operations and activities covered under the required financial security [bond] in accordance with applicable state law and permits, rules, and orders of the Commission [commission].

[(k) Eligibility for nonrefundable $100 fee.]

[(1) A person filing an organization report for the first time in order to perform any commission-regulated operations is a new organization and is not eligible to choose to file the nonrefundable fee of $100 under subsection (c)(3) of this section.]

[(2) A person that filed an initial organization report less than 48 months prior to the current filing is not eligible to choose to file the nonrefundable fee of $100 under subsection (c)(3) of this section.]

[(3) A change in name, without any other organizational change, of a person registered with the commission does not indicate a new organization. If the commission or its representative determines that only a name change has occurred, a person operating under a new name may choose to file under subsection (c)(3) of this section, if otherwise qualified.]

[(4) An individual, registered with the commission as a sole proprietor or who is a general partner of a partnership that is registered with the commission, and who reorganizes his or her oil and gas operations under a new legal entity or establishes a new and separate entity, will be considered eligible to choose to file under subsection (c)(3) of this section, if otherwise qualified based on the individual's existing record of compliance as well as the records of any other owners or officers of the new entity.]

[(5) A surviving or new corporation or other entity resulting from a merger under the Texas Business Corporation Act, Part Five, may choose to file under subsection (c)(3) of this section, only if otherwise qualified on the basis of the existing records of compliance, considered as a whole, of all corporations and other entities that are parties to the merger as well as the records of the officers and owners of the surviving or new entities. The number of surviving or new corporations or other entities eligible under this paragraph is limited to no more than the total number of parties to the merger who were currently registered with the commission at the time of the merger.]

[(6) For the purposes of this subsection, "officers and owners" include directors, general partners, owners of more than 25% ownership interest, or any trustee of an organization.]

(l) Conditions for cash deposits. Operators shall tender cash deposits in United States currency or certified cashiers check only. All cash deposits will be placed in a special account within the Oil Field Clean Up Fund account. Any interest accruing on cash deposits will be deposited into the Oil Clean Up Fund pursuant to Texas Natural Resources Code, §91.111(c)(8). The Commission will not refund a cash deposit until either financial security or an alternate form of financial security is accepted by the Commission as provided for under this section or an operator ceases all activity.

[(l) Compliance certification. The commission or a commission representative may require an applicant organization to file a compliance certification in connection with filing the nonrefundable $100 fee under subsection (c)(3) of this section.]

[(1) The certification shall include a statement that:]

[(A) the applicant organization at the time of application or during the 48 months prior to the application has no referrals to the commission's legal enforcement section relating to a violation, or has no pending legal enforcement action relating to a violation; and]

[(B) the applicant organization or any officer, director, general partner, or owner of more than 25% ownership interest, or trustee of the named organization has no outstanding violations.]

[(2) If the certification is signed by an agent of an applicant organization, the certification is binding on the agent and the organization as if signed by a person holding a position of ownership or control in the organization.]

(m) Individual well bonds.

(1) An operator who has filed an alternate form of financial security with the Commission and who applies for a plugging extension for a well that has been inactive for more than 36 months is required under §3.14 of this title (relating to Plugging) to file an individual well bond or individual well letter of credit in the face amount of the estimated plugging cost of the well for which a plugging extension is requested. The Commission shall presume that the estimated plugging cost for wells for which a plugging extension is sought is as follows:

(A) for land wells, the product of the total depth of the well multiplied by $3 per foot;

(B) for bay wells, $60,000; and,

(C) for offshore wells, $250,000.

(2) An operator may rebut the presumed estimated plugging costs for a specific well for which a plugging extension is sought at hearing by clear and convincing evidence establishing a higher or lower prospective plugging cost for the well. The operator, Commission staff, or any owner of the surface or mineral estate on which the well is located may initiate a hearing on the prospective plugging cost for a well for the purpose of setting the amount of an individual well bond by filing a request for hearing.

(3) If an individual well bond is required, it shall be continuously maintained until the well is plugged or returned to active operation, as defined under §3.14 of this title, unless the operator files financial security as provided by this section.

[(m) Dismissed violations. In any legal enforcement proceeding, if a person is determined not to be the responsible party for a violation and is dismissed from the proceeding for that reason, that violation shall not be considered in determining whether that person has an acceptable record of compliance.]

(n) Well or lease transfer.

(1) The Commission shall not approve a transfer of operatorship submitted for any well or lease unless the operator acquiring the well or lease has on file with the Commission one of the following approved forms of financial security in an amount sufficient to cover both its current operations and the wells being transferred:

(A) an individual performance bond, letter of credit or cash deposit; or

(B) a blanket performance bond, letter of credit or cash deposit.

(2) Any existing financial security or individual well bond covering the well or lease proposed for transfer shall remain in effect and the prior operator of the well remains responsible for compliance with all laws and Commission rules covering the transferred well until the Commission approves the transfer.

(3) A transfer of a well or lease from one entity to another entity under common ownership is a transfer for the purposes of this section.

[(n) Fee for inactive wells subject to §3.14 of this title (relating to Plugging) (Statewide Rule 14(b)(2)). A person who chooses to file a form of financial security other than a bond or letter of credit shall also submit, pursuant to subsection (b)(4) of this section, a fee of $100 for each well for which an application to extend the time to plug a well has been filed under §3.14(b)(2) (Statewide Rule 14).]

(o) [(p)] Reimbursement liability. Filing any [a bond or alternate] form of financial security does not extinguish a person's liability for reimbursement for the expenditure of state oilfield clean-up funds pursuant to the Texas Natural Resources Code, §89.083 and §91.113.

[(o) Well transfer. A transfer of operatorship of any well is not complete unless the operator acquiring the well has on file with the commission an approved form of organizational financial security covering its operations. In addition, if under the terms of §3.14 of this title (relating to Plugging) (Statewide Rule 14), the well has been inactive for 12 or more months, the well has not been returned to active operation prior to the proposed transfer, and the proposed acquiring operator is an unbonded operator, the transfer shall not be approved unless the acquiring operator files an individual well bond, as defined in §3.14 of this title (relating to Plugging) (Statewide Rule 14). All existing individual well bonds, organizational individual bonds, organizational blanket bonds, and letters of credit covering the well and lease proposed for transfer remain in effect and the prior operator of the well remains responsible for compliance with all laws and commission rules covering the transferred well until the commission determines that the well is covered by proper financial security and approves the transfer and the acquiring operator has assumed full responsibility for the well in accordance with all applicable statutes and commission rules.]

[(q) Hazardous waste generation fee. A person who generates hazardous oil and gas waste, as that term is defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and gas Waste), shall pay to the commission the fees specified in subsection (z) of §3.98.]

(p) [(r)] Financial security for commercial facilities. The provisions of this subsection shall apply to the holder of any permit for a commercial facility.

(1) Application.

(A) New permits. Any application for a new or amended commercial facility permit filed after the original effective date of this subsection shall include:

(i) a written estimate of the maximum dollar amount necessary to close the facility prepared in accordance with the provisions of paragraph (4) of this subsection that shows all assumptions and calculations used to develop the estimate;

(ii) a copy of the form of the bond or letter of credit that will be filed with the Commission [commission]; and

(iii) information concerning the issuer of the bond or letter of credit as required under paragraph (5) of this subsection including the issuer's name and address and evidence of authority to issue bonds or letters of credit in Texas.

(B) Existing permits. Within 180 days of the original effective date of this subsection, the holder of any commercial facility permit issued on or before the original effective date of this subsection shall file with the Commission [commission] the information specified in subparagraph (A)(i)-(iii) of this paragraph.

(2) Notice and hearing.

(A) New permits. For commercial facility permits issued after the original effective date of this subsection, the provisions of §3.8 or §3.57 of this title (relating to Water Protection; and Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials), as applicable, regarding notice and opportunity for hearing, shall apply to review and approval of financial security proposed to be filed to meet the requirements of this subsection.

(B) Existing permits. Notice of filing of information required under paragraph (1)(B) of this subsection shall not be required. In the event approval of the financial security proposed to be filed for a commercial facility operating under a permit in effect as of the original effective date of this subsection is denied administratively, the applicant shall have the right to a hearing upon written request. After hearing, the examiner shall recommend a final action by the Commission [commission].

(3) Filing of instrument.

(A) New permits. A commercial facility permitted after the original effective date of this subsection may not receive oil field fluids or oil and gas waste until a bond or letter of credit in an amount approved by the Commission [commission] or its delegate under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with the Commission [commission].

(B) Existing permits. Except as otherwise provided in this subsection, after one year from the original effective date of this

section, a commercial facility permitted on or before the original effective date of this subsection may not continue to receive oil field fluids or oil and gas waste unless a bond or letter of credit in an amount approved by the Commission [~~commission~~] or its delegate under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with and approved by the Commission [~~commission~~] or its delegate.

(C) Extensions for existing permits. On written request and for good cause shown, the Commission [~~commission~~] or its delegate may authorize a commercial facility permitted before the original effective date of this subsection to continue to receive oil field fluids or oil and gas waste after one year after the original effective date of this section even though financial security required under this subsection has not been filed. In the event the Commission [~~commission~~] or its delegate has not taken final action to approve or disapprove the amount of financial security proposed to be filed by the owner or operator under this subsection one year after the original effective date of the section, the period for filing financial security under this subsection is automatically extended to a date 45 days after such final Commission [~~commission~~] action.

(4) Amount.

(A) Except as provided in subparagraphs (B) or (C) of this paragraph, the amount of financial security required to be filed under this subsection shall be an amount based on a written estimate approved by the Commission [~~commission~~] or its delegate as being equal to or greater than the maximum amount necessary to close the commercial facility, exclusive of plugging costs for any well or wells at the facility, at any time during the permit term in accordance with all applicable state laws, Commission [~~commission~~] rules and orders, and the permit, but shall in no event be less than $10,000.

(B) The owner or operator of a commercial facility may reduce the amount of financial security required under this subsection by $25,000 if the owner or operator holds only one commercial facility permit.

(C) The owner or operator of more than one commercial facility may reduce the amount of financial security required under this subsection for one such facility by $25,000. The full amount of financial security required under subparagraph (A) of this paragraph shall be required for the remaining commercial facilities.

(D) Except for the facilities specifically exempted under subparagraph (E), a qualified professional engineer licensed by the State of Texas shall prepare or supervise the preparation of a written estimate of the maximum amount necessary to close the commercial facility as provided in subparagraph (A) of this paragraph. The owner or operator of a commercial facility shall submit the written estimate under seal of a qualified licensed professional engineer to the Commission [~~commission~~] as required under paragraph (1) of this subsection.

(E) A facility permitted under §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials [~~reclaiming tank bottoms, other hydrocarbon wastes, and other waste materials~~]) that does not utilize on-site waste storage or disposal that requires a permit under §3.8 of this title (relating to Water Protection [~~water protection~~]) is exempt from subparagraph (D) of this paragraph.

(F) Notwithstanding the fact that the maximum amount necessary to close the commercial facility as determined under this paragraph is exclusive of plugging costs, the proceeds of financial security filed under this subsection may be used by the Commission [~~commission~~] to pay the costs of plugging any well or wells at the facility if the financial security for plugging costs filed with the Commission [~~commission under subsection (c) of this section~~] is insufficient to pay for the plugging of such well or wells.

(5) Issuer and form.

(A) Bond. The issuer of any commercial facility bond filed in satisfaction of the requirements of this subsection shall be a corporate surety authorized to do business in Texas. The form of bond filed under this subsection shall provide that the bond be renewed and continued in effect until the conditions of the bond have been met or its release is authorized by the Commission [~~commission~~] or its delegate.

(B) Letter of credit. Any letter of credit filed in satisfaction of the requirements of this subsection shall be issued by and drawn on a bank authorized under state or federal law to operate in Texas. The letter of credit shall be an irrevocable, standby letter of credit subject to the requirements of Texas Business and Commerce Code, §§5.101-5.118 [~~§§5.101-5.117~~]. The letter of credit shall provide that it will be renewed and continued in effect until the conditions of the letter of credit have been met or its release is authorized by the Commission [~~commission~~] or its delegate.

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 July 25, 2001.

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

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CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION
SUBCHAPTER E. QUARRY AND PIT SAFETY

16 TAC §11.1004

The Railroad Commission of Texas proposes amendments to 16 TAC §11.1004, relating to Definitions. The Commission proposes the amendments to maintain consistency with Attorney General Opinion No. JC-0164 dated December 30, 1999.

The Commission proposes to amend §11.1004(14) to add the clause "that includes an industrial aggregate extraction plant" to the definition of "Inactive quarry or pit." This amendment is proposed to parallel JC-0164 which concludes that the Texas Aggregate Quarry and Pit Safety Act, Tex. Nat. Res. Code Ann. §§133.001, *et seq*. (The Act) definition of "inactive quarry or pits" incorporates only "sites" and the term "sites" includes only those locations with a plant used in the extraction of aggregates, so that the Act applies only to those inactive pits located near and associated with a plant.

The Commission proposes to amend 16 TAC §11.1004(30)(C) to remove from the definition of "Unacceptable and unsafe location" the sentence, "Other locations will be decided on a case by case basis." The Commission proposes to remove this sentence to comport with JC-0164 which concludes that the provision is invalid because it does not give adequate notice of proscribed conduct.

Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, has determined that, during each year of the first five years the proposed amendments are in effect, there will likely be no fiscal impacts to state government associated with the proposed amendments. The proposed amendments should have the effect of reducing the Commission's case load of non-compliant inactive quarries and pits, allowing the Commission more time to handle quarries and pits which remain governed by the Act. Mr. Hodgkiss has also determined that there will be no discernible fiscal impacts to local governments.

Mr. Hodgkiss has also determined that the public benefit from adoption of the proposed amendments will be more effective enforcement of the quarry and pit safety rules due to consistency with the Attorney General opinion and compliance with administrative legal requirements.

Mr. Hodgkiss has determined that for each year of the first five years the amendments are in effect there will be no increased costs of compliance with the amended rule. These rule amendments actually reduce the number of quarries and pits subject to Commission regulation and keeps the Quarry and Pit program in compliance with what the Attorney General has determined to be state legal requirements.

The Commission has not requested a local employment impact statement pursuant to Texas Government Code, §2001.022(b).

Comments on these proposed amendments should be submitted to Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 or via electronic mail at melvin.hodgkiss@rrc.state.tx.us. Comments will be accepted until 5:00 p.m. on the 30th day after publication in the *Texas Register*. For further information, please call Mr. Hodgkiss at (512) 463-6901.

The Commission proposes the amendments under Texas Natural Resources Code §134.011, which provides the Commission the authority to promulgate rules pertaining to quarry safety.

Texas Natural Resources Code, §133.003, is affected by the proposed amendments.

Issued in Austin, Texas, on July 24, 2001.

§11.1004. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (13) (No change).

(14) Inactive quarry or pit--A site that includes an industrial aggregate extraction plant or any portion of a site that includes an industrial aggregate extraction plant, that although previously in aggregate production, is not currently being quarried by any ownership, lease, joint venturer, or some other legal arrangement.

(15) - (29) (No change).

(30) Unacceptable unsafe location--A condition where the edge of a pit is located within 200 feet of a public roadway intersection in a manner which, in the judgment of the Commission:

(A) presents a significant risk of harm to public motorists by reason of the proximity of the pit to the roadway intersection; and

(B) has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from accidentally entering the pit as the result of a motor vehicle collision at or near the intersection; or which,

(C) in the opinion of the Commission, is also at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as prescribed by these regulations. It is the Commission's opinion that any abandoned pit which has an edge within 200 feet of a roadway edge of a public road constitutes a substantial dangerous risk to the driving public. [~~Other locations will be decided on a case by case basis.~~]

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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Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
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CHAPTER 20. ADMINISTRATION
SUBCHAPTER F. METHODS OF MAKING PAYMENTS TO THE COMMISSION

16 TAC §20.501

The Railroad Commission of Texas (Commission) proposes new §20.501, relating to payment of convenience fees. The new rule will be in new subchapter F to be titled "Methods of Making Payments to the Commission." The proposed new rule will apply to all entities making payments to the Commission using a method that requires electronic payment processing and that results in the Commission incurring transaction costs. The new rule will allow the Commission to implement additional payment methods over the Internet at no additional cost to the state.

Hope Morgan, Director, ITS Division, has determined that for each year of the first five years the new section is in effect there will be fiscal implications to state government as a result of the new section with regard to the payment of merchant fees; however, the net effect will be zero. No additional programming is required to implement the ability to make electronic payments. With the adoption of this proposed rule, the transaction fee charged to the Commission for electronic payment services will be passed on to the payer and collected from the payer at the time of payment. Convenience fees are set contractually with authorized financial institutions or authorized third parties, as in the case of the Texas Online Authority.

There will be no fiscal implications to local government.

Ms. Morgan also has determined that the public benefit anticipated as a result of the new section will be the ease of making secure payments to the Commission using non-cash payment methods, including the services provided over the Internet through Texas Online. There will be additional convenience fees charged to persons making payments to the Commission using non-cash payment methods. Since the use of non-cash payment processes is not mandatory, not every person making payments to the Commission would be required to pay convenience fees.

There is no anticipated economic cost for small businesses, micro-businesses, or individuals unless these entities choose to participate in non-cash transactions with the Commission.

Comments may be submitted to Mary Ross McDonald, Deputy General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711, or via electronic mail to polly.mcdonald@rrc.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. For more information, call Ms. Morgan at (512) 463-7249.

The Commission proposes the new section pursuant to Subsection (b) of Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the provisions of Section 2, Senate Bill 310, 77th Legislature (2001), which enacted new Texas Civil Statutes, Article 6447n, authorizing the Commission to accept electronic payments and to impose a service charge in an amount reasonable and necessary to reimburse the Commission for the costs involved in processing the payment.

Texas Civil Statutes, Article 6447n, as enacted by Senate Bill 310, is affected by the proposed new section.

Issued in Austin, Texas on July 24, 2001.

§20.501. Payment of Convenience Fees.

(a) Authority. As permitted by Texas Civil Statutes, Article 6447n, the Commission authorizes payment of regulatory fees, fines, penalties, and charges for goods and services by means of an electronic payment method or a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the Commission. Payment by an authorized method may be made in person, by telephone, or through the Internet. A person who makes a payment to the Commission by means of an electronic payment method or credit card shall pay a convenience fee in an amount reasonable and necessary to reimburse the Commission for the costs involved in processing the payment.

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

(1) Commission--The Railroad Commission of Texas.

(2) Convenience fees--An additional charge by the Commission collected from the payer to cover the cost of credit card merchant fees, Internet transactions, and/or other charges associated with non-cash payments.

(3) Electronic payment--Non-cash payment made to the Commission over the Internet or otherwise.

(4) Electronic processing--The required use of an electronic processing system owned by financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the Commission to make a payment to the Commission.

(5) Merchant fees--Charges by a third party to the Commission for the electronic processing of non-cash payments, which can include both flat fees and charges based on a percentage of the total payment amount.

(6) Non-cash payments--The use of credit cards, debit cards, charge cards, or other payment methods offered by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the Commission.

(7) Payments--Regulatory fees, fines, penalties, and charges for goods and services paid to the Commission.

(8) Payer--Any entity making a payment to the Commission.

(9) Refunds--Payments returned by the Commission to the payer.

(10) Transaction fees--Charges incurred by the Commission to cover the cost of processing debit card, credit card, Internet, and other non-cash transactions. These include the charges incurred by the Commission for Texas Online Internet payment processing services.

(c) Explanation of how the Commission charges convenience fees.

(1) General. The Commission will assess convenience fees on a per-transaction basis in an amount that will cover the cost of the transaction fee paid by the Commission for electronic payment processing services, including but not limited to the transaction cost incurred by the Commission through the use of Texas Online Internet payment services. Payers shall pay convenience fees when they make payment to the Commission using any payment method that requires electronic processing. The Commission will refund convenience fees using the same electronic processing system used to make the payment.

(2) Examples. The fact situations in subparagraphs (A) through (C) of this paragraph illustrate the Commission's interpretation and application of Texas Civil Statutes, Article 6447n, and demonstrate how the Commission will calculate the amount of any convenience fee that may be due. The fact situations in subparagraphs (A) through (C) of this paragraph are illustrative only.

(A) Customer #1 pays for a drilling permit application over the Internet using a credit card or a debit card through the Texas Online payment portal services. Customer #1 also pays a convenience fee that includes merchant fees and a $2.00 per transaction charge for using Texas Online Internet processing services.

(B) Customer #2 pays for a drilling permit application in person using a credit card or a debit card. Customer #2 also pays a convenience fee that includes merchant fees only.

(C) Customer #3 pays for a drilling permit application by writing a check. Customer # 3 pays no convenience fees.

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 July 24, 2001.

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Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

The Texas Department of Licensing and Regulation proposes the repeal of 16 Texas Administrative Code §§76.10, 76.200 - 76.206, 76.220, 76.300, 76.600 - 76.602, 76.700 - 76.707, 76.900, 76.910, and 76.1000 - 76.1009 and new §§76.10,

76.200 - 76.206, 76.220, 76.300, 76.600 - 76.602, 76.700 - 76.708, 76.900, 76.910, and 76.1000 - 76.1010 concerning water well drillers and water well pump installers. The new rules rearrange, consolidate, and revise existing language for clarification.

The proposed rules add the definitions of continuing education, continuing education programs, and test wells. Also added were the definitions of "Commissioner" and "Executive Director". The definitions of Commissioner and Executive Director are necessary to implement statutory changes that affect the Texas Water Code, Chapters 32 and 33. The statutory changes were enacted by Acts of the 77th Legislature; House Bill 1214 (HB 1214). The proposed definitions related to HB 1214 define "Commissioner" as being the Executive Director of the Texas Department of Licensing and Regulation and define the "Executive Director" as being the Commissioner of the Texas Department of Licensing and Regulation.

The proposed rules establish the following: the requirement that a driller needs experience in water well drilling; a renewal for apprentice and a waiver for continued education requirements for licensees; criteria for continued education providers; procedures for reporting the drilled wells and plugged wells electronically; procedures for reporting undesirable water or constituents reports electronically; the requirement of capping unattended wells; criteria for licensees to adhere to manufacturer's recommended well construction materials and equipment; a time frame for plugging test wells; a new procedure for sealing a water well that encounters undesirable water or constituents; and a new procedure for plugging large-diameter and bored wells.

Jimmy Martin, Director of the Enforcement Division, has determined that for the first five-year period these sections are in effect, there will be no fiscal implications until fee rules proposed on June 29, 2001 are adopted by the Department. The Department anticipates adopting the fee rules in the very near future.

Mr. Martin also has determined that for each year of the first five years the sections are in effect, the public benefit as a result of enforcing the sections will be improvements in water well drilling and pump installation techniques, education of water well and pump installation professionals, and communication of important water well and pump installation information to the Department.

The Department does not anticipate an economic effect on small businesses and persons who are required to comply with the sections as proposed until it adopts fee rules. The Department anticipates adopting fee rules in the very near future.

Comments on the proposal may be submitted to Steve Wiley, Program Manager, Water Well Drillers Section, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 463-8616, or by e-mail: steve.wiley@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§76.10, 76.200 - 76.206, 76.220, 76.300, 76.600 - 76.602, 76.700 - 76.707, 76.900, 76.910, 76.1000 - 76.1009

(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 Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, Chapter 51, §51.203, Texas Water Code, Chapters 32 and 33, §32.009 and §33.007, and Acts of the 77th Legislature, HB 1214, §41(b). The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §32.009 and §33.007 of the Texas Water Code, and §41(b) of HB 1214, as authorizing the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Texas Water Code, Chapters 32 and 33.

The statutory provisions affected by the repeal are Texas Water Code, Chapters 32 and 33 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the repeal.

§76.10. Definitions.
§76.200. Licensing Requirements-General.
§76.201. Requirements for Issuance of a License.
§76.202. Applications for Licenses and Renewals.
§76.203. Examinations.
§76.204. License Renewal.
§76.205. Registration for Driller or Pump Installer Apprenticeship.
§76.206. Responsibilities of the Apprentice.
§76.220. Continuing Education.
§76.300. Exemptions.
§76.600. Responsibilities of the Department-Certification by the Executive Director.
§76.601. Responsibilities of the Department-General.
§76.602. Responsibilities of the Department - Undesirable Water.
§76.700. Responsibilities of the Licensee-State Well Reports.
§76.701. Responsibilities of the Licensee-Reporting Undesirable Water or Constituents.
§76.702. Responsibilities of the Licensee and Landowner-Well Drilling, Completion, Capping and Plugging.
§76.703. Responsibilities of the Licensee-Standards of Completion for Public Water.
§76.704. Responsibilities of the Licensee-Marking Vehicles and Equipment.
§76.705. Responsibilities of the Licensee-Representations.
§76.706. Responsibilities of the Licensee-Unauthorized Practice.
§76.707. Responsibilities of the Licensee--Adherence to Statutes and Codes.
§76.900. Disciplinary Actions.
§76.910. Disciplinary Actions - Disposition of Application.
§76.1000. Technical Requirements-Locations and Standards of Completion for Wells.
§76.1001. Technical Requirements - Standards of Completion for Water Wells.
§76.1002. Technical Requirements-Standards for Wells Producing Undesirable Water or Constituents.
§76.1003. Technical Requirements - Re-completions.
§76.1004. Technical Requirements-Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.
§76.1005. Technical Requirements-Standards for Water Wells (drilled before June 1, 1983).
§76.1006. Technical Requirements - Water Distribution and Delivery Systems.
§76.1007. Technical Requirements - Chemical Injection, Chemigation, and Foreign Substance Systems.

§76.1008. Technical Requirements-Pump Installation.

§76.1009. Technical Requirements-Alternative Standards.

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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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16 TAC §§76.10, 76.200 - 76.206, 76.220, 76.300, 76.600 - 76.602, 76.700 - 76.708, 76.900, 76.910, 76.1000 - 76.1010

The new rules are proposed under Texas Occupations Code, Chapter 51, §51.203, Texas Water Code, Chapters 32 and 33, §32.009 and §33.007, and Acts of the 77th Legislature, HB 1214, §41(b). The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §32.009 and §33.007 of the Texas Water Code, and §41(b) of HB 1214, as authorizing the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Texas Water Code, Chapters 32 and 33.

The statutory provisions affected by the proposed new rules are Texas Water Code, Chapters 32 and 33 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§76.10. Definitions.

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

(1) Abandoned well--A well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

(A) a non-deteriorated well which contains the casing, pump, and pump column in good condition; or

(B) a non-deteriorated well which has been capped.

(2) Annular space--The space between the casing and borehole wall.

(3) Atmospheric barrier--A section of cement placed from two feet below land surface to the land surface when using granular sodium bentonite as a casing sealant or plugging sealant in lieu of cement.

(4) Bentonite--A sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

(5) Bentonite grout--A fluid mixture of sodium bentonite and potable water mixed at manufacturers' specifications to a slurry consistency that can be pumped through a pipe directly into the annular space between the casing and the borehole wall. Its primary function is to seal the borehole in order to prevent the subsurface migration or communication of fluids.

(6) Capped well--A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

(7) Casing--A watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

(A) Plastic casing--National Sanitation Foundation (NSF-WC) or American Society of Testing Material (ASTM) F-480 minimum SDR 26 approved water well casing.

(B) Steel Casing--New ASTM A-53 Grade B or better and have a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(C) Monitoring wells may use other materials, such as fluoropolymer (Teflon), glass-fiber-reinforced epoxy, or various stainless steel alloys.

(8) Cement--A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum or other additives.

(9) Chemigation--A process whereby pesticides, fertilizers or other chemicals, or effluents from animal wastes is added to irrigation water applied to land or crop, or both, through an irrigation distribution system.

(10) Commission--The Texas Commission of Licensing and Regulation.

(11) Commissioner--as used in Texas Water Code, Chapters 32 and 33 and in these rules, has the same meaning as Executive Director.

(12) Complainant--A person who has filed a complaint with the Texas Department of Licensing and Regulation (Department) against any party subject to the jurisdiction of the Department. The Department may be the complainant.

(13) Completed monitoring well--A monitoring well which allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing and/or cementing procedures. The single water-producing zone shall not include more than one continuous water-producing unit unless a qualified geologist or a groundwater hydrologist has determined that all the units screened or sampled by the well are interconnected naturally.

(14) Completed to produce undesirable water--A completed well which is designed to extract water from a zone which contains undesirable water.

(15) Completed water well--A water well, which has sealed off access of undesirable water to the well bore by proper casing and/or cementing procedures.

(16) Constituents--Elements, ions, compounds, or substances which may cause the degradation of the soil or ground water.

(17) Continuing Education--Four hours of education in a one-year period required as a condition of licensure or certification under the Code.

(18) Continuing Education Program--A formal offering of instruction or information to licensees or certificate holders for the purpose of maintaining skills necessary for the protection of groundwater and the health and general welfare of the citizens and the competent practice of the construction of water wells, the installation of pumps or pumping equipment or water well monitoring. A school, clinic, forum, lecture, course of study, educational seminar, workshop, conference, convention, or short course approved by the Department, may offer such programs.

(19) Dry litter poultry facility--Fully enclosed poultry operation where wood shavings or similar material is used as litter.

(20) Easy access--Access is not obstructed by other equipment and the fitting can be removed and replaced with a minimum of tools without risk of breakage of the attachment parts.

(21) Edwards aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) Environmental soil boring--An artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

(23) Executive Director--As used in Texas Water Code, Chapter 32 and 33 and in these rules, has the same meaning as Commissioner.

(24) Flapper--The clapper, closing, or checking device within the body of the check valve.

(25) Foreign substance--Constituents that includes recirculated tailwater and open-ditch water when a pump discharge pipe is submerged in the ditch.

(26) Freshwater--Water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

(27) Granular sodium bentonite--Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) which has the specific characteristic of swelling in freshwater.

(28) Groundwater conservation district--Any district or authority created under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution or under the provisions of Chapters 35 and 36 of the Texas Water Code that has the authority to regulate the spacing or production of water wells.

(29) Irrigation distribution system--A device or combination of devices having a hose, pipe, or other conduit which connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device, which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(30) Monitoring well--An artificial excavation constructed to measure or monitor the quality and/or quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. Included within this definition are environmental soil borings, piezometer wells, observation wells, and recovery wells. The term shall not include any well that is used in conjunction with the production of oil, gas, coal, lignite, or other minerals.

(31) Mud for drilling--A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(32) Piezometer--A device so constructed and sealed as to measure hydraulic head at a point in the subsurface.

(33) Piezometer well--A well of a temporary nature constructed to monitor well standards for the purpose of measuring water levels or used for the installation of piezometer resulting in the determination of locations and depths of permanent monitor wells.

(34) Plugging--An absolute sealing of the well bore.

(35) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

(36) Public water system--A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas Natural Resource Conservation Commission, 30 TAC Chapter 290.

(37) Recharge zone--Generally, that area where the stratigraphic units constituting the Edward Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such in official maps in the appropriate regional office of the Texas Natural Resource Conservation Commission.

(38) Recovery well--A well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

(39) Sanitary well seal--A watertight device to maintain a junction between the casing and the pump column.

(40) Test well--A well drilled to explore for groundwater.

(41) Undesirable water--Water that is injurious to human health and the environment or water that can cause pollution to land or other waters.

(42) Water or waters in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(43) Well--A water well, test well, injection well, dewatering well, monitoring well, piezometer well, observation well, or recovery well.

(44) State well report (Well Log)--A log recorded on forms prescribed by the Department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the Executive Director.

§76.200. Licensing Requirements-General.

It shall be unlawful for any person to act as, or to offer to perform services as a driller or pump installer without first obtaining a license pursuant to the Texas Water Code, Chapters 32 and 33 and this chapter.

§76.201. Requirements for Issuance of a License.

(a) An application, accompanied by the required examination fee, must be submitted by each person desiring to obtain a well driller's or pump installer's license.

(b) Within 90 days after approval, each applicant must pass an examination.

(c) Upon passing the examination, an applicant must submit the required license fee to the Department.

(d) A licensee, not licensed to perform all types of well drilling and pump installation, may apply for designation for additional types of well drilling or pump installation. Applications for additional designations shall be accompanied by the appropriate application fee, and shall contain all information required by these rules for an initial license. Upon examination of the applicant's qualifications, the Executive Director, with advice of the Water Well Driller Advisory Council, shall deny or grant additional grades of licensure.

(1) An applicant who has demonstrated competency in well drilling shall be deemed qualified for licensing for Dewatering, Injection, and Monitoring drilling which are regulated under these rules.

(2) An applicant who has demonstrated competency in all types of pump installation shall be deemed qualified for a master pump installer's license.

§76.202. Applications for Licenses and Renewals.

(a) Application shall be made on forms provided by the Department.

(b) Application shall include:

(1) a letter of reference from a licensed well driller or pump installer with the same type of designation, as applicable, who has at least two years licensed experience in well drilling/pump installing;

(2) letters of reference from two well drilling or pump installer customers, as applicable, who are not related within the second degree of consanguinity to the applicant (i.e., may not be the applicant's spouse, or related to the applicant or applicant's spouse, as a child, grandchild, parent, sister, brother, or grandparent);

(3) the applicant's statement that he has drilled wells or installed pumps under the supervision of a driller or pump installer licensed under the Texas Water Code, Chapters 32 and 33 for two years or that he has other well drilling or pump installing experience as defined by this chapter ; and

(4) the applicant's sworn statement that he has read and will adhere to the requirements of the Texas Water Code, Chapters 32 and 33 and this chapter.

(c) The application must be received by the Department at least 45 days before a Council meeting in order to be scheduled for consideration at the next meeting.

(1) The Department will send written notice to the applicant informing the applicant that the application is administratively complete and accepted for filing, or that the application is deficient in specific areas and the applicant has 30 days to submit additional information to correct the deficiency or deficiencies.

(2) If the required information is not forthcoming from the applicant within 30 days of the date of mailing of the deficiency notice, the applicant will not be considered at the next Council meeting.

(3) If the applicant disagrees that the application is deficient, the applicant may file a motion for reconsideration of the Department's action.

(d) A license issued by the Department will expire annually from the date of issuance.

(e) Intentionally misstating or misrepresenting a fact on an application, renewal application, state well report, plugging report, or with any other information or evidence furnished to the Department in connection with official Departmental matters shall be grounds for assessing penalties and/or sanctions.

§76.203. Examinations.

(a) Examinations shall be designed to determine if the applicant possesses the requisite knowledge of pump installation techniques, well drilling, completion, and plugging methods and techniques, and of groundwater formations to ensure that the licensee will not present a serious risk of pollution of a groundwater source.

(b) Examinations shall be offered on a regular basis at a time and place designated by the Executive Director.

(c) Additional examinations shall be offered if more than ten (10) applicants petition the Executive Director in writing.

(d) An applicant may only take the examination twice within any 12-month period.

(e) Each time an applicant applies to retake the Department's examination an applicant must submit the re-examination fee.

§76.204. License and Apprentice Registration Renewal.

(a) On or before the expiration date of the license or registration, the licensee or registrant shall pay an annual renewal fee to the Department and submit an application for renewal.

(b) To renew a license, the licensee is required to show proof of four hours of continuing education with one-hour dedicated to the Water Well Driller/Pump Installer Rules and Regulation.

(c) If a person's license or registration is expired 90 days or less, the person may renew the license or registration by paying the Department the required renewal fee and a late fee equal to one-half the license or registration fee.

(d) If a person's license or registration is expired for more than 90 days but less than two years, the person may be eligible for a license or registration reissuance by paying all renewal fees and a late fee that is equal to the license or registration fee.

(e) If a person's license or registration has been expired for two years or more, the person may not renew the license or registration, but may apply for a new license or registration.

(f) A person's registration will not be renewed unless their supervisor's well driller or pump installer license is current.

(g) Requests to waive the Continuing Education requirements because the license holder does not supervise, contract with the public, or has retired from the drilling or pump service industry shall:

(1) be submitted in writing to the Department;

(2) contain a detailed explanation of the conditions under which the waiver is requested; and

(3) must be accompanied by the renewal fee.

(h) To re-instate a driller license to supervise and/or contract with the public, the driller must submit four hours of continuing education.

§76.205. Registration for Driller or Pump Installer Apprenticeship.

(a) A person who wishes to undertake a Department approved apprentice program under the supervision of a licensed well driller or a licensed pump installer who has been licensed for a minimum of two years, must submit a registration form to the Department and provide proof that the licensed well driller or pump installer has agreed to accept the responsibility of supervising the training. A driller or pump installer may not supervise more than three apprentices at any one time. Person's with both a well driller and a pump installer license may register a maximum of six apprentices (three of each type) at any one time.

(b) A registered pump installer apprentice shall represent his supervising pump installer during operations at the well site.

(c) The Department, with advice of the Council, may review driller and pump installer apprentice registration forms.

(d) A registered pump installer apprentice may not perform, or offer to perform, any services associated with procedures employed in the placement and preparation for operation of equipment and material used to obtain water from a water well. A pump installer apprentice's registration may be revoked for engaging in prohibited activities.

(e) Registration forms shall include:

(1) the name, business address, and permanent mailing address of the apprentice in training;

(2) the name, business address, and license number of the licensed driller or pump installer who will supervise the training;

(3) a brief description of the training program;

(4) the effective commencement and termination date of the training program;

(5) a statement by the licensed driller or pump installer accepting financial responsibility for the activities of the apprentice associated with the training program or undertaken on behalf of the licensed driller or pump installer; and

(6) the signatures of the apprentice and the licensed driller or pump installer and the sworn statement of both that the information provided is true and correct.

(f) If the application conforms to the rules and the apprentice program meets Department requirements, the Department will notify the apprentice and the supervising driller or pump installer that the apprentice has been accepted as a registered driller or pump installer apprentice and that the registration form shall remain in the Department's files for the stated duration of the apprentice period.

(g) If the application and apprentice program do not conform to the rules or is not approved, the Department shall notify the apprentice and the apprentice's supervising driller/pump installer of the disapproval.

§76.206. Responsibilities of the Apprentice.

(a) A registered driller/pump installer apprentice shall:

(1) represent his supervising driller/pump installer during operations at the well site;

(2) driller apprentice shall co-sign state well reports with the supervising driller; and

(3) perform services associated with drilling, deepening, or altering a well under the direct supervision of the supervising driller.

(b) A registered driller/pump installer apprentice may not perform, or offer to perform, any services associated with drilling, deepening, installing a pump or altering a well except under the direct supervision of a licensed driller/pump installer and/or according to the supervising driller's express directions. A driller/pump installer apprentice's registration may be revoked for engaging in prohibited activities.

(c) Upon completion of a training program of at least one year, an apprentice may apply to obtain a well driller's or pump installer's license or renew the status as an apprentice. The supervising driller, pump installer, or apprentice may terminate the training program by written notice to the Department. A reason for termination is not required. Upon receipt of the notice, the Department shall terminate the apprentice's status as a registered apprentice.

(d) The licensed driller or licensed pump installer shall be present at the well site at all times during all operations or may be represented by a registered apprentice capable of immediate communication with the licensed driller or licensed pump installer at all times, provided that the licensed driller and licensed pump installer is less than one hour travel time from the well site. The licensed driller shall visit the well site at least once each day of operation to direct the manner in which the operations are conducted.

(e) The supervising licensed driller or licensed pump installer is responsible for compliance with the Texas Water Code, Chapters 32 and 33 of this title (relating to Water Well Drillers and Water Well Pump Installers) and Department rules.

(f) If the supervising driller or pump installer is unavailable, he may be represented by any other licensed driller or licensed pump installer employed by the same company.

§76.220. Continuing Education.

(a) A licensed driller or pump installer is required to show proof of four (4) hours of continuing education every year with one-hour dedicated to rules and regulations related to the Well Driller/Pump Installer industry. Only courses approved by the Department can be used to satisfy this requirement.

(b) Competence in the performance of services requires that the licensee's knowledge and skills encompass current knowledge of the rules and regulations, drilling and completion, pump installation, plugging techniques, areas of health and safety, and of the occurrence and availability of groundwater to the extent that the performance of services by the driller or pump installer does not create a risk of water pollution. Therefore, licensees must maintain proficiency in the field of well drilling and pump installation.

(c) Each licensee must submit with the renewal request a copy of the certificates of completion as proof of meeting the continuing education requirements.

(d) Only courses or programs designated or approved by the Department shall be acceptable for license renewal.

(e) General requirements for approval of continuing education programs. The Department shall approve applications from providers for continuing education programs. Approval will be granted for a specific number of hours. To be approved, all continuing education programs must meet the following general requirements.

(1) Course content must relate directly to the Department regulated well industry and shall include (but not limited to) well and water well pump standards, geologic characteristics of the state, state groundwater laws and related regulations, well construction and pump

installation practices and techniques, areas of health and safety, environmental protection, technological advances, and business management.

(2) Approval of courses or programs shall be issued by the Department before the course or program is offered. A written request by the provider's entity shall provide a detailed narrative describing the courses or programs offered and the qualification of the instructors.

(3) Program presenters must be a graduate from an accredited four-year college or university with a degree in the field they are teaching or related experience may be substituted on a year for year basis.

(4) The program provider will give each attendee a certificate of completion and submit a complete attendance roster to the Department no later than thirty (30) days after the occurrence of each program and shall include the following information:

(A) name and address of individuals attending,

(B) program title,

(C) date(s) attended, and

(D) number of hours credited to attendees.

(5) Each program, course offering, or seminar shall be individually reviewed and approved.

(6) Courses or programs conducted by manufacturers specifically to promote their products will not be considered for continuing education.

(7) A provider may not train his or her own employees.

(f) To obtain approval of a continuing education program, a provider shall submit an application that includes the following information:

(1) business name, address and telephone number,

(2) business representative's name,

(3) name, location and date(s) of the program,

(4) number of continuing education hours credited, and

(5) description of the instructors' qualifications.

(g) The course application shall be accompanied by the following.

(1) A sample of the Certificate of Completion. The Certificate of Completion must include:

(A) name and brief description of course,

(B) name of provider,

(C) name and signature of the provider representative,

(D) course completion date,

(E) name of the person who attended,

(F) number of continuing education hours credited, and

(G) the Department's course number.

(2) A copy of the course outline. This outline should include a description of each segment of course and the time allotted. All segments must directly relate to the training course.

(3) Copies of videos, tapes, handouts, study materials and any additional documentation. These course materials will become property of the Department and will not be returned.

(4) A resume of qualifications for each instructor who will teach. Providers must explain an instructor's qualifications to teach the course including educational and well drilling or pump installer experience. (Note: An updated instructor's resume must be submitted when instructors are added or removed from the staff).

(5) Any other information or data that is necessary to adequately describe or explain the course.

(h) Responsibilities of the Recognized Private Provider.

(1) After the Department has approved an application, the provider is entitled to state upon its publication: "This course has been approved by the Texas Department of Licensing and Regulation for continuing education credit under the Well Drilling and Pump Installation Regulation."

(2) Providers shall retain student attendance records for a period of two years, make copies available to former students, and provide copies to the Department upon request.

(3) A participant roster shall be provided to the Department and shall include actual hours attended.

(4) Providers or instructors shall fully assist any employee of the Department in the performance of an audit or investigation of a complaint, and shall provide requested information within the time frame set by the Department.

(5) Providers shall notify the Department of the intent to provide an approved course at least 30 days before the date of the course.

(i) The approval of a program may be withdrawn or suspended by the Department if it is determined that:

(1) the program teaching method or program content has been changed without notice to the Department,

(2) a certificate of completion has been issued to an individual who did not attend or complete the approved program,

(3) certificates of completion are not given to all individuals who have satisfactorily completed the approved activity,

(4) fraud or misrepresentation occurred in the application process for program approval, maintenance or records, teaching method program content, or issuance of certificates for a particular course or program, or

(5) failure to notify the Department of the intent to provide a course at least 30 days prior to the course.

§76.300. Exemptions.

The following are not required to obtain a license under Chapters 32 and 33 of the Texas Water Code, however, must comply with standards set forth in §§76.701, 76.702, 76.1000, 76.1001, 76.1003 and 76.1004 of this chapter:

(1) any person who drills, bores, cores, or constructs a water well on his property for his own use.

(2) any person who assists in the construction of a water well under the direct supervision of a licensed water well driller and is not primarily responsible for the drilling operation;

(3) any person who, pursuant to 30 TAC, Chapter 334, Subchapter I: Underground Storage Tank Contractor Registration and Installer Licensing, possesses a Class A or Class B Underground Storage Tank (UST) Installers' license who drills observation wells within the backfill of the original excavation for UST's, including associated piping and pipe trenches (tank plumbing and piping), to a depth of no more than two feet below the tank bottom. However, if the total depth

exceeds 20 feet below ground surface, a licensed driller is required to drill the well;

(4) any person who drills environmental hand auger soil borings no more than 10 feet in depth;

(5) any person who installs or repairs water well pumps and equipment on his own property, or on property that he has leased or rented, for his own use;

(6) any person who assists in the procedure of pump installation under the direct supervision of a licensed installer and who is not primarily responsible for the installation;

(7) any person who is a ranch or farm employee whose general duties include installing or repairing a water well pump or equipment on his employer's property for his employer's use, but who is not employed or in the business of installation or repair of water pumps or equipment; or,

(8) any registered well driller apprentice or pump installer apprentice.

(9) pump manufacturers and sellers of new and used pumps and/or pump equipment including pump distributors and pump dealers who do not install pumps and/or pump equipment.

§76.600. Responsibilities of the Department--Certification by the Executive Director.

(a) The Department, with advice of the Council, shall review and pass upon each applicant's qualifications.

(b) In assessing an applicant's qualifications, the Department and the Council shall examine the letters of reference submitted, the applicant's experience and competence in well drilling or pump installing, and any other relevant information which may be presented including, but not limited to, compliance history.

(c) An applicant, at the discretion of the Department, may not be certified for up to one-year following the revocation of the applicant's license or a finding that the applicant operated without a license.

(d) After assessing the qualifications of an applicant, the Department, with advice of the Council, shall determine the type(s) of well drilling or pump installation, the applicant is competent to perform. Types of drilling include water well, monitoring well, injection well, and dewatering well. Types of pump installation include: windmills, hand pumps, and pump jacks; fractional to five horsepower; submersible five horsepower and over; and line-shaft turbine pumps.

(e) The Executive Director may waive any applicant requirements stated herein.

§76.601. Responsibilities of the Department--General.

The Department may initiate field inspections and investigations of well drilling, pump installation, capping, plugging, or completion operations.

§76.602. Responsibilities of the Department--Undesirable Water.

(a) The Department shall determine whether undesirable water or constituents have been encountered. If undesirable water or constituents are encountered, the Department shall determine whether the person having the well drilled, deepened, or altered intends to have the well plugged or completed within 30 days;

(b) Where a person having a well drilled, deepened, or altered does not intend to have the well plugged or completed as required by this chapter, or where he or she does not have the well plugged or completed within the prescribed time period, the Department shall direct that the person having the well drilled, deepened, or altered appear at a hearing and show cause why the well should not be plugged or completed.

§76.700. Responsibilities of the Licensee--State Well Reports.

Every well driller who drills, deepens, or alters a well, within this state shall record and maintain a legible and accurate State Well Report on forms prescribed by the Department. Each copy of a State Well Report, other than a Department copy, shall include the name, mailing address, and telephone number of the Department.

(1) Every well driller shall transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the State Well Report to the Department. Every well driller shall deliver or send by first-class mail a photocopy to the local groundwater conservation district, if applicable, and a copy to the owner or person for whom the well was drilled, within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.

(2) The person that plugs a well described in §76.702(a), (b), and (d) of this title (relating to Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging) shall, within 30 days after plugging is complete, transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the State Texas Plugging Report to the Department. The person that plugs the well shall deliver or send by first-class mail a copy to the local groundwater district and the owner or person for whom the well was plugged.

§76.701. Responsibilities of the Licensee--Reporting Undesirable Water or Constituents.

Each well driller shall inform, within 24 hours, the landowner or person having a well drilled, deepened, or otherwise altered or their agent when undesirable water or constituents have been knowingly encountered. The well driller shall submit, within 30 days of encountering undesirable water or constituents transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the Undesirable Water or Constituents Report. The well driller shall deliver or send by first-class mail a copy of the Undesirable Water or Constituents Report to the local groundwater conservation district if applicable and the landowner or personal having the well drilled, deepened, or altered.

§76.702. Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging.

(a) All well drillers and persons having a well drilled, deepened, or altered shall adhere to the provisions of this chapter prescribing the location of wells and proper drilling, completion, capping, and plugging.

(1) Where a landowner, or person having the well drilled, deepened, or altered, denies a licensed well driller access to the well to complete the well to established standards and thereby precludes the driller from performing his or her duties under the Texas Water Code, Chapters 32 and 33 and this title, the well driller shall file with the Department a statement to that effect within five days of the denial. The landowner or person authorizing the well work must complete the well to established standards within ten days of notification by the Department.

(2) It is the responsibility of the landowner or person having the well drilled, deepened, or otherwise altered, to cap or have capped, under standards set forth in §76.1004 of this title (relating to Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones), any well which is open at the surface.

(3) It is the responsibility of the landowner or person having the well drilled, deepened, or otherwise altered to plug or have plugged a well which is abandoned under standards set forth in §76.1004 of this title.

(b) It shall be the responsibility of each licensed well driller to inform a landowner or person having a well drilled, deepened, or altered that the well must be plugged by the landowner, a licensed driller, or a licensed pump installer if it is abandoned.

(c) It is the responsibility of the licensed well driller or landowner to see that when undesirable water or constituents is knowingly encountered, the well is plugged or is converted into a monitoring well under the standards set forth in §76.1004 of this title. For class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas Natural Resource Conservation Commission rules under 30 TAC, Chapter 331.

(d) It shall be the responsibility of the driller of a newly drilled well to place a cover or cap over the boring or casing, that is not easily removable, if the well is to be left unattended without a pump installed. It shall be the responsibility of the pump installer to place a cap over the casing that is not easily removable if the well is to be left unattended with the pump removed.

(e) A licensed well driller is responsible for assuring that when undesirable water or constituents is knowingly encountered, the well is plugged or completed forthwith pursuant to the following:

(1) Where a person or landowner having the well drilled, deepened, or altered denies a licensed driller access to a well which requires plugging or completion or otherwise precludes the driller from plugging or completing a well which has encountered undesirable water or constituents, the driller shall, within 48 hours, file a signed statement to that effect with the Department and provide a copy of the statement to the local groundwater conservation district. The statement shall indicate that:

(A) The driller, or person under his or her supervision, encountered undesirable water or constituents while drilling the well;

(B) The driller has informed the person having the well drilled, deepened, or otherwise altered that undesirable water or constituents were encountered and that the well must be plugged or completed pursuant to the Texas Water Code §32.017, relating to Plugging of Water Wells;

(C) The person or landowner having the well drilled, deepened, or altered has denied the driller access to the well;

(D) The reason, if known, for which access has been denied and,

(E) if known, whether the person having the well drilled, deepened, or otherwise altered intends to have the well plugged or completed.

(2) For class V wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas Natural Resource Conservation Commission rules under 30 TAC, Chapter 331.

(f) Each licensed well driller shall ensure that all wells are plugged, repaired, or properly completed pursuant to this Chapter and Texas Water Code §32.017, relating to Plugging of Water Wells. Each pump installer shall install or repair pumps pursuant to this title and Texas Water Code §33.014, relating to Completion, Repair, and Plugging of Water Wells.

(g) A licensed driller or licensed pump installer shall notify the Department, the local groundwater conservation district if required by the local authority, and the landowner or person having a well drilled or pump installed when he encounters water injurious to vegetation, land, or other water, and inform the landowner that the well must be plugged, repaired, or properly completed in order to avoid injury or pollution.

(h) A licensed driller or licensed pump installer who knows of an abandoned or deteriorated well, as defined by Texas Water Code §32.017 and §33.014, and §76.1005(a) of this tile (relating to Technical Requirements- Standards for Water Wells drilled before June 1, 1983), shall notify the landowner or person possessing the well that the well must be plugged or capped in order to avoid injury or pollution.

§76.703. Responsibilities of the Licensee--Standards of Completion for Public Water System Wells.

A licensed well driller shall complete a well supplying a public water system in accordance with plans approved by the Texas Natural Resource Conservation Commission under 30 TAC, Chapter 290 of this title (relating to Water Hygiene).

(1) The licensed well driller shall, to the best of his or her abilities, ascertain whether a well which is to be drilled, deepened, or altered is intended for use as part of a public water system and shall comply with all applicable rules and regulations of the Texas National Resource Conservation Commission under 30 TAC, Chapter 290 and any other local or regional regulations.

(2) The licensed well driller shall inform the Department of the well's intended use, by submitting a State Well Report.

(3) The person or landowner having the well drilled, deepened, or altered is responsible for ensuring that a well intended for use as a part of a public water system meets the current rules and regulations of the Texas National Resource Conservation Commission under 30 TAC, Chapter 290 and any other local or regional regulations.

§76.704. Responsibilities of the Licensee--Marking Vehicles and Equipment.

Licensee's shall mark their well rigs and pump installer vehicles used by them or their employees in the well drilling or pump installer business with legible and plainly visible identification numbers.

(1) The identification number to be used on rigs and vehicles shall be the licensee's license number.

(2) License numbers shall be printed, upon each side of every well rig or pump installer vehicle, not less than two inches high and in a color sufficiently different from the color of the vehicle or equipment so that the license number shall be plainly visual.

(3) A licensee shall have 30 days from the date a license is issued to see that all well rigs or pump installer vehicles used by him or his employees are marked as provided in paragraphs (1) and (2) of this section.

§76.705. Responsibilities of the Licensee--Representations.

(a) No licensee shall offer to perform services unless such services can be competently performed.

(b) A licensee shall accurately and truthfully represent to a prospective client his qualifications and the capabilities of his equipment to perform the services to be rendered.

(c) A licensee shall neither perform nor offer to perform services for which he is not qualified by experience or knowledge in any of the technical fields involved.

(d) A licensee shall not enter into a partnership or any agreement with a person, not legally qualified to perform the services to be

rendered, and who has control over the licensee's equipment and/or independent judgment as related to construction, alteration, or plugging of a well or installation of pumps or equipment in a well.

(e) A licensee shall not make false, misleading, or deceptive representations.

(f) A licensee shall make known to prospective clients, all adverse, or suspicions of adverse conditions concerning the quantity or quality of groundwater in the area. If there is any uncertainty regarding the quality of water in any well, the licensee shall recommend that the client have the suspected water analyzed.

§76.706. Responsibilities of the Licensee--Unauthorized Practice.

(a) A licensee shall inform the Department of any unauthorized well drilling or pump installation practice of which the licensee has knowledge.

(b) A licensee shall not aid or abet an unlicensed person to unlawfully drill or offer to drill wells or install pump equipment.

(c) A licensee shall, upon request of the Department, furnish any information the licensee possesses concerning any alleged violation of the Texas Water Code, Chapters 32 and 33 of this title (relating to Water Well Drillers or Water Well Pump Installers) or this chapter.

(d) A licensee shall have the following information on all proposals and invoices given to consumers: Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin Texas 78711, 1-800-803-9202, 512-463-7880.

§76.707. Responsibilities of the Licensee--Adherence to Statutes and Codes.

A licensee shall comply with Texas Occupations Code, Chapter 51, 16 TAC, Chapter 60, the Texas Water Code, Chapters 32 and 33, and this chapter in connection with all well drilling or pump installation services rendered.

§76.708. Responsibilities of the Licensee--Adherence to Manufacturers' Recommended Well Construction Materials and Equipment.

(a) It shall be the responsibility of the licensee to select the correct slot size for manufacturer well screen in a domestic (household use) water well to prevent sand/sediments from entering the well unless waived by the landowner or person having the well drilled in writing.

(b) It shall be the responsibility of the licensee to adhere to manufacturers' recommended pump sizing and wiring specifications.

(c) It shall be the responsibility of the licensee to select the proper hydraulic collapse pressure for casing to be installed.

§76.900. Disciplinary Actions.

(a) The Executive Director may assess an administrative penalty, reprimand a licensee, suspend or revoke a license, and the Texas Commission of Licensing and Regulation may assess administrative penalties or take any appropriate action described in Chapter 60 of this title (relating to the Texas Commission of Licensing and Regulation), Texas Occupations Code, Chapter 51, or the Texas Water Code, Chapters 32 and 33 for violations of the statutes or Department rules.

(b) If a person violates the Texas Water Code, Chapters 32 and 33, or a rule or order, of the Executive Director or Commission relating to the Code, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Code or Texas Occupations Code, Chapter 51, and Chapter 60 of this title.

§76.910. Disciplinary Actions--Disposition of Application.

The Department shall mail a notice to each applicant as to the disposition of their application within ten (10) days of the final decision. An applicant who disagrees with the Department's final decision may request a hearing.

§76.1000. Technical Requirements--Locations and Standards of Completion for Wells.

(a) Wells shall be completed in accordance with the following specifications and in compliance with the local groundwater conservation district rules or incorporated city ordinances:

(1) The annular space to a minimum of ten (10) feet shall be three (3) inches larger in diameter than the casing and filled from ground level to a depth of not less than ten (10) feet below the land surface or well head with cement slurry, bentonite grout, or eight (8) feet solid column of granular sodium bentonite topped with a two (2) foot cement atmospheric barrier, except in the case of monitoring, dewatering, piezometer, and recovery wells when the water to be monitored, recovered, or dewatered is located at a more shallow depth. In that situation, the cement slurry or bentonite column shall only extend down to the level immediately above the monitoring, recovery, or dewatering level. Unless the well is drilled within the Edwards Aquifer, the distances given for separation of wells from sources of potential contamination in subsection (b)(2) of this section may be decreased to a minimum of fifty (50) feet provided the well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressured filled to the depth of one hundred (100) feet to the surface provided the annular space is three inches larger than the casing. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata. Wells that are subject to completion standards of the Texas Natural Resource Conservation Commission under 30 TAC, Chapter 331 for class V injection wells, are exempt from this section.

(2) A well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressured filled to the depth of one hundred (100) feet to the surface provided the annular space is three inches larger than the casing may encroach up to five feet of the property line. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata.

(3) A well shall be located a minimum horizontal distance of fifty (50) feet from any water-tight sewage and liquid-waste collection facility, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates.

(4) Except as noted in paragraph (1) and (2) of this subsection, a well shall be located a minimum horizontal distance of one hundred fifty (150) feet from any concentrated sources of potential contamination such as, but not limited to, existing or proposed livestock or poultry yards, cemeteries, pesticide mixing/loading facilities, and privies, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates. A well shall be located a minimum horizontal distance of one hundred (100) feet from an existing or proposed septic system absorption field, septic

systems spray area, a dry litter poultry facility and fifty (50) feet from any property line provided the well is located at the minimum horizontal distance from the sources of potential contamination.

(5) A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal, so as to maintain a junction between the casing and pump column, and a steel sleeve extending a minimum of thirty six (36) inches above ground level and twenty four (24) inches below the ground surface.

(6) The following are exceptions to the property line distance requirement where:

(A) groundwater conservation district rules are in place regulating the spacing of wells;

(B) platted or deed restriction subdivision spacing of wells and on-site sewage systems are part of planning; or

(C) public wastewater treatment is provided and utilized by the landowner.

(b) In all wells where plastic casing is used, except when a steel or polyvinyl chloride (PVC) sleeve or pitless adapter, as described in paragraph (3) of this subsection, is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.

(1) The slab or block shall extend laterally at least two (2) feet from the well in all directions and have a minimum thickness of four (4) inches and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(2) The surface of the slab shall be sloped to drain away from the well.

(3) The top of the casing shall extend a minimum of twelve (12) inches above the land surface except in the case of monitoring wells when it is impractical or unreasonable to extend the casing above the ground. Monitoring wells shall be placed in a waterproof vault the rim of which extends two (2) inches above the ground surface and a sloping cement slurry shall be placed a minimum twelve (12) inches from the edge of the vault and two (2) feet below the base of the vault between the casing and the wall of the borehole so as to prevent surface pollutants from entering the monitoring well. The well casing shall have a locking cap that will prevent pollutants from entering the well. The annular space of the monitoring well shall be sealed with an impervious bentonite or similar material from the top of the interval to be tested to the cement slurry below the vault of the monitoring well.

(4) The well casing of a temporary monitoring well shall have a locking cap and the annular space shall be sealed from zero (0) to one (1) foot below ground level with an impervious bentonite or similar material; after 48 hours, the well must be completed or plugged in accordance with this section and §76.1004 of this title (relating to Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones).

(5) The annular space of a closed loop injection well used to circulate water or other fluids shall be backfilled to the total depth with impervious bentonite or similar material, closed loop injection well where there is no water or only one zone of water is encountered you may use sand, gravel or drill cuttings to back fill up to thirty (30) feet from the surface. The top thirty (30) feet shall be filled with impervious bentonite or similar materials and meets the standards pursuant to Texas Natural Resource Conservation Commission 30 TAC, Chapter 331.

(c) In wells where a steel or PVC sleeve is used:

(1) The steel sleeve shall be a minimum of 3/16 inches in thickness and/or the plastic sleeve shall be a minimum of Schedule 80 sun resistant and twenty four (24) inches in length, and shall extend twelve (12) inches into the cement, except when steel casing or a pitless adapter as described in paragraph (2) of this subsection is used. The casing shall extend a minimum of twelve (12) inches above the land surface, and the steel/plastic sleeve shall be two inches larger in diameter than the plastic casing being used and filled with cement; or

(2) A slab or block as described in paragraph (1) and (2) of this subsection is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells provided that:

(A) the adapter is welded to the casing or fitted with another suitably effective seal;

(B) the annular space between the borehole and the casing is filled with cement to a depth not less than twenty (20) feet below the adapter connection; and

(C) in lieu of cement, the annular space may be filled with a solid column of granular sodium bentonite to a depth of not less than twenty (20) feet below the adapter connection.

(d) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that differ in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.

(e) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(f) Each licensed well driller drilling, deepening, or altering a well shall keep any drilling fluids, tailings, cuttings, or spoils contained in such a manner so as to prevent spillage onto adjacent property not under the jurisdiction or control of the well owner without the adjacent property owners' written consent.

(g) Each licensed well driller drilling, deepening, or altering a well shall prevent the spillage of any drilling fluids, tailings, cuttings, or spoils into any body of surface water.

(h) Unless waived by written request from the landowner, a new, repaired, or reconditioned well or pump installation or repair on a well used to supply water for human consumption shall be properly disinfected. The well shall be properly disinfected with chlorine or other appropriate disinfecting agent under the circumstances. A disinfecting solution with a minimum concentration of fifty (50) milligrams per liter (mg/l) (same as parts per million), shall be placed in the well as required by the American Water Works Association (AWWA), pursuant to ANST/AWWA C654-87 and the United States Environmental Protection Agency (EPA).

(i) Unless waived in writing by the landowner, after performing an installation or repair, the licensed installer shall disinfect the well by:

(1) treating the water in the well casing to provide an average disinfectant residual to the entire volume of water in the well casing of fifty (50) mg/l. This may be accomplished by the addition of calcium hypochlorite tablets or sodium hypochlorite solution in the prescribed amounts;

(2) circulating, to the extent possible, the disinfected water in the well casing and pump column; and

(3) pumping the well to remove disinfected water for a minimum of fifteen (15) minutes.

(4) If calcium hypochlorite (granules or tablets) is used, it is suggested that the installer dribble the tablets of approximately five-gram (g) size down the casing vent and wait at least thirty (30) minutes for the tablets to fall through the water and dissolve. If sodium hypochlorite (liquid solution) is used, care should be taken that the solution reaches all parts of the well. It is suggested that a tube be used to pipe the solution through the well-casing vent so that it reaches the bottom of the well. The tube may then be withdrawn as the sodium hypochlorite solution is pumped through the tube. After the disinfectant has been applied, the installer should surge the well at least three times to improve the mixing and to induce contact of disinfected water with the adjacent aquifer. The installer should then allow the disinfected water to rest in the casing for at least twelve hours, but for not more than twenty-four hours. Where possible, the installer should pump the well for a minimum of fifteen (15) minutes after completing the disinfection procedures set forth above until a zero disinfectant residual is obtained. In wells where bacteriological contamination is suspected, the installer shall inform the well or property owner that bacteriological testing may be necessary or desirable.

(j) A test well that is drilled for exploring for groundwater must be completed or plugged within six (6) months unless such site is located within a groundwater conservation district where district rules shall prevail if applicable.

(k) Water wells located within public water supply system sanitary easements must be constructed to public well standards pursuant to 30 TAC, Chapter 290.

§76.1001. Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.

If a well driller knowingly encounters undesirable water or constituents and the well is not plugged or made into a completed monitoring well, the licensed well driller shall see that the well drilled, deepened, or altered is forthwith completed in accordance with the following:

(1) When undesirable water or constituents are encountered in a water well, the undesirable water or constituents shall be sealed off and confined to the zone(s) of origin.

(2) When undesirable water or constituents are encountered in a zone overlying fresh water, the driller shall case the water well from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of water quality.

(3) The annular space between the casing and the wall of the borehole shall be pressure grouted with positive displacement technique or the well is tremie pressured filled provided the annular space is three inches larger than the casing with cement or bentonite grout from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of groundwater. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(4) When undesirable water or constituents are encountered in a zone underlying a fresh water zone, the part of the wellbore opposite the undesirable water or constituent zone shall be filled with pressured cement or bentonite grout to a height that will prevent the entrance of the undesirable water or constituents into the water well. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(5) For class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas Natural Resource Conservation Commission under 30 TAC, Chapter 331.

§76.1002. Technical Requirements--Standards for Wells Producing Undesirable Water or Constituents.

(a) Wells completed to produce undesirable water or constituents shall be cased to prevent the mixing of water or constituent zones.

(b) The annular space between the casing and the wall of the borehole shall be pressured grouted with cement or bentonite grout to the land surface. Bentonite grout may not be used if a water zone contains chloride water above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(c) Wells producing undesirable water or constituents shall be completed in such a manner that will not allow undesirable fluids to flow onto the land surface except when the Department's authorization is obtained by the landowner or the person(s) having the well drilled.

§76.1003. Technical Requirements--Re-completions.

The landowner shall have the continuing responsibility of ensuring that a well does not allow the commingling of undesirable water or constituents with fresh water through the wellbore to other porous strata.

(1) If a well is allowing the commingling of undesirable water or constituents and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed in accordance with the applicable rules, the casing in the well shall be perforated and squeeze cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

(2) The Executive Director may direct the landowner to take proper steps to prevent the commingling of undesirable water or constituents with fresh water, or the unwanted loss of water.

§76.1004. Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.

(a) If a well is abandoned or deteriorating, all removable casing shall be removed from the well and the entire well pressure filled via a tremie pipe with cement from bottom up to the land surface.

(b) In lieu of the procedure in subsection (a) of this section, the well shall be pressure filled via a tremie tube with clean bentonite grout of a minimum 9.1 pounds per gallon weight followed by a cement plug extending from land surface to a depth of not less than two (2) feet, or if the well to be plugged has one hundred 100 feet or less of standing water the entire well may be filled with a solid column of 3/8 inch or larger granular sodium bentonite hydrated at frequent intervals while strictly adhering to the manufacturers' recommended rate and method of application. If a bentonite grout is used, the entire well from not less than two (2) feet below land surface may be filled with the bentonite grout. The top two (2) feet above any bentonite grout or granular sodium bentonite shall be filled with cement as an atmospheric barrier.

(c) Undesirable water or constituents, or the fresh water zone(s) shall be isolated with cement plugs and the remainder of the wellbore filled with clean bentonite grout of a minimum 9.1 weight followed by a cement plug extending from land surface to a depth of not less than two (2) feet.

(d) Large diameter hand dug and bored wells to one hundred (100) feet in depth may be plugged by back filling with compacted clay or caliche to surface. Leave mounded to compensate for settling.

(e) Drillers may petition the Department, in writing, for a variance from the methods stated in subsection (a) of this section. The variance should state in detail, an alternative method proposed and all conditions applicable to the well that would make the alternative method preferable to those methods stated in subsections (a) and (b) of this section.

(f) A non-deteriorated well which contains casing in good condition and is beneficial to the landowner can be capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least four hundred (400) pounds and constructed in such a way that the covering cannot be easily removed by hand.

§76.1005. Technical Requirements--Standards for Water Wells Drilled before June 1, 1983.

(a) Wells drilled prior to June 1, 1983, unless abandoned, shall be grandfathered from this chapter without further modification unless the well is found to be a threat to public health and safety or to water quality. The following will be considered a threat to public health and safety or to groundwater quality:

(1) annular space around the well casing is open at or near the land surface;

(2) an unprotected opening into the well casing that is above ground level;

(3) top of well casing below known flood level and not appropriately sealed;

(4) deteriorated well casing allowing commingling of aquifers or zones of water of different quality; and

(5) water wells with the well head below ground level unless the Department grants a variance.

(b) If the annular space around the well casing is not adequately sealed as set forth in this section, it shall be the responsibility of each licensed driller or licensed pump installer to inform the landowner that the well is considered to be a deteriorated well and must be recompleted when repairs are made to the pump or well in accordance with this chapter, and the following specifications.

(1) The well casing shall be excavated to a minimum depth of four (4) feet and the annular space shall be filled from ground level to a depth of not less than four (4) feet below the land surface with cement. 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) A cement slab or sealing block shall be placed above the cement around the well at the ground surface except when a pitless adapter as described in §76.1000(d)(2) of this title (relating to Technical Requirements--Locations and Standards of Completion for Wells) or a steel or plastic sleeve as described in §76.1000(d)(1) of this title is used.

(A) The slab or block shall extend laterally at least two (2) feet from the well in all directions and have a minimum thickness of four inches.

(B) The surface of the slab shall be sloped to drain away from the well.

(C) The top of the casing shall extend a minimum of twelve 12 inches above ground level or thirty six 36 inches above known flood prone areas and unprotected openings into the well casing that is above ground shall be sealed water tight.

(3) If deteriorated well casing is allowing commingling of aquifers or zones of water of different quality and causing degradation of any water including groundwater, the well shall be plugged according to §76.1004 of this title (relating to Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones) or repaired. Procedures for repairs shall be submitted to the Department for approval prior to implementation.

(c) If a licensed well driller or pump installer finds any of the procedures described by this section to be inapplicable, unworkable, or inadequate, alternative procedures may be employed provided that the proposed alternative procedures will prevent injury and pollution and that the procedures shall be submitted to the Department for approval prior to their implementation, except for class V injection wells pursuant to 30 TAC, Chapter 331.

(d) Well covers shall be capable of supporting a minimum of four hundred 400 pounds and constructed in such a way that they cannot be easily removed by hand.

(e) This section shall not apply to a public water supply system well.

§76.1006. Technical Requirements--Water Distribution and Delivery Systems.

(a) The licensee shall inform the landowner and well owner that the landowner and well owner are responsible for complying with the rules and regulations under the standards set forth in this chapter.

(b) A buried discharge line between the pump discharge and the pressure tank or pressure system in any installation, including a deep well turbine or a submersible pump, shall not be under negative pressure at any time. With the exception of jet pumps, a check valve or an air gap shall be installed in a water line between the well casing and the pressure tank. Either a check valve or an air gap, as applicable, shall be required on all irrigation well pumps whenever a pump is installed or repaired. All wells shall have either a check valve, or an air gap as applicable.

(c) Wells shall be vented with watertight joints except as provided by subsection (b) of this section.

(1) Watertight joints, where applicable pursuant to the provisions of this rule, shall terminate at least two (2) feet above the regional flood level or one (1) foot above the established ground surface or the floor of a pump room or well room, whichever is higher.

(2) The casing vent shall be screened and point downward.

(3) Vents may be offset provided they meet the provisions of this rule.

(4) Toxic or flammable gases, if present, shall be vented from the well. The vent shall extend to the outside atmosphere above the roof level at a point where the gases will not produce a hazard.

§76.1007. Technical Requirements--Chemical Injection, Chemigation, and Foreign Substance Systems.

(a) All irrigation distribution systems or water distribution systems into which any type of chemical (except disinfecting agents) or other foreign substances will be injected into the water pumped from water wells shall be equipped with an in-line, automatic quick-closing check valve capable of preventing pollution of the ground water. The required equipment shall be installed on all systems whenever a pump is installed or repaired or at the time of a chemical injection, Chemigation or foreign substance unit is added to a water delivery system or not

later than January 1, 2000, if the well has a chemical injection, Chemigation, or foreign substance unit in the delivery system. The type of check valve installed shall meet the following specifications:

(b) The body of the check valve shall be constructed of cast iron, stainless steel, cast aluminum, cast steel, or of a material and design that provides a sturdy integrity to the unit and is resistant to the foreign substance being injected. All materials shall be corrosion resistant or coated to prevent corrosion. The valve working pressure rating shall exceed the highest pressure to which the valve will be subjected.

(c) The check valve shall contain a suitable automatic, quick-closing and tight-sealing mechanism designed to close at the moment water ceases to flow in the downstream or output direction. The device shall, by a mechanical force greater than the weight of the closing device, provide drip-tight closure against reverse flow. Hydraulic back-pressure from the system does not satisfy this requirement.

(d) The check valve construction should allow for easy access for internal and external inspection and maintenance. All internal parts shall be corrosion resistant. All moving parts shall be designed to operate without binding, distortion, or misalignment.

(e) The check valve shall be installed in accordance with the manufacturer's specifications and maintained in a working condition during all times in which any fertilizer, pesticide, chemical, animal waste, or other foreign substance is injected into the water system. The check valve shall be installed between the pump discharge and the point of chemical injection or foreign substance injection.

(f) A vacuum-relief device shall be installed between the pump discharge and the check valve in such a position and in such a manner that insects, animals, floodwater, or other pollutants cannot enter the well through the vacuum-relief device. The vacuum-relief device may be mounted on the inspection port as long as it does not interfere with the inspection of other anti-pollution devices.

(g) An automatic low pressure drain shall also be installed between the pump discharge and the check valve in such a position and in such a manner that any fluid which may seep toward the well around the flapper will automatically flow out of the pump discharge pipe. The drain must discharge away from rather than flow into the water supply. The drain must not collect on the ground surface or seep into the soil around the well casing.

(1) The drain shall be at least three-quarter (3/4) inch in diameter and shall be located on the bottom of the horizontal pipe between the pump discharge and the check valve.

(2) The drain must be flush with the inside surface of the bottom of the pipe unless special provisions, such as a dam made downstream of the drain, forces seepage to flow into the drain.

(3) The outside opening of the drain shall be at least two (2) inches above the grade.

(h) An easily accessible inspection port shall be located between the pump discharge and the check valve, and situated so the automatic low-pressure drain can be observed through the port and the flapper can be physically manipulated.

(1) The port shall allow for visual inspection to determine if leakage occurs past the flapper, seal, seat, and/or any other components of the checking device.

(2) The port shall have a minimum four (4) inch diameter orifice or viewing area. For irrigation distribution systems with pipe lines too small to install a four-inch diameter inspection port, the check valve and other anti-pollution devices shall be mounted with quick disconnects, flange fittings, dresser couplings, or other fittings that allow for easy removal of these devices.

(i) Any check valve not fully meeting the specifications set forth in this section may on request to the Executive Director be considered for a variance.

§76.1008. Technical Requirements--Pump Installation.

(a) During any repair or installation of a water well pump, the licensed installer shall make a reasonable effort to maintain the integrity of ground water and to prevent contamination by elevating the pump column and fittings, or by other means suitable under the circumstances.

(b) This section shall include every type of connection device, including but not limited to, flange connections, hose-clamp connections, and other flexible couplings. Except as provided by this chapter, a pump shall be constructed so that no unprotected openings into the interior of the pump or well casing exist.

(1) A hand pump, hand pump head, stand, or similar device shall have a spout, directed downward.

(2) A power driven pump shall be attached to the casing or approved suction or discharge line by a closed connection. For the purposes of this section a closed connection is defined to be a sealed connection.

(c) The provisions of this section relating to the requirement of closed connections shall not apply to the following types of pumps and pumping equipment:

(1) sucker rod pumps and windmills; and

(2) hand pumps.

(d) A new, repaired, or reconditioned well, or pump installation or repair on a well used to supply water for human consumption shall be properly disinfected. The landowner may waive the disinfection process by submitting a written request to the driller or pump installer.

§76.1009. Technical Requirements--Variances--Alternative Procedures.

(a) If the party having the well drilled, deepened or altered, the licensed well driller, or the party, landowner or person drilling or plugging the well, finds any of the procedures prescribed by §76.1000 of this title (relating to Technical Requirements--Locations and Standards of Completion for Wells), §76.1001 of this title (relating to Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents), §76.1002 of this title (relating to Technical Requirements--Standards for Wells Producing Undesirable Water or Constituents), §76.1003 of this title (relating to Technical Requirements--Re-completions), §76.1004 of this title (relating to Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones) and §76.1005 of this title (relating to Technical Requirements--Standards for Water Wells drilled before June 1, 1983) inapplicable, unworkable, or inadequate, combinations of the prescribed procedures or alternative procedures may be employed, provided that the proposed alternative procedures will prevent injury and pollution.

(b) Proposals to use combinations of prescribed procedures or alternative procedures shall be considered application for a variance and must be submitted to the Department and provide a copy of the variance to the local groundwater conservation district for approval prior to their implementation.

(c) If a variance is not submitted prior to construction and the licensee or landowner or the designated agent believes a request is justified, such request shall be submitted to the Department and a copy of the variance provided to the local groundwater conservation district as soon as possible following completion of the well.

(d) This section shall not apply to a public water system well.

§76.1010. Appeals--Variances.

(a) Appeal of staff decision disapproving a variance or waiver application shall be submitted to the Executive Director and a copy of the appeal provided to the local groundwater conservation district within 14 days of notification of staff decision.

(b) The Executive Director shall determine whether or not to uphold the disapproval of the variance.

(c) The party making the appeal shall be advised in writing of the Executive Director's determination.

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

Filed with the Office of the Secretary of State, on July 24, 2001.

TRD-200104279
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 463-7348

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305, §401.312

The Texas Lottery Commission proposes amendments to 16 TAC §401.305 and §401.312, relating to the "Lotto Texas" On-Line Game rule and the "Texas Two Step" On-Line Game rule, respectively. The proposed amendments make the rules consistent with existing law and clarify current agency practices and procedures relating to the game rules. Additional proposed amendments to the "Lotto Texas" and "Texas Two Step" rules relating to the advertised jackpot make clear that the Commission will pay the advertised jackpot amount or, in the case of "Lotto Texas", the net present cash value of the advertised jackpot amount, depending on the payment option and consistent with the provisions of the rule. The Commission proposed rulemaking on Subchapter D, Chapter 401 and that proposal was published in the May 11, 2001 issue of the *Texas Register* (26 TexReg 3433). In connection with this rulemaking, the Commission received a comment that suggested that the text in the "Lotto Texas" game rule relating to paying the advertised jackpot and the language relating to the direct prize category percentage apportioned to the jackpot amount was conflicting. The proposed text in this rulemaking is to eliminate perceived potential conflicting language as raised by the commenter in the rulemaking on Subchapter D and, also, to clarify that the Commission will pay the advertised jackpot in connection with "Lotto Texas" and "Texas Two Step". The proposed amendments also clarify that if the direct and indirect prize category contributions are greater than the advertised jackpot amount, the difference will be added to the respective game's prize reserve fund and will be used for future jackpot prizes. The proposed amendments also define the phrase "advertised jackpot" to mean the jackpot amount the Commission establishes for each drawing and the amount the Commission authorizes its vendors to publicize. Additionally, prior to the Subchapter D rulemaking and this rulemaking, the Commission received a comment in which the commenter suggested the Commission reconsider the wording "cash value option" and instead use the phrase "net present cash value" in the "Lotto Texas" rule. The commenter believed the phrase, "cash value option" is not as clear in informing the player of what the jackpot prize amount would be if the player chose the cash value option as the phrase "net present cash value". Staff agrees with the commenter and proposes this new language. The proposed amendments also include a definition of "annual payment option" so players will have a better understanding of the meaning of this term at the time the player is making his/her purchase.

Government Code §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature (1999), requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). 16 TAC Chapter 401 has been reviewed in its entirety and the Commission determined that reasons for adopting certain sections continue to exist. The certain sections that have been readopted pursuant to Commission Order Number 00-0004, dated January 28, 2000, are set out in Exhibit "A" to the Order. The notice of the proposed rule review was published in the November 12, 1999, issue of the *Texas Register* (24 TexReg 10149). No comments were received regarding the agency's rule review of Chapter 401. The proposal of this rulemaking relating to the "Lotto Texas" On-Line Game rule is consistent with and, in part, the result of the agency's rule review.

Bart Sanchez, Financial Administration Director, has determined for each year of the first five years the sections are in effect there will be no foreseeable additional fiscal implications for state or local government as a result of enforcing or administering these rules. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing these sections.

Gary Grief, Lottery Operations Director, has determined that each of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of the proposed amendments will be the elimination of redundant or obsolete language and updating of language to current agency practice. Additionally, the Commission is making clear that it will pay the advertised jackpot amount.

Written comments on the proposed amendments may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. The comments must be received no later than 30 days after the proposal is published in the *Texas Register* to ensure that the comments will be considered.

The amendments are proposed under Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and

under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments affect Government Code, Chapter 466.

§401.305. "Lotto Texas" On-Line Game Rule.

(a) Lotto Texas. A Texas Lottery on-line game to be known as "Lotto Texas" is authorized to be conducted by the executive director under the following rules and under such further instructions and directives as the executive director may issue in furtherance thereof. If a conflict arises between this section and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence.

(b) Definitions. In addition to the definitions provided in §401.301 [~~§401.304~~] of this title (relating to General Definitions [~~On-Line Game Rules (General)~~]), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot--The jackpot amount the commission establishes for each Lotto Texas drawing and authorizes commission vendors to publicize. The advertised jackpot or share of the advertised jackpot is the amount the commission will pay as the annual payment option in 25 annual payments consistent with the provisions of this rule. The advertised jackpot is determined by estimating the direct prize category and may be increased prior to the draw by the commission based on sales projections.

(2) Annual payment option--The option selected if the player elects at the time the player purchases a ticket or if the player makes no election at the time the player purchases the ticket. The option is to be paid the advertised jackpot amount in 25 annual payments, in the event the player has a valid winning jackpot ticket and consistent with the provisions of the rule.

(3) [~~(1)~~] Net Present Cash value option--An election a player makes at the time the player purchases a ticket to be paid the net present cash value of the player's share of the advertised jackpot, in the event the player has a valid winning jackpot ticket. The net present cash value is the cost that the Comptroller of Public Accounts informs the commission is the cost to purchase a 25-year annuity on the first business day after the drawing. The term "net present cash value option" is synonymous with the terms "cash value option", "cash option", and "net present value".

(4) [~~(2)~~] Number--Any play integer from one through 54 inclusive.

(5) [~~(3)~~] Play--The six numbers selected on each play board and printed on the ticket.

(6) [~~(4)~~] Play board--A field of the 54 numbers found on the playslip.

(7) [~~(5)~~] Playslip--An optically readable card issued by the commission [~~Texas Lottery~~] used by players of Lotto Texas to select plays. There shall be five play boards on each playslip identified at A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Lotto Texas play shall be $1.00. A player may purchase up to five plays on one ticket. Multiple draws are available for up to 10 consecutive draws beginning with the current draw.

(d) Play for Lotto Texas.

(1) Type of play. A Lotto Texas player must select six numbers in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick. A winning play is achieved only when three, four, five, or six of the numbers selected by the player match, in any order, the six winning numbers drawn by the lottery.

(2) Method of play. The player may [~~will~~] use playslips to make number selections. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available or if a player is unable to complete a playslip, the on-line retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers. If offered by the commission [~~lottery~~], a player may leave all play selections to a random number generator operated by the computer, commonly referred to as Quick Pick. [~~"quick pick."~~]

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning numbers [~~number~~] drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Prizes for Lotto Texas.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Lotto Texas player who selects a matching combination of numbers will vary due to a pari-mutuel calculation, with the exception of the fourth prize, which is a guaranteed $5.00. The calculation of a prize shall be rounded down so that prizes can be paid in multiples of whole dollars. Each prize category breakage, [~~with the exception of the fourth prize breakage,~~] will carry forward to the next drawing for each respective prize category. [~~The fourth prize category breakage will be placed in the reserve fund. No prize amount shall be less than $5.00.~~] The pari-mutuel prize amounts, except the jackpot prize amount, are based on the total amount in the prize category for that Lotto Texas drawing distributed equally over the number of matching combinations in each prize category.
Figure: 16 TAC §401.305(e)(1) (No change.)

(2) Prize pool. The prize pool for Lotto Texas prizes shall be a minimum of 55% of Lotto Texas sales.

(3) Prize categories.

(A) First prize (jackpot).

(i) In the event of a prize winner who does not select the net present cash value option, the prize winner's share of the advertised jackpot shall be paid in 25 installments. To determine the annuitized future value of each share (prize amount), the annuitized future value of the advertised jackpot [~~prize category~~] is divided by the shares. A share is the matching combination, in one play, of all six numbers drawn by the commission [~~Texas Lottery~~] (in any order). Each share will be paid in 25 installments. The initial payment shall be paid only upon completion of all internal validation procedures. The subsequent 24 payments shall be paid annually by monies generated by the purchase of securities which shall be purchased through the Comptroller of Public Accounts-Treasury Operations, State of Texas, after each drawing for which lottery records reflect the sale of one or more winning Lotto Texas six of six plays, and the value of the 24 installments shall be determined by the face or market value of said securities at purchase. Annual installment payments shall be based on the annual maturity value of the securities purchased. The payment of annual annuities will be made on the 15th day of the anniversary of the month in which the ticket won. If the net present cash value of each share is equal to or greater than the amount required to pay an initial first-year cash installment and 24 subsequent annuitized annual installments yielding total payments greater than [~~of~~] $2 million [~~or greater~~], each share shall be paid in 25 installments in the same manner as described in this paragraph. If the net present cash value of each share is less than the amount required to pay an initial first-year cash installment and 24 subsequent

installments yielding total payments of $2 million or less, each share shall be paid the net present cash value of each share in one payment.

(ii) In the event of a prize winner who selects the net present cash value option, the prize winner's share will be paid in a single, lump sum payment based on the discounted, net present cash value of the prize winner's share of the advertised jackpot on the next business day after the drawing. The player must make the election of the net present cash value option at the time of purchasing a Lotto Texas ticket. If the player does not make any election at the time of purchasing a Lotto Texas ticket, the share will be paid in accordance with clause (i) of this subparagraph.

(iii) The six of six jackpot prize must be claimed at the Austin claim center. The advertised jackpot is determined by estimating the direct prize category. The total prize category contribution for a drawing will include the following.

(I) The direct prize category contribution may be 68.24% of the prize pool for the drawing.

(II) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(III) The commission will pay the advertised jackpot amount or the net present cash value of the advertised jackpot amount, depending on the payment option. If the direct and indirect prize category contributions are greater than the advertised jackpot amount, the difference will be added to the Lotto Texas prize reserve fund and will be used for future Lotto Texas jackpot prizes. If the direct and indirect prize category contributions are less than the advertised jackpot amount, the difference will be taken from the Lotto Texas prize reserve fund to fund the advertised jackpot amount.

(B) Second Prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any five of the six numbers drawn by the commission [~~Texas Lottery~~] (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 5.07% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage and/or roll-over from the previous drawing, if any.

(C) Third prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any four of the six numbers drawn by the commission [~~Texas Lottery~~] (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 12.51% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage and/or roll-over from the previous drawing, if any.

(D) Fourth prize. The prize amount is a guaranteed minimum $5.00. The difference between the prizes won and the direct prize category contribution will increase or decrease the prize reserve fund. The total prize category contribution will include the direct prize category contribution of 12.18% of the prize pool for the drawing. [~~Any roll-over amounts shall be added to the prize reserve fund. The total prize category contribution will include the following:~~]

~~*(i)* The direct prize category contribution shall be 12.18% of the prize pool for the drawing.~~

~~*(ii)* The indirect prize category contribution as determined by the executive director.~~]

(4) Prize reserve fund.

(A) The Lotto Texas prize reserve is 2.0% of the prize pool.

(B) The Lotto Texas prize reserve fund may be increased or decreased by the difference between the advertised jackpot and the first prize (jackpot) category's share of the prize pool and the fourth prizes won and that prize category's share of the prize pool [~~any amounts allocated to the prize pool and not paid to the winners. The Lotto Texas prize reserve fund may be increased or decreased, for example, by rounding down, paying Lotto Texas prizes, and roll-over amounts from the fourth prize~~]. The Lotto Texas prize reserve fund may be used only for the Lotto Texas game.

(f) Ticket purchases.

(1) Lotto Texas tickets may be purchased only at a licensed location from a lottery retailer authorized by the lottery director to sell on-line tickets.

(2) Lotto Texas tickets shall show the player's selection of numbers [~~number~~] or Quick Pick (QP) numbers, boards played, drawing date, jackpot payment option, and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Lotto Texas tickets must be purchased using official Lotto Texas playslips. Playslips which have been mechanically completed are not valid. Lotto Texas tickets must be printed on official Texas lottery paper stock and purchased at a licensed location through an authorized Texas lottery retailer's on-line terminal.

(g) Drawings.

(1) The Lotto Texas drawings shall be held each week on Wednesday and Saturday evenings at 9:59 p.m. Central Time except that the drawing schedule may be changed by the executive director, if necessary.

(2) Lotto Texas tickets will not be sold during the draw break for the Lotto Texas game [~~from 9:45 p.m. Central Time until 10 p.m. Central Time~~] on Wednesday and Saturday nights.

(3) The drawings will be conducted by lottery officials.

(4) Each drawing shall determine, at random, six winning numbers in accordance with Lotto Texas drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the commission [~~Texas Lottery~~] in accordance with the drawing procedures. The winning numbers shall be used in determining all Lotto Texas winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one commission [~~lottery~~] security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(6) A drawing will not be invalidated based on the financial liability of the commission [~~Texas Lottery~~].

(h) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

§401.312. "Texas Two Step" On-Line Game.

(a) Texas Two Step. A commission on-line game to be known as "Texas Two Step" is authorized to be conducted by the executive director under the following rules and under such further instructions and directives as the executive director may issue in furtherance thereof. If a conflict arises between this section and §401.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence.

(b) Definitions. In addition to the definitions provided in §401.301 [~~§401.304~~] of this title (relating to General Definitions [~~On-Line Game Rules (General)~~]), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot--The jackpot amount the commission establishes for each Texas Two Step drawing and authorizes commission vendors to publicize.

(2) [~~(1)~~] Number--Any play integer from 1 through 35 inclusive.

(3) [~~(2)~~] Play--The five numbers selected on each play board and printed on the ticket. Four numbers are selected from the first field of 35 numbers and one number is selected from the second field of 35 numbers.

(4) [~~(3)~~] Play board--Two fields of 35 numbers each found on the playslip.

(5) [~~(4)~~] Playslip--An optically readable card issued by the commission used by players of Texas Two Step to select plays. There shall be five play boards on each playslip identified at A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Texas Two Step play shall be $1.00. A player may purchase up to five plays on one ticket. Multiple draws are available for up to 10 consecutive draws beginning with the current draw.

(d) Play for Texas Two Step.

(1) Type of play. A Texas Two Step player must select four numbers from the first field of numbers from 1 through 35 and an additional one number from the second field of numbers from 1 through 35 in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick. A winning play is achieved only when zero, one, two, three or four numbers selected from the first field of 35 numbers match, in any order, the four numbers drawn from the first field of 35 numbers in addition to matching either zero or one number drawn from the second field of 35 numbers.

(2) Method of play. The player may use playslips to make number selections. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available or if a player is unable to complete a playslip, the on-line retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers. A player may leave all play selections to a random number generator operated by the computer, commonly referred to as Quick Pick.

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning number drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Prizes for Texas Two Step.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Texas Two Step player who selects a matching combination of numbers will vary due to a pari-mutuel calculation, with the exception of the sixth and seventh prize, which are guaranteed prizes of $7.00 and $5.00, respectively. The calculation of pari-mutuel prize categories 2 through 5 shall be rounded down so those prizes can be paid in multiples of whole dollars. Each prize category breakage will carry forward to the next drawing for each respective prize category. [~~No prize amount shall be less than $5.00.~~] The prize amounts, except the First prize (jackpot), are based on the total amount in the prize category for that Texas Two Step drawing distributed equally over the number of matching combinations in each prize category.
Figure: 16 TAC §401.312(e)(1) (No change.)

(2) Prize pool. The prize pool for Texas Two Step prizes shall be a minimum of 50% of Texas Two Step sales.

(3) Prize categories.

(A) First prize (jackpot)--The prize winner's share of the first prize or advertised jackpot is won by matching all four numbers drawn (in any order) from the first field of 35 numbers in addition to matching the number drawn from the second field of 35 numbers. The jackpot share (prize amount) shall be calculated by dividing the advertised jackpot [~~prize category contributions~~] by the number of shares for the prize category. Each first prize or jackpot share will be paid in one lump sum payment. The first prize or jackpot share of $600 to $999,999 [~~$300,000~~] must be claimed at a commission claim center. First prize or jackpot share of $1,000,000 [~~$300,001~~] or larger must be claimed at the commission headquarters in Austin. The advertised jackpot is determined by estimating the direct prize category. The total prize category contribution for a drawing will include the following.

(i) The direct prize category contribution may [~~shall~~] be 45.56% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(iii) The commission will pay the advertised jackpot amount for Texas Two Step. If the direct and indirect prize category contributions are greater than the advertised jackpot amount, the difference will be added to the Texas Two Step prize reserve fund [~~carry forward to the next drawing for the first prize or jackpot prize category~~] and will be used for future Texas Two Step jackpot prizes. If the direct and indirect prize category contributions are less than the advertised jackpot amount, the difference will be taken from the Texas Two Step prize reserve fund to fund the advertised jackpot amount.

(B) Second Prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of all four numbers drawn (in any order) from the first field of 35 numbers in addition to matching zero numbers from the second field of 35 numbers drawn by the commission. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 5.57% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage from the previous drawing, if any.

(C) Third prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one

play, of three of four numbers drawn (in any order) from the first field of 35 numbers in addition to matching the number from the second field of 35 numbers drawn by the commission. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 0.68% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage from the previous drawing, if any.

(D) Fourth prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of three of four numbers drawn (in any order) from the first field of 35 numbers in addition to matching zero numbers from the second field of 35 numbers drawn by the commission. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 9.20% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage from the previous drawing, if any.

(E) Fifth prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of two of four numbers drawn (in any order) from the first field of 35 numbers in addition to matching the number from the second field of 35 numbers drawn by the commission. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 6.09% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage from the previous drawing, if any.

(F) Sixth prize. The prize amount is a guaranteed minimum $7.00. The difference between the prizes won and the direct prize contribution will increase or decrease the prize reserve fund. The total prize category contribution will include the direct prize category contribution of 13.73% of the prize pool for the drawing.

(G) Seventh prize. The prize amount is a guaranteed minimum $5.00. The difference between the prizes won and the direct prize contribution will increase or decrease the prize reserve fund. The total prize category contribution will include the direct prize category contribution of 17.17% of the prize pool for the drawing.

(4) Prize reserve fund.

(A) The Texas Two Step prize reserve fund is 2.0% of the prize pool.

(B) The Texas Two Step prize reserve fund may be increased or decreased by the difference between the first (advertised jackpot), sixth, and seventh actual prizes won and that prize category's share of the prize pool. The Texas Two Step prize reserve fund may be used only for the Texas Two Step game.

(f) Ticket purchases.

(1) Texas Two Step tickets may be purchased only at a licensed location from a commission retailer authorized by the lottery director to sell on-line tickets.

(2) Texas Two Step tickets shall show the player's selection of numbers or Quick Pick (QP) numbers, boards played, drawing date(s) and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Texas Two Step tickets must be purchased using official Texas Two Step playslips. Playslips which have been mechanically completed are not valid. Texas Two Step tickets must be printed on official Texas Lottery paper stock and purchased at a licensed location through an authorized commission retailer's on-line terminal.

(g) Drawings.

(1) The Texas Two Step drawings shall be held each week on Tuesday and Friday evenings at 9:59 p.m. Central Time except that the drawing schedule may be changed by the executive director, if necessary.

(2) Texas Two Step tickets will not be sold during the draw break for the Texas Two Step game on Tuesday and Friday evenings.

(3) The drawings will be conducted by commission officials.

(4) Each drawing shall determine, at random, five winning numbers in accordance with Texas Two Step drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Texas Two Step winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one commission security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(6) A drawing will not be invalidated based on the financial liability of the commission.

(h) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

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 July 27, 2001.

TRD-200104378
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5215

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.5

The Texas Higher Education Coordinating Board proposes amendments to §1.5 concerning the membership in Board committees. Specifically, this amendment provides that each member of the Board is an ex-officio member of each committee and may participate in all committee meetings and vote on any committee actions.

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

Ms. Greenberg has also determined that for each year of the first five years these proposed new rules are in effect, the public benefit anticipated as a result of administering the sections will be the increased flexibility of Board committees to take action. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed amendment to the rules may be submitted to Ms. Jan Greenberg, General Counsel, P. O. Box 12788, Austin, Texas 78711.

The amendment to the rules is proposed under the Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to adopt rules

The amendment to the rules affect the Texas Education Code, Section 61.027.

§1.5. Coordinating Board Committees

(a) The chair of the Board shall appoint committees from the Board's membership as appropriate to conduct the business of the Coordinating Board and shall designate the chair and vice chair of each committee.

(b) A committee meeting may be called by the committee chair. The designated committee chair shall conduct each committee meeting. [~~Each committee meeting shall be conducted by the designated committee chair but each member of the Board may participate in all committee meetings and may vote on any committee action.~~]

(c) Committees will adopt recommendations on the agenda items for consideration by the Coordinating Board. In the event a decision cannot be reached by a committee on any agenda item, the Coordinating Board will consider that agenda item without a recommendation from the committee.

(d) Each member of the Board is an ex-officio member of each committee and may participate in all committee meetings and vote on any committee actions.

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 July 26, 2001.

TRD-200104338

Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2001
For further information, please call: (512) 427-6162

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CHAPTER 5. PROGRAM DEVELOPMENT
SUBCHAPTER P. TESTING AND DEVELOPMENTAL EDUCATION

19 TAC §5.312, §5.314

The Texas Higher Education Coordinating Board proposes amendments to §5.312 and §5.314 concerning the Texas Academic Skills Program (TASP). Specifically, the amendments to §5.314(b)(10) exempts from TASP requirements members of the armed forces serving on active duty military and §5.314(b)(11) exempts from TASP requirements certain students who graduate from high school after completing the recommended or advanced high school curriculum with a 3.5 or higher GPA. The amendments to §5.312(1) defines "Accredited Private High School" and §5.312(5) defines "Equivalent or Similar Curriculum". Section 5.314(a)(6) has been amended for clarity; and §5.314(b)(2)(B)(ii) has been deleted since it no longer applies.

Dr. Leticia Hinojosa, Assistant Commissioner for Participation and Success, has determined that for each year of the first five years the proposed amendments are in effect, there will be decreased cost in the amount of $594,180 to state or local government as a result of enforcing or administering the rules.

Dr. Hinojosa has also determined that for each year of the first five years these amendments to the rules are in effect, the public benefit anticipated as a result of administering the sections will be an increased number of active-duty military personnel enrolling in Texas public institutions of higher education and a slight increase in the number of students just graduating from high school who will be exempt from the TASP requirements. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rules may be submitted to Dr. Leticia Hinojosa, Assistant Commissioner for Participation and Success, P. O. Box 12788, Austin, Texas 78711.

The amendments to the rules are proposed under the Texas Education Code, §51.306 and §51.3061 which provides the Coordinating Board with the authority to adopt rules concerning the TASP.

The amendments to the rules affect the Texas Education Code, §51.306 and §51.3061, as amended by House Bill 234 and House Bill 2109, 77th Texas Legislature.

§5.312. Definitions.

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

(1) Accredited Private High School -- Non-public schools accredited by the Texas Private School Accreditation Commission

(TEPSAC), or, if outside of the State of Texas, accredited by an organization similar to the TEPSAC.

(2) [~~(1)~~] Alternative Test -- A test instrument other than the TASP Test approved by the Board for use by an institution to initially test a student for TASP purposes.

(3) [~~(2)~~] Blind student and Deaf student -- Students who are blind or deaf persons as defined by the Texas Education Code, § 54.205(a).

(4) [~~(3)~~] Developmental Education -- Courses, tutorials, laboratories, or other efforts to bring student skill levels in reading, writing and mathematics to entering college level. English as a Second Language (ESL) courses may be considered developmental education, but only when they are used to bring student skill levels in reading or writing to entering college level. The term does not include courses in study skills or thinking skills.

(5) Equivalent or Similar Curriculum -- At an accredited private high school or at a high school out-of-state, a high school curriculum that has been shown by a student to be equivalent or similar to the recommended or advanced high school curriculum in Texas.

(6) [~~(4)~~] Minimum Passing Standard -- Statewide testing standard each undergraduate student who enters a public institution of higher education, unless exempt, must meet or exceed on measures of reading, writing and mathematics skills in order to fulfill requirements specified in Texas Education Code, §51.306.

(7) [~~(5)~~] Non--Degree Credit Course - A course which may not be counted toward a degree or certificate. The term includes developmental, pre-collegiate and continuing education courses.

(8) [~~(6)~~] Testing irregularity -- Any occurrence in the course of administering the TASP Test or detected after administration of the test that violates rules of test participation, standards of test security and/or academic honesty.

(9) [~~(7)~~] TASP -- The Texas Academic Skills Program specified in Texas Education Code, § 51.306.

(10) [~~(8)~~] TASP requirements -- The statutory requirements of Texas Education Code, Section 51.306.

(11) [~~(9)~~] Texas Academic Skills Program (TASP) Test -- The test, other than an alternative test, as defined and reviewed by Texas higher education faculty and approved by the Board, that fulfills the statutory requirements of Texas Education Code, § 51.306. The test shall be uniformly administered statewide on days prescribed by the Board and shall be scored by the testing contractor. The test measures college readiness in reading, writing and mathematics and includes a written essay. It is administered under secure conditions and each student is provided with diagnostic information regarding test performance.

(12) [~~(10)~~] Upper-division course -- Any degree credit course beyond the sophomore level as defined by a four-year senior university, and any degree credit course offered by an upper-level institution.

§5.314. Eligibility and Exemptions/Exceptions.

(a) Eligibility

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

(6) After successful completion of an appropriate developmental program, a student must retake appropriate sections of the TASP Test [~~unless the student has earned a grade of "B" or better in an approved course~~].

(7) - (12) (No change.)

(b) Exemptions/Exceptions

(1) (No change.)

(2) A student who performs at or above a level set by the Board on the ACT, Scholastic Assessment Test (SAT) or exit-level Texas Assessment of Academic Skills (TAAS) shall be exempt from TASP requirements. This exemption shall be in effect for five years from the date the ACT or SAT was taken and for three years from the date the TAAS Test was taken. While a test may be retaken, ACT or SAT scores meeting or exceeding the standard set by the Board must be achieved on a single test administration. TAAS scores must meet or exceed exemption standards on the first attempt for each section. Standards for exemption from TASP requirements are:

(A) (No change.)

(B) SAT:

~~[(i)]~~ for a test taken in April 1995 or later, a combined verbal and mathematics score of 1070 with a minimum of 500 on both the verbal and the mathematics tests; or

~~[(ii)~~ ~~for a test taken prior to April 1995, a combined verbal and mathematics score of 970, with a minimum of 420 on the verbal test and 470 on the mathematics test; or]~~

(C) TAAS: a minimum scale score of 1770 on the writing test, a Texas Learning Index (TLI) of 86 on the mathematics test and 89 on the reading test.

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

(10) A student who is serving on active duty as a member of the armed forces of the United States.

(11) A student who graduates from a public high school or an accredited private high school in any state with a grade point average of 3.5 or higher on a 4.0 scale or the equivalent and completed the recommended or advanced high school curriculum or an equivalent or similar curriculum at an accredited private high school or at a high school outside of Texas. This exemption is effective only for a student who enrolls in an institution of higher education on or before the second anniversary of the date the student graduated from high school.

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

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER T. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §5.420

The Texas Higher Education Coordinating Board proposes amendments to §5.420 concerning the Permanent Fund for Nursing, Allied Health, and Other Health-Related Education Grant Program in accordance with recent legislation (Senate Bill 572) and Texas Education Code, §§63.201 - 63.203. Specifically, this amendment will implement legislation to give

priority to eligible institutions with nursing programs that prepare students for initial licensure as registered nurses.

Dr. Marshall Hill, Assistant Commissioner for Universities and Health-Related Institutions, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Hill has also determined that for each year of the first five years these proposed new rules are in effect, the public benefit anticipated as a result of administering the sections will be the additional attention given to addressing the shortage of nurses. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed amendment to the rules may be submitted to Dr. Marshall Hill, Assistant Commissioner for Universities and Health-Related Institutions, P.O. Box 12788, Austin, Texas 78711.

The amendments to the rules are proposed under the Texas Education Code, §63.202, which directs the Coordinating Board to adopt rules for the award of grants from investment returns of the Permanent Fund.

The amendments to the rules affect the Texas Education Code, §63.201 and §63.202.

§5.420. Nursing, Allied Health and Other Health-related Education Grant Program.

(a) - (h) (No change.)

(i) This subsection pertains to the 2002-03 biennium only (rules are effective only from September 1, 2001 to August 31, 2003).

(1) Funds available to the program for the 2002-03 biennium will be distributed as grants in proportions determined by the Commissioner through three separate programs:

(A) a competitive, peer-reviewed process, as described in subsection (a)-(h) of this section;

(B) a competitive, peer-reviewed process for eligible institutions proposing to address the shortage of registered nurses, as described in subsections (a)-(h) unless amended in subsections (i)(2) and (i)(3) of this section; and

(C) a funding formula for eligible institutions, as amended in subsection (i)(2) of this section, that are seeking to increase enrollments in their nursing programs. The funding formula will give financial incentives to nursing faculty to provide clinical and classroom instruction in addition to carrying a full teaching load. In implementing a funding formula, the Board staff will consider semester credit hours and full-time equivalent faculty positions and other data reported by or requested of eligible institutions for each fall semester of the biennium.

(2) In subsection (a)(4), of this section, eligible institutions, as they pertain to subsections (i)(1)(B), and (i)(1)(C) of this section, are institutions of higher education that offer nursing programs that prepare students for initial licensure as registered nurses, including two-year institutions of higher education and public and independent or private institutions of higher education.

(3) In subsections (a)(5), and (a)(8), of this section, the following pertain to subsection (i)(1)(B) of this section:

(A) Eligible programs - Nursing initiatives that propose to address the shortage of registered nurses by developing new or existing activities and projects, that will promote innovation in the recruitment and retention of nursing students and faculty.

(B) Minimum award - Minimum award is $10,000 per award in any fiscal year.

(4) In subsection (a)(8) of this section, as it pertains to subsection (j)(1)(A) of this section, the minimum award will be $10,000.

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

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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CHAPTER 8. CREATION, EXPANSION, DISSOLUTION, OR CONSERVATORSHIP OF PUBLIC COMMUNITY/JUNIOR COLLEGE DISTRICTS

SUBCHAPTER E. BRANCH CAMPUS MAINTENANCE TAX

19 TAC §8.98

The Texas Higher Education Coordinating Board proposes amendments to §8.98 concerning the establishment of a branch campus maintenance tax. Specifically, this amendment will clarify the process for a county or school district governing board in establishing a branch campus maintenance tax.

Dr. Glenda Barron, Assistant Commissioner for Community and Technical Colleges, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these proposed new rules are in effect, the public benefit anticipated as a result of administering the sections will be the clarification of the process for a county or school district governing board seeking authority to hold a branch campus maintenance tax election. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed amendment to the rules may be submitted to Dr. Glenda Barron, Assistant Commissioner for Community and Technical Colleges, P.O. Box 12788, Austin, Texas 78711.

The amendments to the rule are proposed under the Texas Education Code, §130.001(b)(3) which provides the Coordinating Board with the authority to adopt standards for the operation of public junior colleges and prescribe the rules and regulations,

and §130.087, which allows a governing body of a school district or a county to levy a junior college district branch campus maintenance tax.

The amendments to the rule affect the Texas Education Code, §130.087, Branch Campus Maintenance Tax.

§8.98. Presentation of a Certified Petition to the Board

(a) Upon submission of a petition for an election to authorize a branch campus maintenance tax to a governing body of an independent school district or county, the governing body may propose an election and submit to the Commissioner a feasibility study and survey. Upon approval by the Commissioner, the governing body may enter an order for an election.

(b) [~~(a)~~] The governing body of a county with a population of 150,000 or less, on completion and approval of the feasibility study and survey by the Commissioner, on its own motion and without presentation and approval of a certified petition to the Board may order [~~propose~~] an election to authorize a branch campus maintenance tax.

(c) [~~(b)~~] The governing body of an independent school district or county notwithstanding subsection (b) [~~(a)~~] of this section, shall present a certified petition to the Commissioner who shall then present it to the Board for approval or disapproval.

(d) [~~(c)~~] After the petition and any additional documentation or information are presented to the Commissioner, a minimum of 45 days must elapse between the date on which the petition and supporting documents are received by the Commissioner and the quarterly meeting of the Board when the Board will consider the petition.

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 9. PROGRAM DEVELOPMENT IN PUBLIC COMMUNITY/JUNIOR COLLEGE DISTRICTS AND TECHNICAL COLLEGES SUBCHAPTER F. WORKFORCE CONTINUING EDUCATION COURSES

19 TAC §§9.113 - 9.116

The Texas Higher Education Coordinating Board proposes amendments to §§9.113, 9.114, 9.115, 9.116 concerning workforce continuing education courses. Specifically, these amendments will remove out-of-date references to the "Continuing Education Guidelines and Common Course Manual," a discontinued publication. In addition, they will allow the Commissioner to make limited exceptions to the minimum requirement for length of workforce continuing education courses to incorporate a recommendation made by an advisory committee.

Dr. Glenda Barron, Assistant Commissioner for Community and Technical Colleges, has determined that for each year of the first five years the proposed amendments are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. Although there will be no fiscal impact for the current biennium, there would likely be a small increase in the total number of workforce continuing education contact hours reported for funding in future biennia. Assuming that on average each two-year college campus might implement one shorter course, the estimated increase in formula funding costs statewide would be approximately $120,000 annually for the five years following the current biennium.

Dr. Barron has also determined that for each year of the first five years these proposed amendments are in effect, the public benefit anticipated as a result of administering the sections will be the ability of community and technical colleges to deliver additional needed workforce education courses. Delivery of workforce continuing education courses to employees of small businesses might also be enhanced. Economic costs to persons who are required to comply with the section as proposed will be reduced. Local employment will be affected in a positive manner by the availability of appropriate workforce continuing education courses that are certified by local, state, or national licensing, certifying, regulatory, or accrediting agencies but consist of fewer than seven contact hours.

Comments on the proposed amendments to the rules may be submitted to Dr. Glenda Barron, Assistant Commissioner for Community and Technical Colleges, P.O. Box 12788, Austin, Texas 78711.

The amendments to the rules are proposed under the Texas Education Code, §§54.051(n), 54.545, 61.051(j), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3)-(4), 130.003(e)(4), and 130.006, which authorizes the Coordinating Board to adopt policies, enact regulations, and establish rules for public community/junior and technical colleges for the coordination of workforce continuing education courses eligible for state appropriations.

The amendments do not affect any state statutes, article, or codes.

§9.113. General Provisions.

(a) (No change.)

[~~(b) Workforce continuing education courses shall be approved for five years from the beginning of the quarter following the approval date. The termination date for each course shall be reflected on the approved course list. Any course not offered within a five-year period shall be deleted from the approved course list.~~]

(b) [~~(c)~~] Any workforce continuing education program meeting or exceeding 360 contact hours shall be subject to all of the requirements for workforce education programs for state appropriations as outlined in Chapter 9, Subchapter E of this title (relating to New Certificate and Associate Degree Programs).

(c) [~~(d)~~] Any workforce continuing education program meeting or exceeding 780 contact hours in length must result in the award of semester or quarter credit hours and be applicable to a certificate and an applied associate degree program.

§9.114. Application and Approval Procedures for Workforce Continuing Education Courses.

(a) Any workforce continuing education course listed in the [~~Continuing Education Guidelines and Common Course Manual (CCM) or the~~] Workforce Education Course Manual (WECM) may be

offered by any public community/junior or technical college without prior approval by the Board. Courses in the current [~~CCM or~~] WECM are valid until revised or deleted by subsequent updates of the [~~CCM or~~] WECM.

(b) All workforce continuing education courses shall meet the guidelines outlined in the Guidelines for Instructional Programs in Workforce Education as approved by the Board[~~, the Continuing Education Guidelines and Common Course Manual,~~] and the Workforce Education Course Manual.

§9.115. Funding.

(a) (No change.)

(b) [~~All~~] Workforce continuing education courses with fewer than seven (7) contact hours of instruction will not receive state funding unless the specific type and length of instruction are required by local, state, or national licensing, certifying, regulatory, or accrediting agencies. [~~shall include no fewer than seven (7) contact hours of instruction for institutions to receive state funding.~~]

§9.116. Reporting to the Board.

Contact hours for workforce continuing education courses from public community/junior and technical colleges must be determined and reported in compliance with Board policy as outlined in the Guidelines for Instructional Programs in Workforce Education as approved by the Board, the [~~Continuing Education Guidelines and Common Course Manual,~~] Workforce Education Course Manual, and state law.

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

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Gary Prevost
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Texas Higher Education Coordinating Board
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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER J. TEXAS FUND FOR GEOGRAPHY EDUCATION

19 TAC §§13.180 - 13.187

The Texas Higher Education Coordinating Board proposes new §§13.180 - 13.187 concerning the Texas Fund for Geography Education. Specifically, these new sections will establish the Texas Fund for Geography Education and provide for its management.

Dr. Roger Elliott, Assistant Commissioner for Finance, Campus Planning and Research, has determined that in the first year of the first five years the new rules are in effect, there will be a cost to the state of $500,000, but no fiscal implications exist for the four years thereafter as a result of enforcing or administering the rules.

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

Comments on the new rules may be submitted to Dr. Roger Elliott, Assistant Commissioner for Finance, Campus Planning and Research, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §§61.941 - 61.945 which provides the Coordinating Board with the authority to enter an agreement with the National Geographic Society to create the Texas Fund for Geography Education and to appoint a committee to manage the fund.

The new rules affect the Texas Education Code, §§61.941 - 61.945.

§13.180. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter X, Texas Fund for Geography Education. These rules establish procedures to administer the fund as prescribed in the Texas Education Code, §§ 61.942 through 61.945.

(b) Scope. Unless otherwise noted, this subchapter applies to the National Geographic Society, the Texas Higher Education Board, and any institution seeking funding from the Texas Fund for Geography Education.

(c) Purpose. This subchapter establishes guidelines for the creation and implementation of the Texas Fund for Geography Education, which will support projects to improve the quality of geography education in Texas and promote a better understanding of Texas by all its residents.

§13.181. Definitions.

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

(1) Agreement - The agreement between the National Geographic Society and the Coordinating Board to create and administer the Texas Fund for Geography Education.

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

(3) Commissioner - The Commissioner of Higher Education.

(4) Committee - The advisory committee appointed by the Commissioner to solicit and recommend grant proposals.

(5) Fund - The Texas Fund for Geography Education, which consists of funds contributed by the Board, the Society, and donors and income to the fund.

(6) Society - The National Geographic Society of Washington, D.C.

§13.182. Agreement with National Geographic Society.

(a) The Board shall enter into an agreement with the Society to create and to manage the fund, subject to the following conditions:

(1) The Board shall deposit money into the fund only in an amount equal to the matching funds deposited by the Society;

(2) The Society shall provide to the advisory committee an annual report describing the fund's investments; and

(3) The Board shall retain the right to dissolve the agreement if the purposes herein are not being accomplished.

(b) The Board may transfer to the Society any amount appropriated by the Texas Legislature to the Board for that purpose.

(c) The Board may accept donations from private individuals or corporations who wish to contribute to the fund.

§13.183. Dissolution of the Fund.

If the Board dissolves the fund, the fund balance shall be distributed in the following manner:

(1) one-half to the general revenue fund of the State of Texas;

(2) remainder to donors to the fund, in the amount the donor deposited; and

(3) any further remainder to the Society.

§13.184. Advisory Committee.

The Commissioner shall appoint an advisory committee of seven (7) persons who have expertise and interest in geography education. The committee shall solicit grant proposals, consider those proposals, and make recommendations to the Society.

§13.185. Procedures for Solicitation and Recommendation of Grant Proposals.

The Committee shall, in cooperation with the Society, establish standards and procedures for soliciting grant proposals, the grant application process, consideration of proposals, committee recommendations to the Society, and awarding of grants.

§13.186. Eligibility.

Public and private and independent institutions of higher education as defined in Texas Education Code, § 61.003 shall be eligible to compete for grants.

§13.187. Reporting.

Not later than December 1 of each even-numbered year, the Commissioner shall report to the Board, the governor and the legislature. The report shall include:

(1) the value of the fund;

(2) the membership of the committee;

(3) a summary of each project supported by a grant from the fund during the preceding two years; and

(4) any other appropriate information.

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

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Gary Prevost
Director of Business Services
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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER B. DETERMINING RESIDENCE STATUS

19 TAC §§21.21 - 21.43

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21.21 through 21.43, concerning Determining Residence Status. Specifically, the repeal of the rules will provide the basic rules for determining residency, residency during a student's transition from dependent to independent status, procedures, exceptions, and the transition from waiver recipient to resident.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the repeal of the rules is in effect, there will be the following fiscal implications to state or local government as a result of enforcing or administering the rules: . FY2002 - $0; FY2003 - $0; FY2004 - $691,808; FY2005 - $714,948; and FY2006 - $739,232.

Ms. Hollis has also determined that for each year of the first five years the repeal of the rules is in effect, the public benefit anticipated as a result of administering the sections will be that the residency rules will be more understandable and comprehensive, and there will be more consistency in residency determination decisions. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the repeal of the rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P.O. Box 12788, Austin, Texas 78711.

The repeal of the rules is proposed under the Texas Education Code, §54.053, which states that the governing board of each institution is subject to the residency rules and interpretations issued by the Coordinating Board.

The repeal of the rules affect the Texas Education Code, Chapters 51, 52, 53, 54, 56, 61, 135, and 160.

§21.21. Minors and Dependents.
§21.22. Residence of Independent Individuals 18 Years of Age or Older.
§21.23. Reclassification.
§21.24. Loss of Residence.
§21.25. Re-establishment of Residence.
§21.26. Economic Development and Diversification Employees.
§21.27. Married Students.
§21.28. Military Personnel, Veterans and Commissioned Officers of the Public Health Service.
§21.29. Teachers, Professors and their Dependents.
§21.30. Students Employed as Teaching or Research Assistants.
§21.31. Competitive Scholarship Recipients.
§21.32. Tuition Rates of Individuals From Bordering States or Countries.
§21.33. Foreign Students.
§21.34. Student Responsibilities.
§21.35. Procedures for Reclassification.
§21.36. Penalties.
§21.37. Junior College Tuition Waivers for Ad Valorem Taxpayers.
§21.38. Responsibilities of the Public Institutions of Higher Education.
§21.39. Glossary.
§21.40. Homeless Individual.
§21.41. Students Enrolled in Radiological Sciences.

§21.42. Appeals to the Texas Higher Education Coordinating Board.
§21.43. Students Who Are Beneficiaries of the Texas Tomorrow Fund.
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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Director of Business Services
Texas Higher Education Coordinating Board
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19 TAC §§21.21 - 21.27

The Texas Higher Education Coordinating Board proposes new §§21.21 - 21.27, concerning Determining Residence Status. Specifically, these new rules reorganize and clarify the basic rules for determining residency, residency during a student's transition from dependent to independent status, procedures, exceptions, and the transition from waiver recipient to resident. Additionally, new sections are being proposed to implement the recent legislative changes in residency requirements for foreign students.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, there will be the following fiscal implications to state or local government as a result of enforcing or administering the rules: . FY2002 - $0; FY2003 - $0; FY2004 - $691,808; FY2005 - $714,948; and FY2006 - $739,232.

Ms. Hollis has also determined that for each year of the first five years these proposed new rules are in effect, the public benefit anticipated as a result of administering the sections will be that the residency rules will be more understandable and comprehensive, and there will be more consistency in residency determination decisions. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §54.053, which states that the governing board of each institution is subject to the residency rules and interpretations issued by the Coordinating Board.

The new rules affect the Texas Education Code, Chapters 51, 52, 53, 54, 56, 61, 135, and 160.

§21.21. Authority, Scope, and Purpose.

(a) Authority. Texas Education Code, §54.053 states that the governing board of each institution is subject to the rules and interpretations issued by the Coordinating Board.

(b) Scope. The rules set forth in this subchapter are applicable to determining residency for students attending any Texas public institution of higher education. In addition, they govern the determination of residency for state financial aid programs that include Texas residency as an eligibility criterion.

(c) Purpose. The purpose of this subchapter is to provide guidance to residency determination officials and increase consistency in decisions.

§21.22. Definitions.

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

(1) Bona Fide Texas Resident. See Resident.

(2) Competitive Scholarship. A scholarship that is publicized in the school's catalog and open to both residents and nonresidents, that is designated as competitive by the institution, and whose sum either singularly or in combination with other competitive scholarships totals enough to be a basis for the waiver of nonresident tuition charges.

(3) Conclusive Evidence. Proof that removes uncertainties. In the case of proving residency, conclusive evidence may include but is not limited to the purchase of a homestead with substantial downpayment, significant employment, and business or personal ties in the state that imply a fixed intent to remain in Texas.

(4) Dependent. An individual (minor or 18 years of age or older) who will be claimed as a dependent for federal income tax purposes by a parent or court-appointed legal guardian the year of enrollment and was claimed in the tax year prior to enrollment.

(5) Domicile in Texas. Physically residing in Texas for at least 12 consecutive months with the intent to make Texas one's permanent home. The burden of proof that a domicile has been established lies with the student.

(A) Documenting 12 Months. Among the documents that may be used to prove 12 months' presence in Texas are:

(i) A Texas high school transcript for the full senior year immediately preceding the full semester enrolled;

(ii) A Texas college or university transcript (in conjunction with other documents from the institution);

(iii) An employer's statement of date of employment;

(iv) A permanent driver's license (at least 1 year old). The license expiration date minus date of enrollment should not exceed three years;

(v) Texas voter registration;

(vi) Lease agreement that includes student's name and period covered;

(vii) Property tax payments for the year preceding enrollment;

(viii) Cancelled checks,

(ix) Utility bills for the year preceding enrollment;

(x) A signed, dated and notarized comprehensive residence questionnaire;

(xi) An income tax form or (if current year federal tax form has not been filed) a signed, notarized statement regarding the student's independence or regarding the individual(s) who claim the student as a dependent;

(xii) A current credit report that documents the student's length and place of residence;

(xiii) Other third party documentation that confirms residency status for the 12-month period preceding enrollment;

(xiv) For a homeless individual, documentation may consist of written statements from the office of one or more legitimate social service agencies located in Texas, attesting to the provision of services to the individual over the previous 12-month period.

(B) Documenting a Domicile. Material to the determination of the establishment of a domicile in Texas are business or personal facts including, but not limited to:

(i) The length of residence and employment prior to enrolling in college;

(ii) The nature of employment while a student;

(iii) Physical presence in Texas as a part of a household transferred to the state by an employer (other than the U.S. Armed Forces or Public Health Service) or as a part of a household moved to the state to accept employment; and

(iv) Purchase of a homestead.

(6) Foreign Students. Individuals from other countries than the United States who are not U.S. citizens or permanent residents of this country and are not permitted by Congress to adopt the United States as their domicile while they are in this country.

(7) Gainful Employment. Lawful activities intended to provide an income to the individual or allow an individual to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home). A person who is self-employed, employed as a homemaker, or who is living off his/her earnings may be considered gainfully employed for tuition purposes, as may an individual whose primary support is the government (for instance, through a public assistance program).

(8) Homeless Individual. A homeless individual as defined by 42 U.S.C. §11302 including,

(A) an individual who lacks a fixed, regular, and adequate nighttime residence; and

(B) an individual who has a primary nighttime residence that is

(i) a supervised publicly or privately operated shelter designed to provide temporary living accommodations;

(ii) an institution that provides temporary residence for individuals intended to be institutionalized; or

(iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(C) See §21.28(b)(5) of this title (relating to Homeless Individual).

(9) Independent Student. A student 18 years of age or older or an emancipated minor who is not claimed by a parent or a legal guardian as a dependent for federal income tax purposes during the tax year including the enrollment period.

(10) Minor. An individual who is 17 years of age or younger.

(11) Nonresident. A citizen, national or permanent resident of the United States or an alien who has been permitted by Congress to adopt the United States as his or her domicile while in this country, who has not met the state requirements for establishing residency for tuition purposes.

(12) Official Census Date. The official reporting date for enrollments; the date upon which the student (by virtue of having obligated him/herself to pay requisite tuition and/or fees) is considered to be enrolled in the institution. (For 16-week semesters, the 12th class day; for 6-week summer sessions, the 4th class day.)

(13) Prior to Enrolling. Prior to and/or including the official census date.

(14) Public Institution of Higher Education. State-supported institutions of higher education, including public community colleges, state colleges, universities, health-related institutions, and technical colleges.

(15) Resident. A citizen, national or permanent resident of the United States or an alien who has been permitted by Congress to adopt the United States as his or her domicile while in this country, who has established a domicile in the state of Texas.

(16) Time of Enrollment. The end of working hours on the official census date for the semester or term for that institution.

(17) U.S. Armed Forces. A person who is an officer, enlisted person, selectee, or draftee of the Army, Army Reserve, Air Force, Air Force Reserve, Navy, Navy Reserve, Marine Corps, Marine Corps Reserve, Coast Guard, or Coast Guard Reserves of the United States. Members of the Army and Air National Guard may not qualify for every program directed at members of the U.S. Armed Forces. Where a rule does not explicitly include them, members of the Army or Air National Guard, or spouses or dependents of those members, should present documentation from an appropriately authorized officer that indicates that the individual was acting as a component of the Army or Air Force for the relevant time period.

§21.23. Basic Rules.

(a) Minors and Dependents. For a dependent or minor to acquire Texas residency through a parent or court-appointed legal guardian, the parent or legal guardian must meet residency requirements for individuals 18 years of age or older and the dependent or minor must be eligible to domicile in the United States. Residency of an eligible dependent or minor is based on one of the following circumstances:

(1) The residence of the parent who has claimed the dependent for federal income tax purposes both at the time of enrollment and for the tax year preceding enrollment; or

(2) The residence of the parent or court-appointed legal guardian with whom the dependent or minor has physically resided for the 12 months prior to enrollment; or

(3) The residence of a parent or legal guardian who has joint or single custody of the child, if that individual is not delinquent on the payment of child support; or

(4) The residence of the person to whom custody was granted by court order (e.g., divorce decree, child custody actions, guardianship or adoption proceedings), provided custody was granted at least 12 months prior to the student's enrollment and was not granted for the purpose of obtaining status as a resident student.

(5) If a student was classified as a resident prior to fall semester 2001 based upon the residency of a caretaker or relative, not a court-appointed legal guardian, he or she shall not be reclassified as a nonresident under this section.

(6) See §21.26(a) of this title (relating to Exceptions).

(b) Independent Individuals 18 or Older. Independent individuals 18 years of age or older who are gainfully employed in the state for a period of 12 months prior to enrollment are entitled to classification

as residents. Students registering in an institution of higher education prior to having physically resided in the state for the 12 months prior to enrollment shall be classified as nonresidents for tuition purposes during that term. Accumulations of summer and other vacation periods do not satisfy the employment requirement. Employment while enrolled in college during a 12-month period can be a basis of reclassification as a resident at the end of that period if other evidence indicates the student has established a domicile in Texas. See §21.26(b) of this title (relating to Exceptions).

(c) Military Personnel. Members of the U.S. Armed Forces and commissioned Public Health Service Officers are presumed to maintain the same domicile that was in effect at the time of entering the service during their entire period of active service. They are presumed not to establish a domicile in other states in which they are assigned duty because their presence is not voluntary but under U.S. military or Public Health Service orders. See §21.26(c) of this title (relating to Exceptions).

(d) Foreign Students.

(1) A foreign individual has the same privilege of qualifying for Texas resident status for tuition purposes as does a citizen of the United States if he or she

(A) is living in this country under a visa permitting permanent residence, or

(B) is permitted by Congress to adopt the United States as his or her domicile, or

(C) has applied to or has a petition pending with the Immigration and Naturalization Service to attain lawful status under federal immigration law, or

(D) has met Coordinating Board requirements for being treated as a permanent resident.

(2) A foreign individual who enters a Texas institution of higher education in fall 2001 or later is a resident of Texas if he or she

(A) attended a public or private high school while residing with a parent or legal guardian;

(B) graduated from the high school or received the equivalent of a high school degree in Texas;

(C) resided in Texas for at least three (3) consecutive years as of the date he/she graduated from high school or received the equivalent of a high school degree;

(D) registers as an entering student no earlier than fall 2001; and

(E) provides his/her college an affidavit that he or she intends to file an application to become a permanent resident of the United States at the earliest opportunity the individual is eligible to do so.

(3) A list of eligible visas, along with a discussion of eligible applicants for permanent resident status, is available through the Coordinating Board web site at www.thecb.state.tx.us. If an individual provides proof from the Department of Justice or Immigration and Naturalization Service that the visa he/she holds has been granted eligibility to establish a domicile in the United States, such individuals may be granted the same privileges in establishing Texas residency for tuition purposes.

(e) Married Students. Marriage of a Texas resident to a nonresident does not jeopardize the Texas resident's claim to residency. A nonresident who marries a resident of Texas must establish his or her own residency by meeting the standard requirements of an independent individual 18 years of age or older.

(f) Federal employees other than Members of the U.S. Armed Forces or Public Health Service. The state has no special provisions for determining the residence of federal employees other than members of the U.S. Armed Forces or Public Health Service. Therefore, such persons (including civilian employees of the U.S. Armed Forces) must meet the basic residency requirements for non-military personnel.

(g) Short-Term Stop-Out Students. If the institution has documentation of residence on file when a dependent or independent student returns after being out of school for 12 months or less, it may continue the student's classification as resident upon confirmation from the student that his or her parents or court-appointed legal guardians (in the case of a dependent student) or the student him/herself (in the case of an independent student) have not changed their state of residence since the student's last enrollment.

(h) Persons Temporarily Absent from the State. Residents who move out of state should be classified as nonresidents upon leaving the state, unless their move is temporary and residence has not been established elsewhere.

(1) Persons who were residents of Texas for at least five years prior to moving from the state, and who return to the state to re-establish their home, having been gone less than a year, are still Texas residents.

(2) Students or parents or court-appointed legal guardians (in the case of dependent students) who are temporarily (generally less than five years) assigned to work outside the state may continue to claim residency in Texas if they provide conclusive evidence of their intent at the time they leave the state, to return. Among other things, a letter from an employer that the move outside the state is temporary and that a definite future date has been determined for return to Texas may qualify as proof of the temporary nature of the time spent out of state. Out-of-state internships that are part of the academic curriculum and that require the student to return to the school are temporary relocations and do not jeopardize a student's claim to residency.

(i) Inmates of Federal Prisons. Nonresidents incarcerated in federal prisons located in Texas shall be classified as nonresidents. If, however, such a prisoner files an affidavit with a proper prison authority or institution of higher education, indicating an intention to establish residency in Texas, such residency shall be granted 12 months from the date of the affidavit and shall continue after the prisoner's discharge if he or she remains in Texas.

§21.24. Residency during the Transition from Dependent to Independent Students.

(a) When Parents or Legal Guardians and Student Remain in Texas. If the resident parents or court-appointed legal guardians of a dependent student eligible to domicile in the United States cease claiming the minor as a dependent for federal income tax purposes, but remain in Texas and the minor remains in Texas, the minor is a resident.

(b) When the Parents Move Out of State.

(1) If the Parents or Legal Guardians Continue to Claim the Student as a Dependent. If the resident parents or court-appointed legal guardians of a dependent student move out of state and continue to claim the student as a dependent, the student becomes a resident of the state in which the parents or legal guardians reside. Even if he or she remains in Texas, the student will not be eligible to establish residence in Texas on his/her own until the student is 18 years of age or older, at least 12 months have passed since the parents last claimed him/her as a dependent for federal income tax purposes and the student has established a domicile in the state of Texas. See §21.28(a)(5) of this

title (relating to Exceptions) for information about a waiver for students enrolled in a public college prior to the parents' or legal guardians' move out of state.

(2) If the Minor is an Abandoned or Emancipated Child. If the resident parents or court-appointed legal guardians of a minor move out of state and the minor remains in Texas, the minor may be classified as a resident only if he or she meets the qualifications for being an abandoned child or emancipated child. See §§21.28(a)(1) and 21.28(a)(3) of this title (relating to Exceptions).

(c) If the resident parents or court-appointed legal guardians of an individual 18 years of age or older move out of state but the student remains, and the parents provide the student's institution of higher education a letter indicating they will not claim the student as a dependent for federal tax purposes for the current tax year, the student retains his/her residency.

§21.25. Procedures.

(a) Core Questions. Each public institution is responsible for incorporating core residency questions into its student admissions process. The Coordinating Board, with advice from the institutions, shall develop the required core questions. Answers to the questions should be reviewed to determine each student's proper residency classification. If answers affirm the student's claim to residency, the core questions are sufficient for documenting the student's classification. However, if the student's answers to the core questions are inconsistent, the institution must acquire and maintain appropriate documents to support the student's classification as of the census date of the relevant term.

(b) Reclassification.

(1) Procedures. Students classified as nonresident students shall be considered to retain that status until they apply for reclassification in the form prescribed by the institution and are officially reclassified as residents for tuition purposes by the proper administrative officers of the institution. Application for reclassification must be submitted prior to the official census date of the relevant term. Reclassification as residents must be made in keeping with §21.25 of this title (relating to Basic Rules).

(2) Student Intent. If a student's residence in Texas is primarily for the purpose of education and not to establish a domicile, the student shall be classified as a nonresident. The following persons are NOT considered to have come here for the purpose of education: the spouse or dependent child of an individual transferred here by the U.S. Armed Forces, through the state's plan for economic development and diversification, or as a part of a household moved to the state to accept employment. Therefore, once such individuals have physically resided in Texas for 12 consecutive months, even though they may have been enrolled full-time, they may be considered residents if they have otherwise established a domicile in the state.

(c) Student Responsibilities. The student is responsible for registering under the proper residence classification and for providing documentation as required by the public institution. If there is any question as to the right to classification as a resident of Texas it is the student's obligation, prior to or at the time of enrollment, to raise the question with the administrative officials of the institution for official determination. Students classified as Texas residents must affirm the correctness of that classification by signing an oath of residency as a part of the admissions process. If the student's classification as a resident becomes inappropriate for any reason, it is the responsibility of the student to notify the proper administrative officials at the institution. Failure to notify the institution constitutes a violation of the oath of residency and shall result in disciplinary action by the institution.

(d) Institution Responsibilities. Each institution is responsible for incorporating the core questions and an oath of residency into its student admissions process. It is also responsible for reviewing enrollment and/or registration applications for errors, inconsistencies or misclassifications of residency status on file.

(1) If students who have been classified as residents of Texas are found to have been erroneously classified, those students shall be reclassified as nonresidents and shall be required to pay the difference between the resident and nonresident tuition for those semesters in which they were so erroneously classified.

(2) If it is found that students have been erroneously classified as nonresidents, they shall be reclassified as residents and may be entitled to a refund of the difference between the resident and nonresident fees for the semesters in which they were so erroneously classified. Normally, the refunds must be requested and substantiated during the current term.

(e) Penalties. Each institution has been authorized by statute to assess and collect from nonresident students failing to comply with the provisions of tuition statutes and the rules of this title a fee not to exceed $10 a semester.

(1) If students have obtained residence classification by concealing or misrepresenting facts, they may be subject to disciplinary action in keeping with procedures adopted by the governing boards of their institutions.

(2) If it is determined that the student has obtained resident classification by concealing or misrepresenting information, the student shall, not later than 30 days after the date the individual is notified of the determination, pay to the institution the amount the individual should have paid as a nonresident.

(3) If the individual fails to make a timely payment as required, the individual is not entitled to receive a transcript or to receive credit for courses taken during the time the individual was falsely registered as a resident student.

(f) Appeals to the Coordinating Board. If two or more Texas public institutions determine a different residency status for members of the same family with identical evidence of residency currently enrolled at each institution, the family members may appeal the unfavorable decision to the Commissioner of Higher Education. Before making an appeal to the Commissioner, the student classified as a nonresident must exhaust all appeal processes available at the institutional level. A decision by the Commissioner for one family member's residency status will apply to all family members with identical evidence of residency.

§21.26. Exceptions.

(a) Special Conditions for Minors or Dependents.

(1) Abandoned child. In the case of an abandoned child, the residence of a person who has stood in loco parentis for a period of time may determine the residence. The fact of abandonment must be clearly established and must not have been for the purpose of effecting the residence of the minor. The minor must have actually resided in the home of such person for two years immediately prior to enrolling in a Texas public institution of higher education and such person must have provided substantially all the minor's support. In the event that the in loco parentis relationship has not existed for the full two year period, a shorter period of time is acceptable in unusual hardship cases, such as death of both parents.

(2) Orphans. A public institution of higher education shall classify orphans as residents if the orphans graduated from established

orphans homes in Texas operated by a fraternal, religious or civic organization after living there for at least a year, and resided in Texas from the time they graduated from the home until they enrolled in the institution.

(3) Emancipated Minors. A minor who has been legally emancipated may establish his or her claim to residency following the rules applicable to independent individuals 18 years of age or older.

(4) Married Minors. Minors who are married may establish their own claim to residency following the rules applicable to independent individuals 18 years of age or older.

(5) Minors or Dependents Enrolled before the Parents Move out of State. If a resident minor or dependent is enrolled in a public institution of higher education in Texas when the parents move out of state, the minor or dependent is eligible, although now a nonresident, to continue paying the resident tuition rate as long as he or she continues to enroll in Texas public institutions in the following fall and spring semesters. Vacation time spent with the parents does not jeopardize the students' eligibility for this waiver. The dependent or minor students must enroll for the next available fall or spring semester immediately following the parents' change of residence to another state.

(b) Waivers that Allow Nonresidents to Register While Paying the Resident Tuition Rate.

(1) Economic Development and Diversification. Nonresidents, (including citizens and permanent residents of the US and foreign students eligible to domicile in the United States, but excluding foreign students ineligible to domicile in the U.S.) whose families have been transferred to Texas by a company in keeping with the state's Economic Development and Diversification Program are entitled (although still nonresidents) to pay the resident tuition rate as soon as they move to Texas if they provide the college a letter of intent to establish Texas as their home. If a semester begins before the rest of the family moves to the state, the student may register and pay the resident tuition rate if he/she provides the college a letter from the company, indicating the family will move to Texas prior to the end of the given semester. However, in order to pay resident tuition for a second semester, the student will have to give the college a letter from the company, indicating the family has, indeed, moved to Texas. After the family has resided in Texas 12 months, the student is eligible to apply for reclassification as a resident. A current list of eligible companies is maintained on the Coordinating Board web site at www.collegefortexans.com.

(2) Teachers, Professors, their Spouses and Dependents. Nonresidents (including citizens and permanent residents of the U.S. and all foreign students) employed as teachers and professors at least half time on a regular monthly salary basis (not as hourly employees)by public institutions of higher education in Texas are entitled to pay the resident tuition rate at any public institution of higher education in the state for themselves, their spouses and children regardless of how long they have lived in the state. It is the intent of this rule that the employment and waiver last for the same period of time. If the spouse or children attend an institution other than the one employing the teacher or professor, they must provide proof of his or her current employment to the college they attend.

(3) Research and Teaching Assistants, their Spouses and Dependents. Nonresidents (including citizens and permanent residents of the U.S. and all foreign students) employed by public institutions of higher education as research or teaching assistants on at least a half-time basis in a position related to their degree programs are entitled to pay the resident tuition rate at any public institution of higher education in the state for themselves, their spouses and children regardless of how long they have lived in the state. The institutions that employ the students shall determine whether or not the students' jobs relate to their degree programs. It is the intent of this rule that the employment and waiver last for the same period of time. If the spouse or children attend an institution other than the one employing the research or teaching assistant, they must provide proof of his or her current employment to the college they attend.

(4) Competitive Scholarship Recipients.

(A) Nonresidents (including citizens and permanent residents of the U.S. and all foreign students) who receive eligible competitive scholarships from their institutions totaling at least $1,000 may be granted a waiver of nonresident tuition for the period of time covered by the scholarship, not to exceed 12 months.

(B) To be eligible as the basis of a waiver, the scholarship(s) must meet the following criteria:

(i) be granted by a scholarship committee authorized in writing by the institution's administration to grant scholarships that hold the waiver option;

(ii) be granted in keeping with criteria published in the institution's catalog, available to the public in advance of any application deadline;

(iii) be granted under circumstances that cause both the funds and the selection process to be under the control of the institution;

(iv) be open to both resident and nonresident students.

(C) A waiver based on a competitive scholarship lasts for the period of the scholarship (up to a 12-month period). The scholarship award must specify the term or terms in which the scholarship will be in effect. If the scholarship is terminated, so is the waiver. If the scholarship is to be issued in multiple disbursements and less than $1,000 is issued when a scholarship is terminated, the student does not owe a refund for the tuition that has been waived, since the waiver was originally made in a good faith expectation of a scholarship of at least $1,000, but the waiver is canceled for the terms for which the scholarship is canceled.

(D) The total number of students receiving waivers on the basis of competitive scholarships in any given term may not exceed 5 percent of the students enrolled in the same semester in the prior year.

(E) If the scholarship recipient is concurrently enrolled at more than one institution, the waiver of nonresident tuition is only effective at the institution awarding the scholarship. An exception for this rule exists for a nonresident student who is simultaneously enrolled in two or more institutions of higher education under a program offered jointly by the institutions under a partnership agreement. If one of the partnership schools awards the student a competitive scholarship-based waiver, the student is also entitled to a waiver at the second institution.

(F) If a nonresident or foreign student holds a competitive academic scholarship or stipend and is accepted in a clinical biomedical research training program designed to lead to both a doctor of medicine and doctor of philosophy degree, he or she is eligible to pay the resident tuition rate.

(5) Homeless Individuals. A homeless individual who resides in Texas for the 12-month period immediately preceding the date of registration, but who does not have a permanent residence in Texas, may enroll in vocational education courses at a public junior college by paying the resident tuition rate. Documentation for a homeless individual may consist of written statements from the office of one or more legitimate social service agencies located in Texas, attesting to

the provision of services to the homeless individual over the previous 12-month period.

(6) Lowered Tuition for Individuals from Bordering States or Mexico.

(A) Based on Reciprocity. Waivers of nonresident tuition made through each of the following three programs for students from states neighboring Texas must be based on reciprocity. In other words, the Texas institution cannot lower tuition for in-coming students unless it has on file a current written agreement with a similar school in the other state, to lower tuition for Texas students attending there. A participating Texas institution is required to file a copy of such agreements with the Coordinating Board. To be valid, the agreements may not be more than 2 years old. The amount charged in-coming nonresident students through these programs may not be less than the Texas resident tuition rate.

(i) New Mexico, Oklahoma, Arkansas or Louisiana students may pay a lowered nonresident tuition when they attend Texas A&M -Texarkana, Lamar-Port Arthur, Lamar-Orange or any public community or technical college located in a county adjacent to their home state, if the institution they attend has a current reciprocal agreement with a similar institution in the student's home state.

(ii) New Mexico and Oklahoma students may pay a lowered nonresident tuition when they attend a public technical college located within 100 miles of the border of their home state, if the institution they attend has a current reciprocal agreement with a similar institution in the student's home state.

(iii) Students from counties or parishes of New Mexico, Oklahoma, Arkansas or Louisiana adjacent to Texas may pay a lowered nonresident tuition when they attend any public institution in Texas, if the institution has a current reciprocal agreement with a similar institution in the student's home state.

(iv) Students who Move to Texas from Bordering States. If a dependent student's family or an independent student from a bordering state moves to Texas after the student has received a waiver of nonresident tuition based on reciprocity as described in this section, the student is eligible for a continued waiver for the 12-month period after the relocation to Texas. After that time, however, the student shall be reclassified as a nonresident unless he or she applies for reclassification and proves he or she has become a resident in keeping with these rules.

(B) Programs that do not Require Reciprocity.

(i) Undergraduate students from New Mexico, Oklahoma, Arkansas, Louisiana or other states within 135 miles of the Texas border may pay a lowered nonresident tuition when they attend a public university located within 100 miles of the Texas border if the Coordinating Board has approved the institution to participate in the program.

(ii) New Mexico, Oklahoma, Arkansas or Louisiana students who have graduated or completed 45 semester credit hours while enrolled on a reciprocal basis through Texarkana College may pay the resident tuition rate if they attend Texas A&M-Texarkana.

(C) Programs for Residents of Mexico.

(i) Residents of Mexico are those individuals who currently live in Mexico and individuals who are living outside of Mexico temporarily and with definite plans to return. Students planning to stay in the United States indefinitely are not residents of Mexico.

(ii) An unlimited number of residents of Mexico who have financial need may attend a public university or TSTC campus located in a county adjacent to Mexico, TAMU-Corpus Christi, TAMU-Kingsville, the University of Texas at San Antonio or Texas Southmost College while paying the resident tuition rate.

(iii) A limited number of residents of Mexico who have financial need may attend a public university located in counties away from the Mexico border while paying the resident tuition rate. The program is limited to the greater of two students per 1000 enrollment, or 10 students.

(iv) A resident of Mexico with financial need may register in courses that are part of a graduate degree program in public health conducted in a county immediately adjacent to Mexico and pay the resident tuition rate.

(7) Beneficiaries of the Texas Tomorrow Fund. The tuition and required fees charged by an institution of higher education for semester hours and fees that are paid for by a prepaid tuition contract shall be determined as if the beneficiary of that contract is a resident student. If a student is a nonresident, any tuition and fees not paid by the contract will be assessed at the nonresident rate.

(8) Inmates of the Texas Department of Criminal Justice. All inmates of the Texas Department of Criminal Justice are Texas residents for tuition purposes only.

(9) Foreign Service Officers. A foreign service officer employed by the U.S. Department of State and enrolled in an institution of higher education is entitled to pay resident tuition and fees if the person is assigned to an office of the department of state that is located in Mexico.

(10) Registered Nurses in Postgraduate Nursing Degree Programs. An institution of higher education may permit a registered nurse authorized to practice professional nursing in Texas to register by paying resident tuition and fees without regard to the length of time the registered nurse has resided in Texas if he/she

(A) is enrolled in a program designed to lead to a master's degree or other higher degree in nursing; and

(B) intends to teach in a program in Texas designed to prepare students for licensure as registered nurses.

(11) Members of the U.S. Armed Forces, Army National Guard, Air National Guard, and Commissioned Officers of the Public Health Service.

(A) Assigned to Duty in Texas. Nonresident members of the U.S. Armed Forces, members of Texas units of the Army or Air National Guard, or Commissioned Officers of the Public Health Service who are assigned to duty in Texas are entitled to pay the resident tuition rate for themselves, their spouses and dependent children. To qualify, the student must submit at least once a year a statement from an appropriately authorized officer in the service, certifying that he or she (or a parent or court-appointed legal guardian) will be assigned to duty in Texas at the time of enrollment and is not a member of the National Guard or Reserves who will be in Texas only to attend training with Texas units.

(B) First Assignment after Texas. The spouses and dependent children of nonresident members of the U.S. Armed Forces, members of Texas units of the Army or Air National Guard, or Commissioned Officers of the Public Health Service are entitled to pay the resident tuition rate during the members' first assignment after duty in Texas. To qualify, the spouse and children must reside continuously in Texas.

(C) Out-of-State Military. The spouse and dependents of nonresident members of the U.S. Armed Forces, members of Texas

units of the Army or Air National Guard, or Commissioned Officers of the Public Health Service stationed outside of Texas are entitled to immediately start paying the resident tuition rate in Texas if they move to this state, [~~and~~] file a statement of intent to become permanent residents of Texas with the public institution of higher education they attend.

(D) Survivors. The spouse and dependents of nonresident members of the U.S. Armed Forces, members of Texas units of the Army or Air National Guard, or Commissioned Officers of the Public Health Service who die while in service are entitled to pay the resident tuition rate if they move to Texas within 60 days of the date of death. To qualify, the students shall submit satisfactory evidence to the institution, establishing the date of death and current residence in Texas.

(E) Spouse and Dependents who Previously Lived in Texas. The spouse and dependent children of a nonresident member of the U.S. Armed Forces, members of Texas units of the Army or Air National Guard, or Commissioned Officer of the Public Health Service who previously resided in Texas for at least 6 months may establish residency for tuition purposes if the member or commissioned officer (at least 12 months prior to the family member's enrollment):

(i) filed proper documentation with the military or Public Health Service to change his/her permanent residence to Texas and designates Texas as his/her place of legal residence for income tax purposes;

(ii) registered to vote in Texas, and

(iii) shows one of the following three things has been in effect for the full 12 months prior to the first day of the relevant term or semester:

(I) ownership of real estate in Texas with no delinquent property taxes;

(II) registration of an automobile in Texas, or

(III) execution of a currently-valid will that indicates he/she is a resident of Texas that has been deposited with a county clerk in Texas.

(F) Members Who Change their Residency to Texas. A member of the U.S. Armed Forces whose state of record is not Texas may change his/her residency to Texas if he/she does the following things at least 12 months prior to the member's enrollment:

(i) files proper documentation with the military to change his/her permanent residence to Texas, and

(ii) meets four of the 8 conditions listed below for the 12 months prior to enrollment:

(I) purchase a residence in Texas and claim it as a homestead;

(II) register to vote in Texas;

(III) register an automobile in Texas;

(IV) maintain a Texas driver's license;

(V) maintain checking, savings or safety deposit box in Texas;

(VI) have a will or other legal documents on file in Texas that indicate residence in Texas;

(VII) have membership in professional organizations or other state organizations; and/or

(VIII) establish a business in Texas.

(G) Honorably Discharged Veterans. A former member of the U.S. Armed Forces or Commissioned Officer of the Public Health Service and his/her spouse and children are entitled to pay the resident tuition rate for any term beginning prior to the first anniversary of separation from the military or health service if the former member has

(i) filed proper documentation with the military or Public Health Service to change his/her permanent residence to Texas and designated Texas as his/her place of legal residence for income tax purposes;

(ii) registered to vote in Texas, and

(iii) shows one of the following three things has been in effect for the full 12 months prior to the first day of the relevant term or semester:

(I) ownership of real estate in Texas with no delinquent property taxes;

(II) registration of an automobile in Texas, or

(III) execution of a currently-valid will that indicates he/she is a resident of Texas that has been deposited with a county clerk in Texas.

(H) ROTC Students. A nonresident student who is a member of an ROTC unit must pay nonresident tuition until such time he or she signs a contract that cannot be terminated by the student and that obligates the student to serve a period of active duty in the U.S. Armed Forces. Once the student has signed such a contract, he or she has the same rights for qualifying to pay the resident rate as has a member of the U.S. Armed Forces.

(I) NATO Forces. Foreign individuals stationed in Texas in keeping with the agreement between the parties to the North Atlantic Treaty regarding status of forces, their spouses and dependent children, are entitled to pay the same tuition rate as residents of Texas.

(J) Radiological Science Students at Midwestern State University. Members of the U.S. Armed Forces stationed outside the State of Texas who are enrolled in a bachelor of science or master of science degree program in radiological sciences at Midwestern State University by instructional telecommunication will be entitled to pay tuition and other fees or charges provided for Texas residents if they began the program of study while stationed at a military base in Texas.

§21.27. Transition from Waiver Recipient to Resident.

Some nonresident students who pay the resident tuition rate as a result of waivers can acquire the right to be reclassified as residents. To do so, they must be U.S. citizens, or permanent residents, or foreign individuals eligible to domicile in the United States, or fall in a category identified as the Coordinating Board as eligible to be treated as permanent residents. See §21.23(d) of this title (relating to Basic Rules). In addition, they must follow the procedures for reclassification as outlined in §21.25(b) of this title (relating to Procedures), and show that they currently meet the requirements for classification as a resident.

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 July 26, 2001.

TRD-200104345

Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM FOR ALL LOANS WHICH ARE SUBJECT TO THE PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM, THE COLLEGE ACCESS LOAN PROGRAM, THE HEALTH EDUCATION ASSISTANCE LOAN PROGRAM, AND THE HEALTH EDUCATION LOAN PROGRAM

19 TAC §21.57

The Texas Higher Education Coordinating Board proposes amendments to §21.57 concerning the Hinson-Hazlewood College Student Loan Program. Specifically, the amendment would delete the requirement that College Access Loans be disbursed in a minimum of two equal disbursements.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years these proposed new rules are in effect, the public benefit anticipated as a result of administering the sections will be the increased flexibility that institutions of higher education will have in disbursing College Access Loans. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The amendments to the rules are proposed under the Texas Education Code, Chapter 52, which provides the Coordinating Board with the authority to administer the student loan program authorized by this chapter pursuant to Article III, §§50b-1, 50b-2, 50b-3, and 50b-4, of the Texas Constitution.

The amendments to the rules affect the Texas Education Code, Chapter 52.

§21.57. Loan Limits.

(a) (No change.)

(b) Annual Loan Limit. The maximum loan amounts allowed for any qualified applicant during an academic year is stated in paragraphs (1) - (5) of this subsection for each type of Hinson-Hazlewood loan. Under no circumstances may the annual loan amount for the FSL and FSLS exceed the amounts prorated for less than full-time enrollment specified in Title IV, Part B, of the Higher Education Act of 1965 as amended. When the student progresses satisfactorily to the next classification level, that student may be eligible for another FSL, FSLS, or CAL.

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

(3) CAL - The annual loan limit may not exceed $7,500 per academic year. [~~Annual loan amounts must be disbursed in a minimum of two disbursements. Each disbursement is not to exceed one half of the total loan amount unless at least one half of the loan period has elapsed.~~] The amount of a CAL plus other student financial aid may not exceed the cost of education.

(4) - (5) (No change.)

(c) (No change.)

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

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Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2001
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SUBCHAPTER N. TEACH FOR TEXAS CONDITIONAL GRANT PROGRAM

19 TAC §§21.430 - 21.449

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21.430 through 21.449, concerning the Teach for Texas Conditional Grant Program. Specifically, the repeal of the rules will provide for setting priorities for approving applications, set requirements for eligible institutions and eligible students, define the eligibility period and service obligation, set requirements for hardship and other good causes, and define the amount of a grant and conditions for receiving a grant.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the proposed repeal of the rules are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. The cost of this program for Fiscal Year 2002 and Fiscal Year 2003 is estimated to be $2.5 million. For Fiscal Year 2004 through Fiscal Year 2006, the fiscal impact is estimated to be $2.5 million.

Ms. Hollis has also determined that for each year of the first five years the repeal of the rules are in effect, the public benefit anticipated as a result of administering the sections will be an increased number of teachers who become certified and teach in fields or communities having a critical shortage of teachers. There is no adverse effect on small businesses. There are no

anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the repeal of the rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The repeal of the rules is proposed under the Texas Education Code, §56.352, which provides the Coordinating Board with the authority to award conditional grants to persons who serve as classroom teachers in the public schools of this state for a specified period.

The repealed rules affect the Texas Education Code, §§56.351 through 56.356.

§21.430. Purpose.
§21.431. Definitions.
§21.432. Priorities of Application Acceptance and Selection Criteria.
§21.433. Approved Institution.
§21.434. Eligible Students.
§21.435. Six-Year Eligibility Period.
§21.436. Hardship and Other Good Cause.
§21.437. Reduced Enrollment.
§21.438. Amount of Grant.
§21.439. Eighteen-Month Period Before Employment.
§21.440. Service Obligation Period.
§21.441. Conditions of Grant.
§21.442. Loan Interest.
§21.443. Repayment of Loans.
§21.444. Educational Deferments.
§21.445. Forbearance.
§21.446. Enforcement of Collection.
§21.447. Provisions for Disability and Death.
§21.448. Advisory Committee.
§21.449. Dissemination of Information.

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 July 26, 2001.

TRD-200104349
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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19 TAC §§21.430 - 21.448

The Texas Higher Education Coordinating Board proposes new §§21.430 through 21.448, concerning the Teach for Texas Conditional Grant Program. Specifically, the new rules will provide for setting priorities for approving applications, set requirements for eligible institutions and eligible students, define the eligibility period and service obligation, set requirements for hardship and other good causes, and define the amount of a grant and conditions for receiving a grant.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. The cost of this program for Fiscal Year 2002 and Fiscal Year 2003 is estimated to be $2.5 million. For Fiscal Year 2004 through Fiscal Year 2006, the fiscal impact is estimated to be $2.5 million.

Ms. Hollis has also determined that for each year of the first five years these proposed rules are in effect, the public benefit anticipated as a result of administering the sections will be an increased number of teachers who become certified and teach in fields or communities having a critical shortage of teachers. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §56.352, which provides the Coordinating Board with the authority to award conditional grants to persons who serve as classroom teachers in the public schools of this state for a specified period.

The new rules affect the Texas Education Code, §§56.351 through 56.356.

§21.430. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter O, Teach for Texas Financial Assistance Program. These rules establish procedures to administer the subchapter as prescribed in §§56.351 through 56.356.

(b) Scope. The rules set forth in this subchapter are applicable to the persons with financial need who are seeking educator certification.

(c) Purpose. The purpose of the Teach for Texas Conditional Grant Program is to encourage students to become teachers and to encourage these newly certified teachers to teach in fields having a critical shortage of teachers or in communities having a critical shortage of teachers.

§21.431. Definitions.

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

(1) Academic period -- A twelve-month period designated by an eligible institution.

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

(3) Commissioner -- The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(4) Community experiencing a critical shortage of teachers -- As defined by the Commissioner of Education.

(5) Eligible Institution -- Institutions of higher education and private or independent institutions of higher education, as defined in the Texas Education Code, Chapter 61.003, that offer an educator certification program (not applicable in the case of alternative educator certification programs).

(6) Enrolled for at least a three-quarter time -- For undergraduates, enrolled for the equivalent of nine semester credit hours in a regular semester.

(7) Enrolled at least half time -- For undergraduates, enrolled for the equivalent of six semester credit hours in a regular semester.

(8) Program -- The Teach for Texas Conditional Grant Program.

(9) Recipient -- A person who has received a Teach for Texas Conditional Grant.

(10) Program Completion Date -- The date the recipient is considered to have completed the requirements of the educator certification program and is eligible to take the appropriate ExCET exam.

(11) Satisfactory Academic Progress -- A student makes satisfactory academic progress toward completion of an educator certification program if he/she completes at least 75% of the semester credit hours attempted in the student's most recent academic year and earns an overall grade point average of at least 2.5 on a four-point scale on coursework previously attempted at institutions of higher education.

§21.432. Priorities of Application Approval.

Applications will be ranked according to the following priorities, in addition to other factors relating to the efficient use of funds furthering the program purpose:

(1) Renewal applicants shall be given priority over first-time applicants.

(2) Applicants who demonstrate the greatest financial need.

(3) Contingent upon available funding, applicants who demonstrate no financial need shall be considered based upon criteria such as earliest anticipated program completion date and residency.

§21.433. Requirements for Eligible Institution.

(a) Each eligible institution shall designate a Teach for Texas Conditional Grant program officer to administer the program. Unless otherwise designated by the chief executive officer, the Director of Student Financial Aid shall serve as program officer. If the day-to-day administration of this program is delegated to a student financial aid officer, the Director of Student Financial Aid must notify the Board and provide the name and telephone number for that person.

(b) All institutions participating in the program described in this subchapter must meet Board reporting requirements for the Teach for Texas Conditional Grant in a timely fashion.

§21.434. Eligible Students.

To be eligible a student must:

(1) be seeking educator certification and agree to teach full-time at the preschool, primary, or secondary level in a public school in Texas:

(A) in a teaching field certified by the Commissioner of Education as experiencing a critical shortage of teachers in Texas in the year in which the student receives the grant; or

(B) in a public school in Texas in a community certified by the Commissioner of Education as experiencing a critical shortage of teachers:

(i) in any year in which the person receives a Teach for Texas Conditional Grant; or

(ii) in any subsequent year in which the person fulfills the teaching obligation;

(2) be enrolled at least three-quarter time in an approved institution as a junior, senior, or, in the case of a person who has received a baccalaureate degree be:

(A) a renewal recipient enrolled in post baccalaureate courses required to complete the educator certification program; and

(B) in the first academic year in an educator certification program;

(3) make satisfactory academic progress toward completion of the educator certification program;

(4) be recommended by the dean of the college or school of education at the approved institution; and

(5) not have been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance, as defined by Chapter 481, Health and Safety Code, unless the student has:

(A) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(B) been pardoned, had the record of the offense expunged from the person's record, or otherwise has been released from the resulting ineligibility to receive a grant under this subchapter.

§21.435. Three-Year Grant Eligibility Period.

A person may not receive a conditional grant through the program for more than 90 course hours or if more than three years has passed since the first award.

§21.436. Hardship and Other Good Cause.

Hardship and other good cause may be determined by the Board based upon documented circumstances. The Board may request assistance from the program officer at an eligible institution in determining whether or not these circumstances warrant exception to the 90-hour grant eligibility limitation, the satisfactory academic progress requirements, the requirement to be enrolled at least three-quarter time, and the requirement to fulfill the five-year service obligation within a six-year period. Such situations include, but are not limited to, the following:

(1) a severe illness or other debilitating condition that may affect the recipient's ability to make satisfactory academic progress in the baccalaureate or educator certification program;

(2) responsibility for the care of a temporarily disabled dependent that may affect the recipient's ability to make satisfactory academic progress in the baccalaureate or educator certification program; or

(3) similar circumstances preventing the recipient from completing the five-year teaching obligation within six years after the date the person began to fulfill the teaching obligation.

§21.437. Amount of Grant.

(a) The maximum aggregate amount of a Teach for Texas Conditional Grant shall equal four times the current annual amount of the TEXAS Grant for a student enrolled at Texas public four-year institution of higher education. A student may receive a TEXAS Grant and a Teach for Texas Grant for the same academic period.

(b) The Coordinating Board shall pay the amount of the grant in installments based on the number of remaining semesters the student anticipates being enrolled in the educator certification program. The Coordinating Board may adjust the amount of a grant for a semester or term, or award a supplemental grant, to ensure that a grant recipient who meets the program requirements receives the maximum aggregate grant amount allowed.

§21.438. Eighteen-Month Period Before Employment.

The recipient must become certified to teach in Texas and must begin fulfilling the five-year service obligation not later than 18 months after the certification program completion date.

§21.439. Service Obligation Period.

(a) A recipient must teach full-time for five years as:

(1) a teacher certified in and teaching in a field having a critical shortage of teachers; or

(2) a certified teacher in a community experiencing a critical shortage of teachers.

(b) A recipient must complete a five-year service obligation.

(c) The service obligation period begins on the first day the recipient begins qualified employment.

(d) During the service obligation period, the recipient shall provide the Board with regular, periodic reports of his or her teaching status.

§21.440. Conditions of Grant.

(a) The Teach for Texas Conditional Grant becomes a loan and shall be reported to credit reporting agencies when the recipient fails to:

(1) remain enrolled at least half-time in an eligible educator certification program;

(2) make satisfactory academic progress in the educator certification program;

(3) complete the educator certification program within the three-year grant eligibility period;

(4) be certified as a teacher within eighteen months after the program completion date;

(5) begin the service obligation within eighteen months after the program completion date;

(6) maintain continuous full-time teaching and complete the five-year teaching obligation within six years of beginning the service obligation period; or

(7) provide a regular, periodic report of enrollment or employment status and location to the Board within a reasonable period of time as determined by the Board.

(b) Recipients must sign a promissory note acknowledging the conditional nature of the grant and promising to repay the outstanding principal, interest, and reasonable collection costs, if the grant conditions are not fulfilled.

§21.441. Loan Interest.

(a) The interest rate charged on Teach for Texas Conditional Grants shall be determined by the Commissioner and shall be a fixed, simple interest rate.

(b) Interest begins to accrue upon the date the grant becomes a loan or the program completion date, whichever is earlier.

(c) Interest does not accrue during of periods of educational deferment.

§21.442. Repayment of Loans.

(a) The Teach for Texas Conditional Grant shall be repaid in installments over a period of not more than ten years from the date the grant becomes a loan.

(b) A recipient shall begin making payments within sixty days of the date on which the Teach for Texas Conditional Grant becomes a loan.

(c) The repayment amount shall be based upon the proportion of the remaining unfulfilled service obligation.

(d) The minimum repayment amount is $1,200 annually or an amount required to repay the loan within 10 years, whichever is greater.

§21.443. Educational Deferments.

Deferments apply only to qualified recipients during periods of eligible enrollment during the six-year eligibility period.

§21.444. Forbearance.

Periods of forbearance may be granted to recipients of Teach for Texas Conditional Grants in repayment under certain documented circumstances as determined by the Board. Periods of forbearance shall extend the ten-year repayment period.

§21.445. Enforcement of Collection.

(a) When a recipient of a Teach for Texas Conditional Grant shall have failed to make six monthly payments in accordance with the promissory note(s), then the full amount of remaining principal, interest, and/or late charges shall immediately become due and payable. The recipient's name and last known address and other information as requested by the Commissioner shall be reported to the Attorney General or any county or district attorney acting for him or her in the county of the recipient's residence or in Travis County, unless the Attorney General shall find reasonable justification for delaying suit and shall advise the Commissioner in writing.

(b) Upon notification by the Commissioner of default on the loan, the educational institution shall cause the records, including transcripts of the recipient, to become unavailable to him or her or any other person outside the institution until the participating institution has been notified by the Commissioner that default has been corrected.

(c) In all cases of default, the recipient shall be responsible for the payment of principal and all accrued charges, including interest, late charges, any collections costs incurred, court costs, and attorney fees.

§21.446. Provisions for Disability and Death.

The Board shall cancel a recipient's repayment or service obligation if it determines:

(1) on the basis of a sworn affidavit of a qualified physician, that the recipient is unable to teach on a full-time basis because the recipient is permanently, totally disabled; or

(2) on the basis of a death certificate, that the recipient has died. In the case of death, the Board may pursue collection from the recipient's estate if the debt has been reduced to judgment before the death of the recipient.

§21.447. Advisory Committee.

The Board's Financial Aid Advisory Committee shall function as the advisory committee to the Board in the administration of the program described in this subchapter.

§21.448. Dissemination of Information.

The Board and its advisory committee are responsible for publishing and disseminating general information and program rules for the Teach for Texas Conditional Grant Program to approved Texas institutions of higher education, appropriate associations, and other interested entities.

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 July 26, 2001.

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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SUBCHAPTER V. TEACH FOR TEXAS ALTERNATIVE CERTIFICATION CONDITIONAL GRANT PROGRAM

19 TAC §§21.680 - 21.696

The Texas Higher Education Coordinating Board proposes new §§21.680 through 21.696, concerning the Teach for Texas Alternative Certification Conditional Grant Program. Specifically, these new rules will provide for application acceptance priorities, selection criteria and program requirements, eligibility and hardship circumstances, award amounts, pre-employment period and service obligation periods, grant conditions, loan interest and repayment provisions, forbearance and collection enforcement provisions, disability and death provisions, advisory committee functions, and dissemination of information provisions.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. The cost of this program for Fiscal Year 2002 is estimated to be $3,200,000 and for Fiscal Year 2003 is estimated to be $8,200,000. For Fiscal Year 2004 through Fiscal Year 2006, the fiscal impact is estimated to remain at $8,200,000.

Ms. Hollis has also determined that for each year of the first five years these proposed rules are in effect, the public benefit anticipated as a result of administering the sections will be an increased number of teachers who enjoy teaching, who have valuable experience and expertise, and who will help relieve the teacher shortage in Texas. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §56.357, which provides the Coordinating Board with the authority to award conditional grants to assist persons seeking educator certification through alternative educator certification programs.

The new rules affect the Texas Education Code, Chapter 56, §§56.357 through 56.358.

§21.680. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter O, Teach for Texas Financial Assistance Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§56.357 through 56.358.

(b) Scope. The rules set forth in this subchapter are applicable to persons who show financial need and who enroll in an alternative certification program approved by the State Board for Educator Certification.

(c) Purpose. The purpose of the Teach for Texas Alternative Certification Conditional Grant Program is to attract to the teaching profession persons with undergraduate degrees who have expressed an interest in teaching, to support the certification of those persons as classroom teachers, and to encourage these newly certified teachers to teach in fields having a critical shortage of teachers or to teach in communities having a critical shortage of teachers.

§21.681. Definitions.

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

(1) Alternative Certification Program--an alternative certification educator preparation program approved by the State Board for Educator Certification.

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

(3) Certification officer--The individual designated by the State Board for Educator Certification as the "Certification Officer" at an approved certification program.

(4) Certified Teacher--A person who has passed the appropriate certification exams and has been fully certified by the Texas State Board for Educator Certification (SBEC).

(5) Commissioner--The Commissioner of Higher Education.

(6) Community Experiencing a Critical Shortage of Teachers--As defined by the Texas Commissioner of Education.

(7) Good cause--See §21.436 of this title (relating to Teach for Texas Conditional Grant Program), "Hardship and Other Good Cause."

(8) Loan--A Teach for Texas Alternative Certification Conditional Grant that has become a loan because the grant conditions have not been fulfilled.

(9) Program Completion Date--The date the recipient is considered to have completed the requirements of the educator certification program and is eligible to take the appropriate ExCET exam.

(10) Program officer--The individual designated by the State Board for Educator Certification as the "Program Director" at an approved certification program.

(11) Recipient--A person who has received a Teach for Texas Alternative Certification Conditional Grant.

(12) Steady Progress--As defined by the individual program officer midway through the alternative certification program.

(13) Shortage Field--Subject or area of study designated by the Texas Commissioner of Education as having a critical shortage of teachers.

§21.682. Application Acceptance and Selection Criteria Priorities.

(a) Selection of applicants to receive grants shall be made either on a first-come, first-served basis or an annual application deadline and criteria for ranking applications that include an applicant's financial resources as well as the efficient use of funds will also be established by the Board.

(b) Applicants from all regions of Texas shall be given the opportunity to apply for and receive the conditional grant.

§21.683. Agreement to Program Requirements.

The program officer at each approved certification program shall sign an agreement acknowledging the requirements of the Teach for Texas Alternative Certification Conditional Grant Program.

§21.684. Eligible Recipient.

To be eligible an applicant must:

(1) be seeking educator certification and agree to teach full-time at the preschool, primary, or secondary level in a public school in Texas:

(A) in a teaching field designated by the Commissioner of Education as experiencing a critical shortage of teachers in Texas in the year in which the student receives the grant; or

(B) in a public school in Texas in a community designated by the Commissioner of Education as experiencing a critical shortage of teachers:

(i) in any year in which the person receives a Teach for Texas Alternative Certification Conditional Grant; or

(ii) in any subsequent year in which the person fulfills the teaching obligation; and

(2) be enrolled in an alternative educator certification program and must:

(3) make steady progress toward completion of the educator certification program;

(4) be recommended for a Teach for Texas Alternative Certification Conditional Grant award by the program officer at the alternative certification program;

(5) not have been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance, as defined by Chapter 481, Health and Safety Code, unless the student has:

(A) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(B) been pardoned, had the record of the offense expunged from the person's record, or otherwise has been released from the resulting ineligibility to receive a grant under this subchapter.

§21.685. Hardship and Other Good Cause.

Hardship and other good cause may be determined by the Board based upon documented circumstances. The Board may request assistance from the program officer at an approved institution in determining whether or not circumstances warrant exception to the steady progress requirement and also the requirement to fulfill the five-year teaching obligation within a six-year period. Such situations include, but are not limited to, the following:

(1) a severe illness or other debilitating condition that may affect the recipient's ability to make steady progress in the alternative educator certification program or in completing the five-year teaching obligation; or

(2) responsibility of the recipient for the care of a temporarily disabled dependent that may affect the recipient's ability to make steady progress in the alternative educator certification program or in completing the five-year teaching obligation.

§21.686. Amount of Award.

The maximum amount of a Teach for Texas Alternative Conditional Grant shall equal two times the current annual amount of the TEXAS Grant for a student enrolled at a Texas four-year public institution of higher education.

§21.687. Eighteen-Month Period Before Employment.

The recipient must become certified to teach in Texas and must begin fulfilling the five-year service obligation not later than 18 months after the program completion date.

§21.688. Service Obligation Period.

(a) A recipient must teach full-time for five years as:

(1) a teacher certified in and teaching in a field having a critical shortage of teachers; or

(2) a certified teacher in a community experiencing a critical shortage of teachers.

(b) A recipient must complete a five-year service obligation.

(c) The service obligation period begins on the first day the recipient begins qualified employment.

(d) During the service obligation period, the recipient shall provide the Board with regular, periodic reports of his or her teaching status.

§21.689. Conditions of Grant.

(a) The Teach for Texas Alternative Certification Conditional Grant becomes a loan and shall be reported to credit reporting agencies when the recipient fails to:

(1) remain enrolled in or to make steady progress in the educator certification program;

(2) become certified as a teacher within eighteen months after the program completion date;

(3) begin the service obligation within eighteen months after the program completion date;

(4) maintain continuous full-time teaching and complete the five-year teaching obligation within six years of beginning the service obligation period;

(5) provide regular, periodic reports of enrollment or employment status and location to the Board within a reasonable period of time, as determined by the Board.

(b) Recipients must sign a promissory note acknowledging the conditional nature of the grant and promising to repay the outstanding principal, interest, and reasonable collection costs if the grant conditions are not fulfilled.

§21.690. Loan Interest.

(a) The interest rate on loans shall be determined by the Commissioner and shall be a fixed simple interest rate.

(b) Interest begins to accrue as of the date the grant becomes a loan, or the date the certification program was completed, whichever is earlier.

(c) Interest does not accrue during periods of eligible teaching.

§21.691. Repayment of Loans.

(a) The Teach for Texas Alternative Certification Conditional Loan shall be repaid in installments over a period of not more than ten years from the date the grant becomes a loan.

(b) A recipient shall begin making payments within sixty days of the date on which the Teach for Texas Alternative Certification Conditional Grant becomes a loan.

(c) The loan amount to be repaid shall be based upon the proportion of the remaining unfulfilled service obligation.

(d) The minimum repayment amount is $1,200 annually, or an amount required to repay the loan within 10 years, whichever is greater.

§21.692. Forbearance.

Periods of forbearance may be granted on loans under certain documented circumstances as determined by the Board. Periods of forbearance shall extend the ten-year repayment period.

§21.693. Enforcement of Collection.

(a) When a recipient of a Teach for Texas Alternative Certification Conditional Grant shall have failed to make six monthly payments due in accordance with the promissory note(s), then the full amount of remaining principal, interest, and/or late charges shall immediately become due and payable. The recipient's name and last known address, and other information as requested by the Commissioner, shall be reported to the Attorney General or any county or district attorney acting for him or her in the county of the recipient's residence or in Travis County, unless the Attorney General finds reasonable justification for delaying suit and advises the Commissioner in writing.

(b) In all cases of default, the recipient shall be responsible for the payment of principal and all accrued charges, including interest, late charges, any collections costs incurred, court costs, and attorney fees.

§21.694. Provisions for Disability and Death.

The Board shall cancel a recipient's repayment or service obligation if it determines:

(1) on the basis of a sworn affidavit of a qualified physician, that the recipient is unable to teach full-time because the recipient is permanently, totally disabled;

(2) on the basis of a death certificate, that the recipient has died; in the case of death, the Board may pursue collection from the recipient's estate if the debt has been reduced to judgment before the death of the recipient.

§21.695. Advisory Committee.

The Board's Financial Aid Advisory Committee shall function as the advisory committee to the Board in the administration of the program described in this subchapter.

§21.696. Dissemination of Information.

The Board and its advisory committee are responsible for publishing and disseminating general information and program rules for the Teach for Texas Alternative Certification Conditional Grant Program to approved Texas institutions of higher education, educator certification programs, appropriate associations, and other interested entities.

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 July 27, 2001.

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER W. CONDITIONAL LOAN REPAYMENT PROGRAM FOR ATTORNEYS EMPLOYED BY THE OFFICE OF THE ATTORNEY GENERAL

19 TAC §§21.710 - 21.722

The Texas Higher Education Coordinating Board proposes new §§21.710 through 21.722, concerning the Conditional Loan Repayment Program for Attorneys Employed by the Office of the Attorney General. Specifically, these new rules will provide for application acceptance priorities, definitions of eligible schools of law, eligible attorneys, and eligible education loans. Additionally, these new rules provide for methods and conditions of loan repayment and noncompliance, loan terms, provisions on forbearance and enforcement of collections, death and disability provisions, and advisory committee functions.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. The cost of this program for Fiscal Year 2002 is estimated to be $50,000, including loan repayments and administrative costs. The cost for this program will remain at $50,000 for each year after Fiscal Year 2002.

Ms. Hollis has also determined that for each year of the first five years these proposed new rules are in effect, the public benefit anticipated as a result of administering the sections will be an increased number of attorneys employed by nonprofit organizations providing services to indigent persons in Texas. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §61.951, which provides the Coordinating Board with the authority to provide assistance for attorneys employed by nonprofit organizations that provide legal services for indigent persons.

The new rules affect the Texas Education Code, §§61.951 through 61.962.

§21.710. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter X, Repayment of Certain Education Loans Owed by Certain State Attorneys. These rules establish procedures to administer the program as prescribed in the Texas Education Code, §§61.951 through 61.962.

(b) Scope. The rules set forth in this subchapter are applicable to attorneys who apply and qualify for the assistance.

(c) Purpose. This subchapter establishes guidelines for administering the program for the purpose of recruiting, and retaining for at least three years, attorneys in the Office of the Attorney General of the State of Texas.

§21.711. Definitions.

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

(1) Attorney General's Office (OAG)--The Office of the Attorney General of the State of Texas.

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

(3) Commissioner--The Texas Commissioner of Higher Education.

(4) Program--The Conditional Education Loan Repayment Program for OAG Attorneys.

(5) Service Period--A twelve-month period of law practice that qualifies an eligible attorney for an annual education loan repayment.

§21.712. Priorities of Application Acceptance.

Acceptance of applicants will depend upon the availability of appropriated funds and will be made either on a first-come, first-served basis, or an annual application deadline. Criteria for ranking applications will be established. Renewal applicants will be given priority over first-time applicants.

§21.713. Eligible School of Law.

An eligible school of law is one that is accredited by the American Bar Association.

§21.714. Eligible Attorney.

To be eligible for loan repayment, an applicant must:

(1) be licensed by the State Bar of Texas,

(2) submit a complete application to the board,

(3) be employed by or have been offered employment as an attorney with the Attorney General's Office at the time the application is submitted to the Board,

(4) sign an agreement to serve as an attorney in the Attorney General's Office for at least three consecutive years, and

(5) sign a promissory note promising to repay all loan repayments made if the three years of service are not completed.

§21.715. Eligible Education Loan.

An eligible education loan is one that:

(1) was obtained through a lender for purposes of attending an eligible school of law or for undergraduate education at a post-secondary institution,

(2) was obtained though a lender for purposes of consolidating education loans,

(3) does not entail a service obligation and is not being repaid through another loan repayment program,

(4) is not an education loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a relative, and

(5) is not in default at the beginning of the service period.

§21.716. Education Loan Repayments.

Eligible education loans shall be repaid under the following conditions:

(1) The annual repayment(s) are made co-payable to the attorney and the holder(s) of the loan(s).

(2) The annual repayment amount shall be determined by the Commissioner for full-time eligible practice, but shall not exceed $6,000.

(3) Repayments shall be applied to the outstanding principal and accrued interest.

(4) All repayments are contingent upon availability of funds and the applicant's having met all program requirements at the end of the service period.

§21.717. Conditions of Loan Repayment(s) and Noncompliance.

(a) Attorneys must serve as a full-time attorney in the Attorney General's Office for three consecutive years.

(b) If three consecutive years of service in the Attorney General's Office are not completed in full, all loan repayments made become loans and the terms of the promissory notes become effective on the date the attorney's employment with the Attorney General's Office ends.

(c) The Board may grant the attorney additional time to complete the service obligation for good cause, such as temporary disability, care for a dependent who is temporarily disabled, or other extenuating circumstances as determined by the Board.

§21.718. Terms of Loans.

(a) The principal and accrued interest shall be repaid in installments over a period of not more than five years;

(b) The fixed annual interest rate shall be determined by the Commissioner.

(c) Interest shall accrue beginning on the date the loan repayment was disbursed by the Board.

(d) Repayment shall begin 60 days after the attorney's last date of employment in the Attorney General's Office.

(e) Monthly payments shall be sufficient to repay the loan(s) within five years, or $200.00, whichever is greater.

§21.719. Forbearance.

Periods of forbearance may be granted at the discretion of the Board based on certain documented circumstances.

§21.720. Enforcement of Collections.

(a) When a recipient of education loan repayments which have become loans has failed to remit as many as six monthly payments due in accordance with the promissory note(s), the unpaid principal, accrued interest charges, late charges, and any collection costs shall become due and payable immediately. The recipient's name, last known address, and other information shall be reported to the Attorney General or any county or district attorney acting for him or her in the county of the recipient's residence or in Travis County, unless the Attorney General shall find reasonable justification for delaying suit and shall so advise the Commissioner in writing. The borrower is responsible for paying all amounts, including principal and all accrued charges, such as interest, late charges, collection costs, court costs, and attorney fees.

(b) Upon notification by the Commissioner of default on the loan, the educational institution shall not release official certified academic transcripts of the recipient until the participating institution has been notified by the Board that the default has been corrected.

(c) In all cases of default the recipient shall be responsible for the payment of principal and all accrued interest charges, late charges, any collections costs incurred, and attorney fees.

§21.721. Provisions for Disability and Death.

The Board shall cancel a recipient's repayment or service obligation upon receipt of a sworn affidavit of a qualified physician documenting permanent disability that prevents the attorney from being unable to complete the three-year service period as an attorney for the Attorney General's Office. Upon receipt of a death certificate of a recipient, the Board shall cancel the repayment obligation unless the debt has been reduced to judgment before the date of death. The Board may pursue collection from the recipient's estate.

§21.722. Advisory Committee.

The Commissioner may appoint an advisory committee from outside the Board's membership and may request assistance from the State Bar of Texas and the Attorney General's Office.

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

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER FF. LAW EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.1010 - 21.1017

The Texas Higher Education Coordinating Board proposes new §§21.1010 through 21.1017, concerning the Law Education Loan Repayment Program. Specifically, these new rules will provide for application acceptance priorities, in addition to eligibility requirements for an organization, an attorney, and an education loan. These sections also will provide for methods of repayment of education loans, and advisory committee functions.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. The cost of this program for Fiscal Year 2002 is estimated to be $100,000, including loan repayments and administrative costs. The costs for this program will remain at $100,000 for each year after Fiscal Year 2002.

Ms. Hollis has also determined that for each year of the first five years these proposed rules are in effect, the public benefit anticipated as a result of administering the sections will be an increased number of attorneys employed by nonprofit organizations providing services to indigent persons in Texas. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §61.951, which provides the Coordinating Board with the authority to provide assistance for attorneys employed by nonprofit organizations that provide legal services for indigent persons.

The new rules affect the Texas Education Code, §§61.951 through 61.958.

§21.1010. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter X, Repayment of Certain Law School Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.951 through 61.958.

(b) Scope. The rules set forth in this subchapter are applicable to attorneys employed by nonprofit organizations that provide either criminal defense or civil legal services for indigent individuals.

(c) Purpose. The purpose of the Law Education Loan Repayment Program is to recruit and retain attorneys in nonprofit organizations providing services to indigent persons in Texas.

§21.1011. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education.

(3) Program--The Law Education Loan Repayment Program.

(4) Service Period--A twelve-month period of service that qualifies an eligible attorney for an annual education loan repayment.

§21.1012. Priorities of Application Acceptance.

Approval of applications will depend upon the availability of appropriated funds and will be made either on a first-come, first-served basis or an annual application deadline and criteria for ranking applications will also be established. Renewal applicants will be given priority over first-time applicants.

§21.1013. Eligible Organization.

An eligible organization is one that:

(1) qualifies for an exemption from federal income taxes under §501 (c)(3), Internal Revenue Code of 1986, as amended;

(2) is prohibited from providing representation in a class-action lawsuit; and,

(3) receives funds for services to indigent individuals from:

(A) the Interest on Lawyer's Trust Accounts program administered by the Texas Equal Access to Justice Foundation; or

(B) the basic civil legal services account assistance grants under the Texas Government Code, §51.943.

§21.1014. Eligible Attorney.

To be eligible for loan repayment, an applicant must:

(1) be licensed by the State Bar of Texas,

(2) submit a completed application to the Board agreeing to meet the conditions of loan repayment through the program, and

(3) provide at least twelve consecutive months of service in an eligible organization.

§21.1015. Eligible Education Loan.

An eligible education loan is one that:

(1) was obtained through a lender for purposes of attending a law school that is accredited by the American Bar Association,

(2) does not entail a service obligation and is not being repaid through another loan repayment program,

(3) is not an education loan made to oneself from one's own insurance policy or pension plan or from the pension plan or insurance policy of a relative, and

(4) is not in default at the beginning of the service period.

§21.1016. Repayment of Education Loans.

Eligible education loans shall be repaid under the following conditions:

(1) The annual repayment(s) shall be made co-payable to the attorney and the holder(s) of the loan(s).

(2) The annual repayment amount and the number of service periods shall be determined by the Commissioner.

(3) The number of service periods shall not exceed ten years.

(4) The total amount of loan repayment received through this program shall not exceed 50% of the total amount of the attorney's outstanding law school loans, including scheduled interest payments at the beginning of the first service period.

(5) If education loans obtained during law school have been consolidated with undergraduate education loans or other professional education loans, and neither the attorney nor the consolidation lender can provide documentation of the indebtedness relating to the original loans for law school, the total amount of loan repayment received through this program shall not exceed 50% of the current average cost of education at eligible schools of law.

(6) All payments are contingent upon availability of funds and the applicant having met all program requirements at the end of the service period.

(7) Prior conditional approval shall be communicated to eligible attorneys.

§21.1017. Advisory Committee.

The Commissioner may appoint an advisory committee to provide assistance in matters relating to the program.

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

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1080 - 21.1091

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21.1080 - 21.1091, concerning the Educational Aide Exemption Program. Specifically, the repeal of the rules will modernize the formatting of program rules and clarify current eligibility requirements in response to legislation.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the repeal of the rules is in effect, the fiscal implications to state or local government as a result of enforcing or administering the rules will be that the annual cost is expected to grow from approximately $1 million to approximately $2 million. Since funding is provided through the Permanent School Fund and not General Revenue, there is no cost to the state as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the repeal of the rules is in effect, the public benefit anticipated as a result of administering the sections will be an increase in the number of individuals working toward teacher certification. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the repeal of the rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P.O. Box 12788, Austin, Texas 78711.

The repeal of the rules is proposed under the Texas Education Code, §54.214, which authorizes the Coordinating Board to adopt rules as necessary to implement the educational aides program.

The repeal of the rules affect the Texas Education Code, §54.214.

§21.1080. Purpose.
§21.1081. Administration.
§21.1082. Delegation of Powers and Duties.
§21.1083. Definitions.
§21.1084. Eligible Institution.
§21.1085. Eligible Students.
§21.1086. The Application Process.
§21.1087. Selection Criteria.
§21.1088. Award Announcements.
§21.1089. Award Cycle.
§21.1090. Reimbursement for Exemptions.
§21.1091. Program Review Requirements.

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

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Gary Prevost
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Texas Higher Education Coordinating Board
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19 TAC §§21.1080 - 21.1089

The Texas Higher Education Coordinating Board proposes new §§21.1080 through 21.1089, concerning the Educational Aide Exemption Program. Specifically, the new rules will modernize the formatting of program rules and clarify current eligibility requirements in response to legislation.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, the fiscal implications to state or local government as a result of enforcing or administering the rules will be that the annual cost is expected to grow from approximately $1 million to approximately $2 million. Since funding is provided through the Permanent School Fund and not General Revenue, there is no cost to the state as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years these proposed new rules are in effect, the public benefit anticipated as a result of administering the sections will be an increase in the number of individuals working toward teacher certification. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §54.214, which authorizes the Coordinating Board to adopt rules as necessary to implement the educational aides program.

The new rules affect the Texas Education Code, §54.214.

§21.1080. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.214, which states that the Coordinating Board shall adopt rules as necessary to implement the educational aides program.

(b) Scope. The rules set forth in this subchapter are applicable to determining the eligibility of students to receive awards through the educational aides program.

(c) Purpose. The purpose of the Educational Aide Exemption Program is to encourage certain educational aides to complete full teacher certification by providing need-based tuition and mandatory fee exemptions at Texas public institutions of higher education.

§21.1081. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The commissioner of higher education, the chief executive officer of the board.

(3) Cost of Attendance--A board-approved estimate of the expenses incurred by a typical financial aid student in attending college. Includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(4) Financial need--Based on the federal formula, the cost of education at an institution of higher education less the expected family contribution and any gift aid for which the student is entitled, or based on adjusted gross annual income for the most recent tax year as follows:

(A) single independent students must have an adjusted gross income of $25,000 or less,

(B) married independent students must have a combined gross income of $50,000 or less, and

(C) dependent students must have an adjusted gross income for the family of $50,000 or less.

(5) Program officer--The individual on a college campus who is designated by the institution's Chief Executive Officer to represent a program described in this subchapter on that campus. Unless otherwise designated by the Chief Executive Officer, the Director of Student Financial Aid shall serve as program officer.

(6) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included.

§21.1082. Eligible Institutions.

(a) All public institutions of higher education are eligible to participate.

(b) The chief executive officer of an eligible institution shall designate a program officer who shall be the board's on-campus agent to certify all institutional transactions, activities and reports with respect to the program described in this subchapter. Unless otherwise indicated by the chief executive officer of the institution, the Director of Financial Aid shall serve as the program officer.

§21.1083. Eligible Students.

To receive an award through the Educational Aide Exemption Program, a student must:

(1) be a resident of Texas;

(2) have at least one school year of experience as an educational aide during the five years preceding the term or semester for which the person receives the exemption;

(3) be employed in some capacity by a school district in Texas during the school year for which the person receives the award;

(4) show financial need;

(5) be enrolled in courses required for teacher certification at the institution granting an exemption under this subchapter;

(6) meet the academic progress standards of his/her institution; and

(7) follow application procedures and schedules as indicated by the board.

§21.1084. The Application Process.

(a) Application forms and instructions will be distributed primarily through school district offices throughout the state, although financial aid offices of eligible institutions will also be provided copies of the forms.

(b) Applications will be processed once a year, with award announcements made as soon as possible after the priority deadline named by the board.

(c) Part I of the application is to be completed and signed by the applicant, who is to forward the form to an authorized officer of the school or school district by which the applicant is employed.

(d) Part II of the application is to be completed and certified by an authorized officer of the school or school district by which the applicant is employed, who is to forward the application to the financial aid office of the college or university the applicant plans to attend.

(e) Part III of the application is to be completed and certified by the financial aid office of the relevant institution of higher education, which is responsible for forwarding the completed application to the board by the deadline indicated in the instructions.

(f) Due to limited funding, each institution will be allowed to submit only a certain number of applications to the board. This allotment will be announced to the institutions at least a month prior to the deadline for submitting applications.

(g) In order to be given priority consideration, applications with Parts I, II and III completed and duly certified must be received by the board by the established deadline. Applications received after that date will be given consideration only if funds remain available after all applications received by the deadline have been processed.

§21.1085. Selection Criteria.

From the pool of applicants submitted by participating institutions, the board will select recipients for the exemptions. Selection will be based on the following criteria:

(1) the financial need of each student,

(2) the number of years the individual has been employed as an educational aide,

(3) the priority assigned each applicant by the institution, and

(4) the student's anticipated date for certification as a teacher.

§21.1086. Award Announcements.

As soon as possible after the priority deadline for submitting applications, the board will select award recipients and announce the selections to the institutions, the selected recipients, and the school districts employing the recipients. The number of awards made each year will depend on the funding available for reimbursing institutions for the exemptions they grant. No institution is required to award an exemption for which reimbursement funds are not available.

§21.1087. Award Cycle.

(a) Fall awards. Each individual selected for an award through this subchapter will be exempted from the payment of tuition and mandatory fees other than class or laboratory fees for the fall term for which the award was requested.

(b) Spring awards. At the end of the fall term and upon confirmation by the institution that the student continues to be eligible, the student will also be granted an exemption for tuition and mandatory fees other than class or laboratory fees for the spring term of that same academic year.

(c) A summer exemption may be granted if program funding is sufficient to meet summer expenses and if the student continues to meet program requirements. The availability of funding for summer awards will be announced to institutions by the board by March 1 of each year.

(d) Students who have received awards may compete for awards in subsequent years but must follow the same application process as students applying for the first time.

§21.1088. Reimbursement for Exemptions.

(a) Source of funding. The funds to be used to reimburse institutions for the exemptions awarded under this subchapter will come from the foundation school fund.

(b) To request reimbursements. After granting exemptions authorized by the board, the institutions may request reimbursement from the board by completing and submitting the reimbursement form prescribed and distributed by the board.

(c) Reimbursements. At least once a year the board will request a transfer of funds from the foundation school fund for use in reimbursing participating institutions and forward amounts to institutions in keeping with the reimbursement forms received from the schools.

§21.1089. Program Review Requirements.

Any institution of higher education whose students receive awards through the program described in this subchapter will be subject to a program review.

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

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Gary Prevost
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Texas Higher Education Coordinating Board
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SUBCHAPTER KK. TEACHER EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.2020 - 21.2026

The Texas Higher Education Coordinating Board proposes new §§21.2020 - 21.2026, concerning the Teacher Education Loan Repayment Program. Specifically, these new rules will provide for application acceptance priorities, eligible teacher requirements, eligible loan requirements, provisions on the repayment of education loans, and advisory committee functions.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, there will be fiscal implications with a cost of $2.5 million to state or local government which includes loan repayments and administrative costs, as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years these proposed rules are in effect, the public benefit anticipated as a result of administering the sections will be an increased number of teachers in communities and subjects for which there is an acute shortage of teachers. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §61.702, which provides the Coordinating Board with the authority to provide assistance in the repayment of student loans for teachers who teach in communities and subject areas for which there is an acute shortage of teachers.

The new rules affect the Texas Education Code, §61.702.

§21.2020. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter M, Teach for Texas Financial Assistance Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §61.702.

(b) Scope. The rules set forth in this subchapter are applicable to full-time classroom teachers at the preschool, primary, or secondary level in a public school in this state in an area or field of acute teacher shortage as designated by the Commissioner of Education.

(c) Purpose. The purpose of the Teacher Education Loan Repayment Program is to recruit and retain classroom teachers in communities and subjects for which there is an acute shortage of teachers in Texas.

§21.2021. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Classroom Teacher--A person who is employed by a school district and teaches in an academic instructional setting or a career and technology instructional setting at least four hours each day. The term does not include a teacher's aide or a full-time administrator.

(3) Commissioner--The Texas Commissioner of Education.

(4) Program--The Teacher Education Loan Repayment Program.

(5) Service Period--A one-year period of service that qualifies an eligible teacher for an annual education loan repayment.

§21.2022. Priorities of Application Acceptance.

Approval of applications will depend upon the availability of appropriated funds and will be made either on a first-come, first-served basis, or on an annual application deadline. Criteria for ranking applications will be established. Renewal applicants will be given priority over first-time applicants.

§21.2023. Eligible Teacher.

To be eligible for loan repayment a teacher must:

(1) have been employed as a classroom teacher for at least one year as a full-time classroom teacher in a public school in Texas at the preschool, primary, or secondary level:

(A) in a school that has been designated by the Commissioner as having an acute shortage of teachers; or

(B) teaching a subject that has been designated as a field of acute teacher shortage by the Commissioner;

(2) be employed as a full-time classroom teacher in a public school in Texas at the preschool, primary, or secondary level:

(A) in a school that has been designated by the Commissioner as having an acute shortage of teachers; or

(B) teaching a subject that has been designated as a field of acute teacher shortage by the Commissioner;

(3) not have received a Teach for Texas Grant; and

(4) submit a completed application to the Board.

§21.2024. Eligible Education Loan.

An eligible education loan is one that:

(1) was obtained for the purpose of attending an institution of higher education,

(2) does not entail a service obligation and is not being repaid through another loan repayment program,

(3) is not an education loan made to oneself from one's own insurance policy or pension plan or from the pension plan or insurance policy of a relative, and

(4) is not in default at the beginning of the service period.

§21.2025. Repayment of Education Loans.

Eligible education loans shall be repaid under the following conditions:

(1) the annual repayment(s) shall be made co-payable to the teacher and the holder(s) of the loan(s);

(2) the annual repayment amount is the lesser of $1,000.00 or the amount of principal and interest that is scheduled to be paid during the service period;

(3) the total amount of loan repayment shall not exceed $5,000.00;

(4) the number of service periods shall not exceed five years;

(5) all payments are contingent upon availability of funds and the applicant's having met all program requirements at the end of the service period; and

(6) prior conditional approval shall be communicated to eligible teachers.

§21.2026. Advisory Committee.

The Commissioner may appoint an advisory committee to provide assistance in matters relating to the program.

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

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Gary Prevost
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Texas Higher Education Coordinating Board
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.22

The Texas Higher Education Coordinating Board proposes amendments to §22.22, concerning the Tuition Equalization Grant Program. Specifically, the amendments to the rule will clarify the eligible institutions of the program.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed amendments to the rule are in effect, there will be no additional fiscal implications to state or local government as a result of enforcing or administering the rule. The total cost of the program for the first five years the amendments are in effect is estimated to be $82,200,337 for each fiscal year.

Ms. Hollis has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the section will be a better understanding of what constitutes an eligible institution. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P.O. Box 12788, Austin, Texas 78711.

The amendments to the rule are proposed under the Texas Education Code, §61.221, which authorizes the Coordinating Board to provide tuition equalization grants to Texas residents enrolled in any approved private Texas college or university, based on student financial need.

The amendments to the rule affect the Texas Education Code, Chapter 61.

§22.22. Eligible Institutions.

(a) Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003 or that is located in Texas and meets the same program standards and accreditation as public institutions of higher education as determined by the Board, is eligible to participate in the Tuition Equalization Grant Program. [~~Any nonprofit, independent Texas college or university which is a regular member of, or candidate for accreditation by, the Commission on Colleges of the Southern Association of Colleges and Schools may apply to participate in the program. Nonprofit, independent professional schools which award bachelor's or other higher degrees, and which are not members of Southern Association of Colleges and Schools, may petition the board for consideration of approval.~~]

(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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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.228, 22.229, 22.232

The Texas Higher Education Coordinating Board proposes amendments to §§22.228, 22.229, and 22.232, concerning the Toward Excellence, Access and Success (TEXAS) Grant Program. Specifically, the amendments will clarify the authority of financial aid officers to exercise professional judgment in granting hardship extensions to the program's 16-month window of opportunity to get into the program and extensions to a student's six or four years of grant eligibility due to emergency situations, enable the Coordinating Board to set award amounts at a flat rate, in keeping with recommendations from the TEXAS Grant Oversight Committee, and clarify that all forfeited student deposit funds are to be used to make need-based grants to students through the TEXAS Grant Program.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed rules are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. The cost of the program for Fiscal Year 2002 is estimated to be $120 million. The cost of the program is estimated to be $162 million for Fiscal Year 2003, $197 million for Fiscal Year 2004, $239 million for Fiscal Year 2005, and $251 million for Fiscal Year 2006.

Ms. Hollis has also determined that for each year of the first five years these proposed rules are in effect, the public benefit anticipated as a result of administering the sections will be increased efficiency in administering the program. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The amendments to the rules are proposed under the Texas Education Code, §56.302, which provides the Coordinating Board with the authority to provide a grant of money to enable eligible students to attend public and private institutions of higher education in this state.

The amendments affect the Texas Education Code, Chapter 56, Subchapter M.

§22.228. Eligible Students.

(a) To receive an initial award through the TEXAS Grant Program, a student must:

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

(6) meet one of the two following conditions:

(A) be a graduate of a public or accredited private high school in this state not earlier than the 1998-99 school year; having completed the recommended or advanced high school curriculum established under the Texas Education Code, §28.002 or §28.025, or its equivalent (except as indicated in paragraph (7) of this subsection), and unless granted a hardship extension in keeping with §22.229 of this title (relating to Hardship Provisions), enroll as an entering undergraduate student not later than the end of the 16th month after the month of high school graduation; or

(B) (No change.)

(7) if a graduate of a public high school in a school district certified not to offer all the courses necessary to complete all parts of the recommended or advanced high school curriculum, have completed all courses at the high school offered toward the completion of such a curriculum and enroll in an eligible institution not later than the end of the 16th month after the month of high school graduation unless granted a hardship extension in keeping with §22.229 of this title (relating to Hardship Provisions); and

(8) (No change.)

(b) To receive a continuation award through the TEXAS Grant Program, a student must:

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

(7) have received a TEXAS grant for no more than 150 semester credit hours or the equivalent or no more than 90 semester credit hours for individuals eligible for TEXAS Grants based on receipt of an associate's degree; and

(8) (No change.)

(c) Unless granted a hardship postponement in accordance with §22.229 (c) of this title (relating to Hardship Provisions), a student's [~~A person's~~] eligibility for a TEXAS grant ends six years from the start of the semester or term in which the student received his or her initial award of a TEXAS grant if the student's eligibility for a TEXAS Grant was based on his or her high school performance. Unless granted a hardship postponement in accordance with §22.229 (c) of this title (relating to Hardship Provisions), a student's eligibility ends four years from the start of the semester or term in which the student received his or her initial award of a TEXAS grant if the student's eligibility was based on receiving an associate's degree.

(d) - (e) (No change.)

§22.229. Hardship Provisions.

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

(c) A student's general eligibility for a TEXAS grant terminates six years from the term in which he or she receives the first award, if the student's eligibility was based on his or her high school performance or four years, if his or her eligibility was based on receiving an associate's degree. However, the director of financial aid may grant an extension of the six or four years in the event of extreme hardship. Documentation justifying the extension must be kept in the student's files, and the institution must identify students granted extensions, and the length of their extensions to the Coordinating Board, so that it may appropriately monitor each student's period of eligibility.

(d) A student's first award must be received within 16 months of high school graduation. However, the financial aid director may allow a student to receive his/her first award after more than 16 months have passed if the student and/or the student's family has suffered a hardship that would now make the student rank as one of the institution's neediest. Documentation justifying the exception must be kept in the student's files.

§22.232. Awards and Adjustments.

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

(d) Amount of Grant.

(1) The maximum amount that may be received in a given semester or term by a student through the TEXAS Grant Program is an amount equal to the average tuition and required fees charged students enrolled in similar institutions for 12 semester credit hours or their equivalent [~~, prorated for more or less than full-time enrollments~~]. The maximum award for recipients enrolled at eligible private or independent institutions is based on the average tuition and required fees at public universities. The maximum award for students enrolled in public community colleges is based on the average in-district tuition and fee charges for such institutions. The board shall determine and announce award maximum amounts prior to the start of each fiscal year.

(2) - (3) (No change).

(e) - (f) (No change)

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

Filed with the Office of the Secretary of State, on July 27, 2001.

TRD-200104365
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2001
For further information, please call: (512) 427-6162

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19 TAC §22.234

The Texas Higher Education Coordinating Board proposes new §22.234, concerning the Toward Excellence, Access and Success (TEXAS) Grant Program. Specifically, the new rule will clarify the authority of financial aid officers to exercise professional judgment in granting hardship extensions to the program's 16-month window of opportunity to get into the program and extensions to a student's six or four years of grant eligibility due to emergency situations, enable the Coordinating Board to set award amounts at a flat rate, in keeping with recommendations from the TEXAS Grant Oversight Committee, and clarify that all forfeited student deposit funds are to be used to make need-based grants to students through the TEXAS Grant Program.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years this proposed new rule is in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. The cost of the program for Fiscal Year 2002 is estimated to be $120 million. The cost of the program is estimated to be $162 million for Fiscal Year 2003, $197 million for Fiscal Year 2004, $239 million for Fiscal Year 2005, and $251 million for Fiscal Year 2006.

Ms. Hollis has also determined that for each year of the first five years this proposed new rule is in effect, the public benefit anticipated as a result of administering the sections will be increased efficiency in administering the program. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed new rule may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rule is proposed under the Texas Education Code, §56.302, which provides the Coordinating Board with the authority to provide a grant of money to enable eligible students to attend public and private institutions of higher education in this state.

The new rule affects the Texas Education Code, Chapter 56, Subchapter M.

§22.234. Funds Provided from Student Deposit Fees.

Student deposit funds that are not claimed by students may only be used to make need-based grants through the TEXAS Grant Program. If the year-end balance of funds at an institution exceeds 150% of the amount forfeited during that year, the excess funds are to be forwarded to the Coordinating Board for disbursement through the TEXAS Grant Program. If an institution established an endowment fund from funds forfeited prior to the end of state Fiscal Year 2001, no additional forfeited funds may be added to the endowment corpus. All forfeited funds and their earnings (including the earnings of the endowment fund) must be used in calculating the year-end balance subject to the 150% limit, and are to be used for making need-based grants.

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

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER M. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT II PROGRAM

19 TAC §§22.253 - 22.260

The Texas Higher Education Coordinating Board proposes new §§22.253 through 22.260, concerning the Toward Excellence, Access and Success (TEXAS) Grant II Program. Specifically, the new rules will provide for the definition of an eligible institution and an eligible student, and also set funding priorities and priorities in determining which students should receive a TEXAS Grant II award. These new sections will also provide for policies in making awards and award adjustments, and provide rules on the dissemination of information.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years these proposed new rules are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the rules. The cost of this program for Fiscal Year 2002 is estimated to be $5 million, and for Fiscal Year 2003 an estimated $5 million. For Fiscal Year 2004 through Fiscal Year 2006, the fiscal impact is estimated to remain at $5 million. These costs include the cost of the grants as well as administrative expenses.

Ms. Hollis has also determined that for each year of the first five years these proposed new rules are in effect, the public benefit anticipated as a result of administering the sections will be the increased number of students earning an associate's degree. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Ms. Lois Hollis, Assistant Commissioner for Student Services, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §56.352, which provides the Coordinating Board with the authority to provide a grant of money to enable eligible students to attend public two-year institutions of higher education in this state.

The new rules affect the Texas Education Code, §§56.351 through 56.357.

§22.253. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter O, Toward Excellence, Access, and Success (TEXAS) Grant II Program. These rules establish procedures to administer the program as prescribed in the Texas Education Code, §§56.351 through 56.357.

(b) Scope. The rules set forth in this subchapter are applicable to eligible students who show financial need and who are enrolled in an associate degree or certificate program at an eligible institution.

(c) Purpose. This subchapter establishes guidelines for the creation and implementation of the TEXAS Grant II Program, which will provide grants of money to enable eligible students to attend two-year public institutions of higher education in this state.

§22.254. Definitions.

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

(1) Encumber funds (for the TEXAS Grant II Program)--To commit specific award amounts to specific students, documented by a report submitted to the Board. This report includes, at a minimum, a list of student recipient Social Security numbers, number of hours taken and dollar amounts awarded.

(2) Enrolled for at least a half-time basis--The equivalent of six semester credit hours in a regular semester.

(3) Entering student--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during concurrent enrollment in high school and courses for which the student received credit through examination.

(4) Initial award--The grant award made in the first year in which a student is eligible.

§22.255. Eligible Institutions.

(a) Eligible institutions include public junior colleges, technical colleges and state colleges as defined in Texas Education Code, Chapter 61.003 that meet the requirements outlined in Chapter 22, Subchapter A, §22.4 of this title (relating to Approved Institutions) for grant and scholarship programs, as well as the reporting requirements outlined below.

(b) Reporting.

(1) Requirements/Deadlines. All institutions participating in the TEXAS Grant II Program must meet Board reporting requirements in a timely fashion. Such reporting requirements may include reports specific to allocation and reallocation of grant funds (including the Financial Aid Database Report), as well as progress and year-end reports of program activities.

(2) Penalties. If a progress report is postmarked up to a week late, the institution will be ineligible to receive additional funding through the reallocation occurring at that time. For each progress

report postmarked more than five working days late, the institution will be penalized 5% of its allocation of funds for initial awards in the following year. If the year-end report is postmarked up to a week late, the institution will be penalized 5% of its allocation of funds for initial awards in the following year. If it is postmarked more than a week late, the institution will be penalized 10% of its allocation for initial awards in the following year. More severe penalties can be assessed if any report is received by the Board more than one month after its due date. The maximum penalty for a single year is 30% of the school's initial fund allocation. If penalties are invoked two years in a row, the institution may be penalized an additional 20%.

(3) Appeals. When Coordinating Board staff determines a penalty is appropriate, it will first contact the Program Officer by telephone or e-mail and then follow up with a written notification, sent through certified mail. The Program Officer will have three weeks from the time he or she receives the written notice to submit a written response and appeal the staff's decision.

§22.256. Eligible Students.

(a) To receive an initial award through the TEXAS Grant II Program, a student must:

(1) be a resident of Texas;

(2) show financial need;

(3) have applied for any available financial aid assistance;

(4) be enrolled at least half time in an associate's degree or certificate program at an eligible institution;

(5) not be eligible for an award through the TEXAS Grant Program; and

(6) not have been granted an associate's or baccalaureate degree.

(b) To receive a continuation award through the TEXAS Grant II Program, a student must:

(1) have previously received an initial award through this program;

(2) show financial need;

(3) be enrolled at least half time;

(4) be enrolled in an associate's degree or certificate program at an eligible institution;

(5) not have been granted an associate's or baccalaureate degree;

(6) not be eligible for an award through the TEXAS Grant Program;

(7) make satisfactory academic progress towards an undergraduate degree or certificate, which requires completion of at least 75% of the hours attempted in the student's most recent academic year, and maintenance of an overall grade point average of at least 2.5 on a four point scale or its equivalent; and

(8) have received TEXAS Grant II awards for no more than 75 semester credit hours or the equivalent.

(c) A person's eligibility for a TEXAS Grant II award ends four years from the start of the semester or term in which the student received his or her initial award of a TEXAS Grant II.

(d) A person is not eligible to receive an initial or continuation TEXAS Grant II award if the person has been convicted of a felony or an offense under Health and Safety Code, Chapter 481 (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Health and Safety Code, Chapter 481, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility, or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a TEXAS Grant II award.

(e) If a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) of this section after completion of any year, the person may not receive a TEXAS Grant II award until he or she completes courses while not receiving a TEXAS Grant II and meets all the requirements of subsection (b) of this section as of the end of that period of enrollment.

§22.257. Priorities in Funding.

If appropriations for the TEXAS Grant II Program are insufficient to allow awards to all eligible students, the following priorities will be followed by the Board in the use of funds:

(1) continuation awards through the TEXAS Grant II Program; and

(2) initial awards through the TEXAS Grant II Program.

§22.258. Priority in Awards to Students.

In determining who should receive a TEXAS Grant II award, an institution shall give highest priority to students who demonstrate the greatest financial need at the time the award is made.

§22.259. Awards and Adjustments.

(a) Allocations and Reallocations. Unless otherwise indicated, institutions will have until an established deadline each year to encumber all funds allocated to their students. As of that date, unencumbered funds are available for reallocation to students at other institutions on a first come/first served basis.

(b) Disbursement of Funds to Institutions. At the beginning of each fall term, the Board shall forward to each participating institution a portion of its preliminary allocation of funds for that year. Further disbursements to institutions will be made as appropriate for the balance of the institution's preliminary allocation and any reallocated funds.

(c) Use of Grant Funds. A person receiving a TEXAS Grant II award may use the money to pay any usual and customary cost of attendance at an institution of higher education incurred by the student. The institution may disburse all or part of the proceeds of a TEXAS Grant II award to an eligible person only if the tuition and required fees incurred by the person at the institution have been paid.

(d) Amount of Grant.

(1) The maximum amount that may be received in a given semester or term by a student through the TEXAS Grant II Program is an amount equal to the average tuition and required fees charged students enrolled in similar institutions for 12 semester credit hours or their equivalent. The maximum award for students enrolled in public community colleges is based on the average in-district tuition and fee charges for such institutions.

(2) The Board shall determine and announce award maximum amounts for the following year prior to the preceding January 31.

(3) An eligible public institution may not charge a person receiving a TEXAS Grant II award through that institution an amount of tuition and required fees in excess of the amount of the TEXAS Grant II award received by the person. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a TEXAS Grant II award. If an institution's tuition and fee charges exceed the TEXAS Grant II amount, it may address the shortfall in one of two ways:

(A) It may use other available sources of financial aid, other than the Pell grant or loans, to cover any difference in the amount of a TEXAS Grant II award and the student's actual amount of tuition and required fees at the institution; or

(B) it may waive the excess charges for the student. However, if a waiver is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(e) Late Disbursements. For a student to receive a disbursement after the end of his/her period of enrollment, the program officer must document in the student's file that

(1) the student has completed the award period with satisfactory academic progress;

(2) the student has an outstanding balance at the school, or on a student loan or other education-related debt for the qualifying award period; and

(3) the institution will apply the award toward that outstanding balance or debt.

(f) Packaging with Other Awards. The amount of a TEXAS Grant II award may not be reduced by any gift aid for which the person is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the total cost of attendance at an eligible institution.

§22.260. Dissemination of Information and Rules.

The Board and its advisory committee are responsible for publishing and disseminating general information and program rules for the program described in this subchapter. The Coordinating Board shall distribute to each eligible institution and to each school district a copy of the rules adopted under this subchapter.

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

Filed with the Office of the Secretary of State, on July 27, 2001.

TRD-200104367
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: October 26, 2001
For further information, please call: (512) 427-6162

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.27

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

The Texas Funeral Service Commission proposes the repeal of §203.27, concerning Sponsors of Provisional Licensees.

O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this 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. Robbins has also determined that the public benefit is that the repeal of this section will get rid of an obsolete rule. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the proposed repeal.

Comments on the repeal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, telephone: (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The repeal is proposed under §651.152 of the Texas Occupation Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this Section.

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

§203.27. Sponsors of Provisional Licensees.

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 July 26, 2001.

TRD-200104326
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 936-2474

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners proposes an amendment to §322.1, concerning Provision of Services. The amendment will allow physical therapists to accept referrals for treatment from physicians and other authorized healthcare practitioners who are licensed only in a country outside the United States.

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

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be easier access to healthcare, as those who have referrals from physicians outside of the U.S. will be able to seek physical therapy treatment in the state. There will be no effect on small business, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amended section.

§322.1. Provision of Services.

(a) Initiation of physical therapy services

(1) Referral requirement. A physical therapist is subject to discipline from the board for providing physical therapy treatment without a referral from a qualified healthcare practitioner licensed by the appropriate [~~state~~] licensing board [~~in any of the United States or its territories, or the District of Columbia~~], who within the scope of the professional licensure is authorized to prescribe treatment of individuals. The list of qualifying referral sources includes physicians, dentists, chiropractors, podiatrists, physician assistants, and advanced nurse practitioners.

(2) - (3) (No change.)

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

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

Filed with the Office of the Secretary of State, on July 26, 2001.

TRD-200104330

John P. Maline

Executive Director, Executive Council of Physical Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: September 9, 2001

For further information, please call: (512) 305-6900

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 519. PRACTICE AND PROCEDURE

22 TAC §519.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.7 concerning Administrative Penalties.

The amendment to §519.7 will clarify that the Board may impose an administrative penalty alone or in addition to other sanctions.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the proposed amendment does not require anyone to do or not do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the proposed amendment does not require anyone to do or not do anything.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the proposed amendment does not require anyone to do or not do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the Board will be able to impose administrative penalties when appropriate.

The probable economic cost to persons required to comply with the amendment will be zero because the proposed amendment does not require anyone to do or not do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday August 29, 2001. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment does not require anyone to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.7. Administrative Penalties.

(a) The Board may impose an administrative penalty alone or in addition to other sanctions permitted under the Act. Board committees and the executive director are delegated the authority to determine that any alleged violation warrants an administrative penalty under Subchapter L of the Public Accountancy Act.

(b) The report of any such determination may be included in a notice of hearing.

(c) A request for a hearing under §901.554 of the Public Accountancy Act shall clearly notify the staff that the hearing must address issues relevant to the assessment of an administrative penalty by including the language "RESPONDENT SPECIFICALLY REQUESTS A HEARING ON ADMINISTRATIVE PENALTIES" in capital letters. Failure to include such language shall be a waiver of the right to a hearing within the meaning of §901.554 of the Public Accountancy Act.

(d) Pursuant to §901.551 of the Public Accountancy Act:

(1) the board imposes an administrative penalty on licensees who, in violation of §901.411 of the Public Accountancy Act:

(A) do not complete at least 120 hours of continuing professional education in each three-year license period;

(B) do not complete at least 20 hours in each one-year license period;

(C) do not comply with board rules for the reporting of continuing professional education; or

(D) fail to complete or report sufficient ethics hours as required by board §523.63 of this title (relating to Mandatory Continuing Professional Education Attendance).

(2) considering the seriousness of violation of §901.411 of the Public Accountancy Act, the hazard and potential hazard to the public from CPAs who are not trained in current accounting standards and practices, the amount necessary to deter future violations, and such other matters as the board considers justice may require, the board sets the administrative penalty for the violations described in §519.7(d)(1) of this title (relating to Administrative Penalties) at $100 per licensee per license period.

(3) the penalty may be assessed only on licensees against whom a final board order is issued.

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 July 27, 2001.

TRD-200104375
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 305-7848

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22 TAC §519.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.9 concerning Procedures after Hearing.

The amendment to §519.9 will allow the Board to dismiss a complaint at any time, even after a hearing or issuance of a proposal for decision ("PFD"), and not impose any sanction on a licensee. The dismissal does not affect any relief lawfully awarded against the board in the PFD. The amendment also corrects some language to comport with the Administrative Procedure Act and makes some grammatical changes. Finally the amendment clarifies that administrative costs eligible to be recovered includes all costs incurred in defending any order on appeal.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the proposed amendment does not require the state to do or not do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the proposed amendment does not require the state to do or not do anything.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be an increased revenue of approximately $1,000.00 a year based on assessing and collecting the incremental costs of defending appeals of Board Orders.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the Board will be able to pass on to licensees and ex-licensees the incremental cost of defending Board Orders on appeal.

The probable economic cost to persons required to comply with the amendment will be approximately $1,000.00 a year for the incremental cost of defending a Board Order on appeal.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, August 29, 2001. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the total annual incremental cost is $1,000.00 which is not an adverse economic effect, and which will probably be assessed as a lump sum, but collected over a period of time, if at all.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which

authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.9. Procedures after Hearing.

(a) The Board may dismiss a complaint at any time even after hearing or issuance of a proposal for decision. The Board may not impose a sanction on a licensee based on a dismissed complaint. Any dismissal after a proposal for decision has been issued shall have no effect on relief lawfully awarded against the Board.

(b) [~~(a)~~] Filing of exceptions and replies. Within [~~Any party of record may, within~~] 15 days of the date of service of the proposal for decision, unless the administrative law judge has set a shorter or longer period of time, any party of record may file exceptions to the proposal for decision. Replies to these exceptions shall be filed within 15 days after the date of filing the exceptions unless the administrative law judge has set a shorter or longer period of time. A request for extension or decrease of time within which to file exceptions or replies shall be filed with the administrative law judge and [~~a copy of the request shall be~~] served on all parties of record by the party making the request. The administrative law judge shall promptly notify the parties of the decision with regard to these requests. Additional time shall be allowed only when the interests of justice so require.

(c) After [~~Upon~~] the expiration of time for filing exceptions or replies to exceptions, [~~or after time for filing exceptions or replies to exceptions, or after the replies and exceptions have actually been timely filed,~~] the proposal for decision may [~~will~~] be considered by the board [~~and either adopted, modified and adopted, or remanded to the administrative law judge~~]. If remanded to the administrative law judge, the revised proposal for decision thereafter rendered by the administrative law judge shall be clearly labeled as an amended proposal for decision. A copy of the proposal for decision shall be served forthwith by the administrative law judge on each party, or each party's attorney of record, and the board. [~~Service shall be in accordance with the board's rules.~~]

(d) [~~(b)~~] Form of exceptions and replies. Exceptions and replies to exceptions shall conform as nearly as practicable to the rules provided for pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and that evidence and any arguments and legal authority relied upon shall be grouped under the exceptions to which they relate. Any party filing exceptions and replies shall provide the board with original and 17 copies.

(e) [~~(c)~~] Oral argument before the board. Any party may request oral argument before the board before the final determination of any proceeding, but the request must be filed in the offices of the board by no later than 5:00 p.m. of the twentieth [~~fifth~~] working day prior to the board meeting. Oral argument shall be allowed only at the discretion of the board. A request for oral argument may be incorporated in the exception, reply to exceptions, or in a separate pleading. In the event oral argument is granted by the board, each party who has filed exceptions and replies may be limited to a maximum of 20 minutes for presentation thereof. The board shall require one spokesman per party and position. Under no circumstances may any party making oral argument to the board refer to or urge reliance on materials that are not part of the administrative record.

(f) [~~(d)~~] Motion for rehearing. In the event a motion for rehearing is filed, the executive director shall have authority to act for the board in either granting or denying such motion.

(g) [~~(e)~~] Administrative cost recovery. [~~rule.~~] The board may for good cause and in accordance with the Public Accountancy Act, after notice and hearing, impose direct administrative costs in addition to other sanctions provided by law or these rules. Direct administrative costs include, but are not limited to, attorneys' fees, investigative costs, including the costs of the evaluation of the file by the board's committees, excess workload billings for contested case hearings or hearings related services provided by the State Office of Administrative Hearings pursuant to the General Appropriations Act, Act. VIII-6, Rider 9, witness fees and deposition expenses, travel expenses of witnesses, fees for professional services of expert witnesses, the cost of a study, analysis, audit, or other projects the board finds necessary in preparation of the state's case, paralegal fees, [~~and~~] the costs of other support personnel in the enforcement process, [~~and~~] the board's associated overhead costs and all costs incurred by the state in defending any order on appeal.

(h) [~~(f)~~] Changes to recommendation. To protect the public interest and to ensure that sound accounting principles govern the decisions of the board, it is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify the proposed order of an administrative law judge when the proposed order is clearly:

(1) erroneous;

(2) against the weight of the evidence;

(3) based on unsound accounting principles or auditing standards;

(4) based on an insufficient review of the evidence;

(5) not sufficient to protect the public interest; or

(6) not sufficient to adequately allow rehabilitation of the licensee.

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 July 27, 2001.

TRD-200104376
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 305-7848

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.10 concerning Out-of-State Proctoring Fee.

The amendment to §521.10 will increase proctoring examination fees for non-Texas CPA applicants by $8.50 for one subject, $17.00 for two subjects and $34.00 for four subjects.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the proctoring fees should recover the costs to proctor the examination.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the proctoring fees should recover the costs to proctor the examination.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the proctoring fees should recover the costs to proctor the examination.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the Board will be able to perform a service for other state boards and for non-Texas applicants, at no cost to the State.

The probable economic cost to persons required to comply with the amendment will be an incremental $8.50, $17.00 and $34.00 for non-Texas applicants that want the Texas board to proctor their examination.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, August 29, 2001. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because $8.50, $17.00 and $34.00 are not adverse economic amounts.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.10. Out-of-State Proctoring Fee.

The fee for proctoring the examination for a candidate applying to another licensing jurisdiction shall be apportioned as follows:

(1) eligible for one subject--$68.50; [~~$60;~~]

(2) eligible for two subjects--$107.00; and [~~$90; and~~]

(3) eligible for four subjects--$214.00. [~~$180.~~]

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 July 27, 2001.

TRD-200104377
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 305-7848

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TITLE 25. HEALTH SERVICES

PART 16. TEXAS HEALTH CARE INFORMATION COUNCIL

CHAPTER 1301. HEALTH CARE INFORMATION

SUBCHAPTER A. HOSPITAL DISCHARGE DATA RULES

25 TAC §1301.11, §1301.18

The Texas Health Care Information Council (Council) proposes amendments to §1301.11 relating to definitions and §1301.18 relating to hospital discharge data release. The proposed amendment to §1301.11 changes the definition of "Provider Quality Data" to clarify that the public use data reports may be created from the public use data files or from other data resources. Proposed new §1301.18(m) establishes that the Council will allow access to electronic or paper copes to each hospital named in provider quality reports and will mask the identities of other hospitals. The proposed amendment also provides guidelines for hospitals to comment on provider quality reports created by the Council.

Jim Loyd, Executive Director, has determined that for the first five-year period that the proposed sections are in effect, there will be the following anticipated costs of $24,864 to $679,199 to the State which may require an exceptional item request to the Legislative Budget Board or request for additional personnel in regards to the implementation of the amended sections: This estimate includes the following: 1) a one-time programming cost of $1,000 to create the secure website pages and the forms to be used by hospitals to submit their comments, 2) recurring costs of $500 for website maintenance, 3) $21,811 to $654,335. This is based on an estimate of four to ten provider quality reports each year. Each report will cost in the range of $893 to $10,718. Thus, costs for the first year are $3,573 to $107,178. {This is based on a range of 40 to 480 hours per report, times the average hourly salary ($22.33) of the Director, Health Information, the Systems Analyst and the Epidemiologist of the Council's staff develop, draft, analyze, and write the report, receive, attach and publish the comments from the hospitals named in the provider quality reports as required by §108.010(e), Health and Safety Code.} A ten percent increase above the first and each subsequent year's costs is estimated for years two through five (Second year--$4,480 to $122,376, Third year--$4,928 to $134,614, Fourth year--$5,421 to $148,075, Fifth year--$5, 963 to $162,883).

Mr. Loyd has also determined that, for the first five-year period the proposed sections are in effect, there, will be the following anticipated costs to affected local governments as a result of enforcing or administering the amended sections:

The Council estimates costs for reviewing and submitting comments regarding the provider quality reports to be $9,678 to $24,196 ($1,585 to $3,963 for the first year based on estimated 16 hours per report with a minimum of 4 reports and a maximum of 10 per year. Per hour staff costs are estimated at $24.77 (using the cost of Medical and Health Services Managers (SOC 11-9111, Average Mean Hourly Salary--Texas Workforce Commission--2000 Occupational Employment Statistics). This assumes a ten percent increase per year: (Second Year--$1,744 to $4,360, Third Year--$1,918 to $4,795, Fourth year--$2,110 to $5,275, Fifth year--$2,321 to $5,803)

Mr. Loyd also has determined that, for each year the of the first five year period the rules are in effect, the costs to persons or hospitals who are required to comply with the amended and new sections will be $9,678 to $24,196. The Council estimates costs for reviewing the provider quality reports to be ($1,585 to $3,963 for the first year is based on an estimated 16 hours per report with a minimum of 4 reports and a maximum of 10 per year. Per hour staff costs are estimated at $24.77 (using the cost of Medical and Health Services Managers (SOC 11-9111, Average Mean Hourly Salary--Texas Workforce Commission--2000 Occupational Employment Statistics). This assumes ten percent increase per year: (Second Year--$1,744 to $4,360, Third Year--$1,918 to $4,795, Fourth year--$2,110 to $5,275, Fifth year--$2,321 to $5,803)

Mr. Loyd also has determined that for each year of the first five-year period the proposed sections are in effect, the anticipated public benefit will be the release of unbiased provider quality reports developed by the Council for comparative analysis of the health care provided by hospitals, in major metropolitan areas and regions in Texas. These reports will allow consumers of health care to review qualitative measures of similar facilities and make decisions regarding health care services offered by those facilities. The facility and geographic (e.g., regional, metropolitan, county and community) focused reports will assist legislators in making decisions regarding their constituents' health conditions or issues of interest in their districts and the state.

Comments on the proposed sections may be submitted to Jim Loyd, Executive Director, Texas Health Care Information Council, Two Commodore Plaza, 206 East 9th Street, Suite 19.140, Austin, Texas 78701. Comments must arrive no later than 31 calendar days from the date that these proposed sections are published in the *Texas Register*.

The Council will entertain requests for a public hearing until the 25th day after the date the rules are published in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §108.006 and §108.009. The Council interprets §108.006 as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data dissemination requirements. The Council interprets §108.009 as authorizing the Council to adopt rules regarding the collection of data from hospitals in uniform submission formats in order for the incoming data to be substantially valid, consistent, compatible and manageable.

The Health and Safety Code, §§108.002, 108.006, 108.009, 108.011, 108.012 and 108.013 are affected by these amendments.

§1301.11. Definitions.

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

(1)-(29) (No change.)

(30) Provider quality data--A report or reports authored by the Council on provider quality or outcomes of care, as defined in Chapter 108 of Health and Safety Code, created from the public use data file created [~~collected~~] by the Council or data obtained from other sources.

(31)-(47) (No change.)

§1301.18. Hospital Discharge Data Release.

(a)-(l) (No change.)

(m) Provider Quality Reports.

(1) The Council shall provide access to a paper copy or an electronic copy of the report to each hospital named in the report. In providing a copy of the report to each named hospital the Council shall mask the identities of the other hospitals in the report.

(2) The hospitals may submit comments regarding the provider quality report to the Council.

(A) Any comments must be submitted within 28 calendar days after notification is sent from the Council.

(B) Comments shall be submitted on a form created by the Council.

(C) Comments shall be returned to the Council in an electronic format specified by the Council.

(D) Comments received by the Council shall be posted on the Council's Internet website and with each release of the provider quality reports.

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 July 30, 2001.

TRD-200104384
Jim Loyd
Executive Director
Texas Health Care Information Council
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 482-3312

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER J. PETROLEUM PRODUCTS DELIVERY FEE

34 TAC §3.151

The Comptroller of Public Accounts proposes an amendment to §3.151, concerning imposition, collection, and bond and other

security of the fee. The 77th Legislature, 2001, in House Bills 2687 and 2912, amended the Water Code, Chapter 26, to reduce the petroleum products delivery fee by 33%.

Subsection (c) is being amended to implement the reduced fee rate schedule for the fiscal years 2002 and 2003, effective September 1, 2001.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Water Code, §26.3574.

§3.151. Imposition, Collection, and Bonds or Other Security of the Fee.

(a) The Texas Petroleum Products Delivery Fee is imposed, collected, and paid to the state by operators of bulk facilities. The fee is assessed when petroleum products are withdrawn from the bulk facility and delivered into a cargo tank or barge or imported into this state in a cargo tank or barge for delivery to another location for distribution or sale. The fee is not assessed when the fuel is destined for delivery to another bulk facility, an electrical generating plant, a common carrier railroad for its exclusive use, or is to be exported from the state.

(b) For the purposes of this section, withdrawals from a bulk facility into a cargo tank or barge are not subject to the fee when the entire withdrawal is delivered into the fuel supply tanks of vessels or boats.

(c) The fee is collected by the operator of a bulk facility from the person ordering the withdrawal. The fee is computed as follows:

(1) $12.50 [~~$18.75~~] for each delivery into a cargo tank or barge having a capacity of less than 2,500 gallons;

(2) $25 [~~$37.50~~] for each delivery into a cargo tank or barge having a capacity of 2,500 gallons or more but less than 5,000 gallons;

(3) $37.50 [~~$56.25~~] for each delivery into a cargo tank or barge having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(4) $50 [~~$75~~] for each delivery into a cargo tank or barge having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) a $25 [~~$37.50~~] fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank or barge having a capacity of 10,000 gallons or more.

(d) In determining the amount of fee due for motor gasoline, other alcohol blended fuels, and aviation gasoline, each net temperature corrected withdrawal of 7,000 gallons or more but less than 10,000 gallons shall be presumed to have been a delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons and the fee shall be collected as provided by subsection (c)(4) of this section.

(e) In determining the amount of fee due on all withdrawals not covered by subsection (d) of this section, it shall be presumed that the capacity of the cargo tank or barge is equal to the total net temperature corrected quantity of product withdrawn.

(f) For the purposes of this section, a bulk facility is a refinery terminal or any other terminal or facility which receives petroleum products by pipeline, rail, or barge, and delivers the products into a cargo tank or barge.

(g) For the purposes of this section, the operator of a bulk facility is the person who first invoices petroleum products withdrawn from the facility. An exchange statement is not considered an invoice.

(h) For the purposes of this section, an electrical generating facility is a plant operated for the primary purpose of generating electricity for sale to consumers.

(i) Persons exempt from the petroleum products delivery fee, including persons operating barges who make withdrawals from a permitted bulk facility for delivery into the fuel supply tanks of vessels or boats, shall request in writing a letter of exemption from the comptroller. The letter of exemption issued by the comptroller, or a copy, must be furnished to the seller each time purchases exempt from the petroleum products delivery fee are made.

(j) If the person making the sale to the exempt purchaser does not hold a petroleum products delivery fee permit, the purchaser must also furnish to the seller a statement listing the date of purchase, number of gallons purchased per delivery, and destination of the product. For the seller to receive credit for exempt sales, this documentation must be presented to the permitted bulk facility from which the product was purchased.

(k) The amount of the petroleum products delivery fee must be listed as a separate item on the invoice or cargo manifest issued by the person holding a permit to collect the fee upon the withdrawal of product from a bulk facility.

(l) Only persons who hold a petroleum products delivery fee permit may charge and collect the fee on the basis of the bracket system established in this section. No other persons selling fuel may list the fee as a separate item on invoices or manifest except:

(1) when required to do so by another governmental agency; or

(2) when an amount is clearly identified as reimbursement. An amount collected as reimbursement may not exceed the amount of fee actually paid by the person issuing the manifest or invoice.

(m) The comptroller may require a bulk facility operator to post a bond or other security to protect the revenues of the state.

(n) When determining the security required of a bulk facility operator, the comptroller will take into consideration the amount of fee that has or is expected to become due from the person, any past history of the person as a distributor or supplier of fuel, and the necessity to protect the state against the failure to pay the fee as it becomes due.

(o) The comptroller may require a bond equal to two times the highest amount of fees that will accrue during a reporting period. The minimum bond is $30,000. The maximum bond is $600,000 unless the comptroller believes there is undue risk of loss of fee revenues, in

which event he may require one or more bond or securities in a total amount exceeding $600,000.

(p) If the comptroller determines that a bulk facility operator has for four consecutive years continuously complied with the conditions of the bond or other security on file, the operator is entitled on request to have the comptroller return, refund, or release the bond or security. However, if the comptroller determines that the revenues of the state would be jeopardized by the return, refund, or release of the bond or security, the comptroller may elect not to return, refund, or release the bond or security. The comptroller may reimpose a requirement of a bond or other security if necessary to protect the revenues of the state.

(q) A bond must be a continuing instrument, must constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(r) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(1) cash in the form of United States currency in an amount equal to the required bond, to be deposited in the suspense account of the state treasury;

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in Texas that is a member of the FDIC in an amount equal to the bond amount required; or

(3) an irrevocable letter of credit to the comptroller from any bank or savings and loan association in Texas that is a member of the FDIC in an amount of credit at least equal to the bond amount required.

(s) If the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or of an additional bond or security.

(t) No surety bond or other form of security may be released until it is determined by examination or audit that no fee, penalty, or interest liability exists. The cash or securities shall be released within 60 days after the comptroller determines that no liability exists.

(u) The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover fees, cost, penalties, and interest found to be due this state by a person in whose behalf the cash or certificate security was deposited.

(v) A surety on a bond furnished by a permittee shall be released and discharged from liability to the state accruing on the bond after the expiration of 30 days after the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued, or that accrues before the expiration of the 30-day period. Promptly after receipt of the request, the comptroller shall notify the permittee who furnished the bond, and unless the permittee, before the expiration date of the existing security, files with the comptroller a satisfactory new bond or other security, the comptroller shall cancel the permit.

(w) The comptroller shall notify immediately the issuer of a letter of credit of a final determination of the bulk facility operator's delinquent liability or a judgment secured in any action by this state to recover fees, cost, penalties, and interest found to be due this state by a bulk facility operator in whose behalf the letter of credit was issued. A letter of credit accepted as security shall contain a statement that the issuer agrees to respond to the comptroller's notice of liability with amounts sufficient to satisfy the comptroller's delinquency claim against the bulk facility operator.

(x) An examination or audit may be requested to obtain release of the security when the permit holder relinquishes the permit or desires to substitute one form of security for an existing one.

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 July 26, 2001.

TRD-200104321
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 463-4062

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION
SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT

40 TAC §800.81

The Texas Workforce Commission (Commission) proposes new §800.81 regarding Board Performance.

The purpose of Subchapter C is generally to set forth the performance requirements applicable to the Boards. The proposed rule emphasizes the partnership between the Commission and Boards in assuring compliance with federal and state requirements through a performance-based contract method. The purpose of the rule is to describe the performance standards applicable to Boards and other subrecipients and to set forth the Boards responsibilities regarding those performance requirements.

The 74th Texas Legislature enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995, now codified in part in Texas Labor Code Chapter 302 and Texas Government Code Chapter 2308. This state law reformed both the welfare and workforce systems and made Texas the nation's leader among reform-minded states. House Bill 1863 provided local elected officials the opportunity to form local workforce development boards (Boards) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers.

A key goal of the federal Workforce Investment Act (WIA) of 1998 (42 U.S.C.A. Section 2801 et seq.) was that of improving the effectiveness and efficiency of federally-funded job training programs. WIA recognized the strides made by the Texas workforce development system and specifically provided for the state to maintain many of the features of H.B. 1863 through grandfather provisions.

The Commission, as the entity responsible for overseeing the implementation of H.B. 1863 and WIA, sets policy regarding performance standards using federal and state performance measures. The Commission approves the performance targets during the budget process based upon federal and state statutory and regulatory performance measures and requirements. In addition, the Commission sets policy regarding contracts to ensure that the performance requirements are met and that contracts are performance-based. Performance-based contracts describe expectations in terms of specific outcomes, results, or final work products, as opposed to methods, processes, or designs. The Agency then incorporates performance standards in contracts with the Boards and other subrecipients of federal and state funds that are funded through the Commission.

The Commission ensures compliance with the WIA and other federal and state performance standards while providing options for the Boards to exercise local flexibility. The Commission works with the Boards to ensure that contract performance requirements are consistent with the Board's and State's strategic planning goals and objectives, and adjusted for local factors including specific economic, demographic and other characteristics of populations to be served in the local workforce development area and other factors the Commission deems appropriate. The Commission welcomes comment and input by all interested parties regarding performance in order to achieve the key objectives of maximizing access to employment, education and training options, while minimizing the Boards' reporting requirements.

The overall goal of the Commission is to use, to the maximum extent practicable, performance-based contracting methods in its management of contracts with the Boards. Performance-based contracting concepts and methodologies that are generally applied to contracts with the Boards and other subrecipients are designed to: (1) describe performance requirements in terms of results rather than methods of accomplishing the work; (2) use measurable (i.e., terms of quality, timeliness, quantity) performance standards and objectives and quality assurance plans; (3) and provide a basis for either performance incentive awards for achieving high performance or penalty imposition for low performance.

The Commission is charged with ensuring accountability of Boards and subrecipients of the Agency. Boards are charged with the oversight and management of the services and activities of the One-Stop Service Delivery Network.

Texas Government Code Chapter 2308, Texas Labor Code Title 4 and WIA have made Boards responsible for a number of duties and responsibilities for the administration of Commission-funded activities, including maintaining adequate fiscal systems, complying with the uniform rules for administration of grants and agreements, meeting the contract performance measures, and complying with all applicable state and federal statutes and regulations.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

There are no anticipated economic costs to persons required to comply with the rule.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated or required to do anything by the rule.

James Barnes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rule.

Barbara Cigainero, Director of Workforce and Development, 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 provide information and set forth requirements regarding the performance.

Comments on the proposal may be submitted to John Moore, Texas Workforce Commission Building, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to: John.Moore@twc.state.tx.us.. Comments must be received by the Agency within thirty days from the date of the publication in the *Texas Register*.

The new rule is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rule as it deems necessary for the effective administration of Agency services and activities.

The rule affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§800.81. Board Performance.

(a) A Board shall achieve levels of performance consistent with performance standards that are reflected in the individual Board's contracts with the Commission.

(b) The Commission shall determine the performance standards by using measures of performance based on federal and state performance requirements and by using factors that may be necessary to achieve the mission of the Commission.

(c) A Board shall comply with all Commission rules, Workforce Development (WD) Letters, the Grants and Contracts Manual, the Financial Manual and guidance letters of the Agency, including rules contained in other chapters of this Part XX applicable to specific programs, including but not limited to Chapter 841 relating to WIA.

(d) A Board's achievement of high levels of performance may result in the Commission providing incentives for the Board.

(e) A Board's failure to meet minimum levels of performance as referenced in the Board's contract may result in corrective actions, penalties or sanctions as specified in:

(1) Part XX of this title (relating to the Texas Workforce Commission), including chapter 800, Subchapter E. relating to Sanctions;

(2) the Board's contract with the Commission; or

(3) as otherwise provided for by federal or state statute or rule.

(f) A Board may submit to the Commission a request for an adjustment to the minimum levels of performance.

(g) The Commission may determine what constitutes a necessary adjustment to local performance measures and may consider specific economic, demographic and other characteristics of populations to be served in the local workforce development area and other factors the Commission deems appropriate including the anticipated impact of the adjustment on the state's performance.

(h) The Governor may adopt additional performance incentives and sanctions provisions as provided in WIA.

(i) A Board shall comply with and remain subject to the provisions contained in Chapter 805 effective on July 1, 2001, relating to performance or any other matters addressed in Chapter 805 regarding any funds granted by the Secretary of Labor under the JTPA regulations or Act, including NRA and other funds.

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

Filed with the Office of the Secretary of State, on July 26, 2001.

TRD-200104352
John Moore
Assistant General Counsel
Texas Workforce Commission
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 463-2573

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CHAPTER 841. WORKFORCE INVESTMENT ACT

The Texas Workforce Commission (Commission) proposes amendments to §§841.31, 841.32, 841.34, 841.38, 841.39, 841.41, 841.44, and 841.46 and proposes the repeal of and new §§841.40, 841.43, 841.45, and 841.47 regarding the Eligible Training Provider Certification System (ETPS) required under the Workforce Investment Act of 1998.

The 74th Texas Legislature and the Governor enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995, now codified in part in Texas Labor Code Chapter 302 and Texas Government Code Chapter 2308. This state law reformed both the welfare and workforce systems and made Texas the nation's leader among reform-minded states. H.B. 1863 provided local elected officials the opportunity to form local workforce development boards (Boards) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers.

A key goal of the federal Workforce Investment Act (WIA) of 1998 (42 U.S.C.A. Section 2801 et seq.) was that of improving the effectiveness and efficiency of federally-funded job training programs. WIA recognized the strides made in the Texas workforce development system and specifically provided for the state to maintain many of the features of H.B. 1863.

The Commission, as the entity responsible for overseeing the implementation of WIA, has endeavored to provide formal and informal opportunities for comment and input by all interested parties. While developing the ETPS, the Commission has continued to work closely with representatives of the training provider community, Boards and partner agencies. The Commission ensures compliance with the WIA while providing options for the Boards and the training provider community. The Commission continues to seek options for streamlining processes, including those for the certification process and for performance reporting by eligible training providers. A key objective is to maximize participant access to education and training options, while minimizing providers' reporting burdens.

The purpose of Subchapter C is to address the ETPS as required under the Act. Changes are proposed for the purposes of streamlining the ETPS, reflecting changes necessitated by the implementation of the automated, Internet-based ETPS and to allow Boards discretion to permit the ETPS and the use of Individual Training Accounts (ITAs) to apply to other workforce services funded through the Commission. In addition to the proposed changes, the Commission invites the public to comment on methods to simplify the ETPS. The language in many of the sections remains the same with the following exceptions:

Section 841.31 addresses the scope and coverage of this subchapter. The ETPS and the use of ITAs to secure and pay for adult training services are primary service delivery mechanisms under the WIA. A sentence is added that acknowledges the Boards' option to use these mechanisms for adult training services funded by Choices, Food Stamp Employment and Training (FS E&T), Welfare-to-Work (WtW), Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA).

Section 841.32 addresses training services. The changes to the language include adding a sentence to subsection (a) that acknowledges the expanded coverage of the rule to cover adult training services funded by Choices, FS E&T, WtW, TAA and NAFTA-TAA.

Section 841.34 addresses ITAs. The changes include adding a subsection (c) that acknowledges the expanded coverage of the rule to cover adult training services funded by Choices, FS E&T, WtW, TAA and NAFTA-TAA.

Section 841.38 addresses the initial certification process for exempt providers. A change is made in the first sentence to clarify Board responsibilities for developing local requirements, rather than a written application, for the submission of initial eligibility applications for exempt programs.

Section 841.39 addresses the alternative application for initial eligibility determination by non-exempt training providers. Changes are made to subsection (b) to address modifications in application requirements due to conversion to the automated, Internet-based ETPS and to specify the exemption of providers that are subject to Texas or another state's regulation or audit from the requirement to submit financial stability documentation. Changes are also made to subsection (c) to remove the requirement that training provider applicants provide performance information regarding the percentage of all individuals participating in the applicable program who obtained unsubsidized employment in an occupation related to the program conducted.

Section 841.40 addresses the submission of an initial eligibility application. Language is added to address the required use of the automated, Internet-based ETPS for application submission and review and to address provider compliance with state law.

Section 841.41 addresses initial eligibility determination. Language in subsection (b) related to a mandatory six-month waiting period for reapplication after Board denial of an initial eligibility application is deleted in order to provide additional flexibility with regard to the development of local appeals policy.

Section 841.43 addresses application for subsequent eligibility determination. The option to request a specific certification date is removed since it is not applicable to the subsequent eligibility determination process. Language is added to address the required use of the automated, Internet-based ETPS for application submission and review and to address provider compliance with state law. Language is added to allow for adjusting the certification renewal period if an appeal is approved to ensure that the period of certification is one year in length.

Section 841.44 addresses the determination of subsequent eligibility. In subsection (e) language related to a mandatory six-month waiting period for reapplication after Board denial of an initial eligibility application is deleted in order to provide additional flexibility with regard to the development of local appeals policy.

Section 841.45 addresses the annual adoption of standards of performance. Changes are made to clarify the process for annual adoption and issuance of performance standards.

Section 841.46 addresses the requirements for submission and retention of verifiable program-specific performance information. The requirement that performance information be submitted on a quarterly basis is deleted since submission of required data is not subject to this stringent timeline and the subsections are re-lettered accordingly.

Section 841.47 addresses the certified provider list and the name is modified to reflect that the training provider list includes "eligible" training providers. Language related to Board submission of certified provider lists, and applicable performance and cost data, is deleted to reflect process changes related to the conversion to the automated, Internet-based ETPS. The remaining subsections are re-lettered accordingly.

The remaining rules in Subchapter C, §841.48 and §841.49, contain no changes to the prior rules.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because any regulatory burdens or impact on small businesses (including micro-businesses) as well as foreseeable adverse economic effects or costs, if any, would be a result of federal statute and regulations, which are the basis for these proposed rules, and second, as far as can be determined, small businesses (including micro-businesses) are not required to do anything as a result of these rules that is not required to receive WIA funding for training. In the event that a Board, Board's contractor, or a subrecipient of the Agency is required to expend funds as a result of applying for the training provider certification, the expense may in part or whole be covered by the grant. Likewise, the expenses may be larger for larger entities and smaller for smaller entities but proportionate to the amount of training activities provided and for which certification is sought.

Barbara Cigainero, Director of Workforce Development, has determined that for each year of the first five years that the rules will be in effect the public benefit anticipated as a result of the adoption of the proposed rules will be to improve and simplify for consumers the ETPS; maintain sufficient provisions to meet state requirements; ensure efficient use of funds to meet the needs of employers, job seekers, and the training provider community; and strengthen the relationship among the Commission, the Boards and training providers in developing a seamless network of services.

James Barnes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of these proposed rules.

Comments on the proposed sections may be submitted to John Moore, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; fax number (512) 463-1426; or e-mail to john.moore@twc.state.tx.us. Comments must be received by the Agency no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER C. ELIGIBLE TRAINING PROVIDER CERTIFICATION

40 TAC §§841.31, 841.32, 841.34, 841.38 - 841.41, 841.43 - 841.47

The amendments and new sections are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments and new sections affect the Texas Labor Code, Title 4.

§841.31. Scope and Coverage.

This subchapter establishes rules governing the state's eligible training provider certification system as required by WIA §122 and is applicable to providers of training services for adults and dislocated workers. At the discretion of the Board, the Eligible Training Provider Certification System (ETPS) may be applied to the delivery of training services funded through the Commission including Choices, Food Stamp Employment and Training (FS E&T), Welfare to Work (WtW), Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA).

§841.32. Training Services.

(a) As used in this subchapter, training services shall mean those services which are described in WIA §134(d)(4)(D) and are provided by an LWDB to eligible adults and dislocated workers. At the discretion of the Board, the eligible training provider certification system may be applied to the delivery of training services funded through

the Commission including Choices, FS E&T, WtW, TAA and NAFTA-TAA.

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

§841.34. Individual Training Accounts.

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

(c) At the discretion of the Board, ITAs may be used as a payment mechanism for the delivery of training services funded through the Commission including Choices, FS E&T, WtW, TAA and NAFTA-TAA.

§841.38. Initial Certification Process.

Each LWDB shall develop local application requirements [~~a written application process~~] for initial certification for the following providers of training services when offering the programs described:

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

§841.39. Alternative Application for Initial Eligibility Determination.

(a) (No change.)

(b) All training provider applicants shall provide the following information to the LWDB:

(1) (No change.)

(2) documentation of financial stability of the applicant, which may include audits or financial statements, unless the applicant is one of the following entities that are subject to regulatory or audit provisions of Texas or another state regarding financial stability: a public university, college, community or technical college;

(3)-(5) (No change.)

[~~(6) a brief description of the training facility or training provider, not to exceed 100 words;~~]

[~~(7) a brief description of each program of training services;~~]

(6) [~~(8)~~] a description of the skill set which will be acquired through each program of training services;

(7) [~~(9)~~] a list of occupations determined by using a coding system specified by the Commission, in which these skill sets are of primary interest;

(8) [~~(10)~~] if all [~~any~~] of the occupations described in paragraph (7) of this subsection [~~above~~] are not on the Occupations in Demand List provided by the LWDB, evidence from employers, in a format and meeting specification set by the LWDB, that demonstrates that the occupation is in demand;

(9) [~~(11)~~] description of the class size, instructor/student ratio;

(10) [~~(12)~~] information on whether the students in the course are eligible for Title IV of the Higher Education Act funding (Pell grant);

(11) [~~(13)~~] an outline of the course or program curriculum, including criteria for successful completion;

(12) [~~(14)~~] the qualifications of the training instructors;

(13) [~~(15)~~] a description of any minimum entry level requirement (e.g. reading or math level, previous education requirements such as high school diploma or GED);

(14) [~~(16)~~] description of equipment utilized in the course and equipment/student ratio;

(15) [~~(17)~~] description of employer support of the program; and

(16) [~~(18)~~] any additional information that is required by the LWDB in the LWDA in which the training provider is located.

(c) Training provider applicants who provide training on the date of application through a program for which they are seeking certification shall include in their application the following verifiable performance information, or appropriate portion of verifiable performance information, for the program(s) of training services:

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

[~~(3) the percentage of all individuals participating in the applicable program who obtained unsubsidized employment in an occupation related to the program conducted;~~]

(3) [~~(4)~~] the wages at placement in employment of all individuals participating in the applicable program; and

(4) [~~(5)~~] a description of the methodology that will be utilized to collect and verify performance information.

(d)-(e) (No change.)

§841.40. Application Submission.

(a) Applications for initial eligibility determination shall be submitted to the LWDB in the LWDA in which the provider of training services desires to provide training. Applications will be accepted throughout the year.

(b) Provider application submission and LWDB and Commission application review shall be conducted via the automated, Internet-based eligible training provider certification system.

(c) Training provider applicants shall be in compliance with applicable state law, including Texas Education Code Chapter 132, related to Proprietary Schools.

§841.41. Initial Eligibility Determination.

(a) (No change.)

(b) LWDB policy shall determine the circumstances under which reconsideration of an application may be afforded to an entity whose initial application for provider certification was denied. [~~An entity whose application for certification was denied may reapply no sooner than 6 months after the date of the written notice of denial.~~]

§841.43. Application for Subsequent Eligibility Determination.

(a) All training services providers, including training providers who were determined to be eligible under §841.38 and §841.39 of this chapter, shall annually, from date of certification, establish continuing eligibility to receive funds from WIA to provide training services.

(b) Provider application submission and LWDB and Commission application review shall be conducted via the automated, Internet-based eligible training provider certification system.

(c) Training provider applicants shall be in compliance with applicable state law, including Texas Education Code Chapter 132, related to Proprietary Schools.

(d) If an application for subsequent eligibility determination is denied and later approved on appeal, the Agency may adjust the certification period to ensure that the certification period is one year in length.

(e) Each training services provider shall provide verifiable program-specific performance information as required, and in a format and on a schedule determined by the Commission.

(f) The Commission and the LWDB may accept program-specific performance information consistent with the requirements for eligibility under Title IV of the Higher Education Act of 1965 from the provider for purposes of enabling the provider to fulfill the applicable requirements of this section if the information is substantially similar to the information otherwise required.

§841.44. Determination of Subsequent Eligibility

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

(e) Board policy shall determine the circumstances under which reconsideration may be afforded to an entity whose application for subsequent eligibility certification determination was denied. [~~An entity whose application for recertification was denied may reapply no sooner than six months after the date of the written notice of denial.~~]

§841.45. Standards of Performance.

(a) The Commission shall annually adopt performance standards for WIA-supported participants and for all individuals enrolled in the program of training services, as applicable.

(b) Each LWDB shall adopt local performance standards within 30 calendar days of the Commission's annual publication of state performance standards. LWDB standards shall meet or exceed the standards adopted by the Commission.

(c) Performance standards may be adjusted by the LWDB for local conditions.

§841.46. Verifiable Program-Specific Performance Information.

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

(c) Subject to approval by the Commission, alternate procedures may be used to collect and verify supplemental performance information in addition to those described in subsection [~~§841.46~~](b) of this section. Approval or use of an alternate procedure shall not release the training provider from the obligation to provide the information required by subsection [~~§841.46~~](b) of this section. Submission of supplemental performance data obtained through use of an alternate procedure must be in accordance with formats determined by the Commission.

(d) (No change.)

[~~(e) Verifiable program performance information shall be submitted on a calendar quarter basis in a format and on a schedule established by the Commission. If the Commission determines that the size of the program or other circumstances exist that would justify a different reporting schedule, the Commission may approve a different reporting schedule for an LWDB that makes such a request.~~]

(e) [~~(f)~~] The Commission may conduct performance verification throughout the year and may require training providers to submit additional information to resolve performance reporting anomalies or irregularities.

(f) [~~(g)~~] Providers of training services shall retain participant program records for a period of three years from the date the participant completes the program.

§841.47. Eligible Training Provider Lists.

(a) At least annually, the LWDB shall publish in a newspaper of general circulation in the LWDA an invitation to training providers to submit an application.

(b) Each LWDB shall develop an eligible training provider list that includes the list of providers determined to be eligible to receive training funds as authorized under WIA and state rules.

(c) The Commission shall publish the program, performance, and cost information of each program receiving eligibility certification.

(d) The Commission may remove a provider from the list of eligible providers or restrict WIA funding eligibility if the Commission determines that:

(1) the provider does not meet the performance levels established by the Commission, or

(2) the training provider has committed fraud or has violated applicable state or federal law, including prohibitions against discrimination and requirements related to the Americans with Disabilities Act.

(e) If the Commission, after consultation with an LWDB, determines that a provider, or an individual providing information on behalf of the provider, has intentionally supplied inaccurate program performance information, the Commission shall terminate the eligibility of the provider to receive funds for training services for a period of not less than two years.

(f) The Commission shall provide written notice of the removal of a provider from the list of eligible providers to both the LWDB and the training provider. The notice will include a description of the appeal process.

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 July 26, 2001.

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John Moore
Assistant General Counsel
Texas Workforce Commission
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER C. TRAINING PROVIDER CERTIFICATION

40 TAC §§841.40, 841.43, 841.45, 841.47

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

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects the Texas Labor Code, Title 4.

§841.40. Application Submission.

§841.43. Application for Subsequent Eligibility Determination.

§841.45. Standards of Performance.

§841.47. Certified Provider Lists.

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 July 26, 2001.

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John Moore
Assistant General Counsel
Texas Workforce Commission
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.84

The Texas Department of Transportation proposes amendments to §1.84, concerning statutory advisory committees.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 195, 77th Legislature, 2001, amended Transportation Code, Subchapter C, Chapter 201, by adding §201.114 to establish a Border Trade Advisory Committee and to provide that the Transportation Commission may adopt rules to govern it.

Government Code, §2110.005, provides that a state agency that is advised by an advisory committee shall adopt rules that state the purpose of the committee and describe the task of the committee and the manner in which the committee will report to the agency. Government Code, §2110.008, provides that a state agency shall establish by rule a date on which the committee will automatically be abolished unless the governing body of the agency affirmatively votes to continue the committee in existence.

The proposed amendments to §1.84 add new subsection (f) to meet these statutory requirements.

New subsection (f)(1) sets forth the purpose of the Border Trade Advisory Committee.

New subsection (f)(2) establishes the membership of the committee. The committee will consist of seven members with staggered terms of three years each. The commission may consider all relevant facts in selecting advisory committee members, including the desirability of geographic and occupational diversity. These provisions are intended to ensure that the committee will be small enough to be effective, but large enough to reflect various perspectives on border trade.

New subsection (f)(3) sets forth the duties of the committee. These duties are mostly derived from the language of Transportation Code, §201.114. The committee is also directed to undertake other duties as requested by the commission or the department.

New subsection (f)(4) provides for meetings at least annually. This permits the number and timing of meetings to be adjusted depending on the committee's workload at any given time.

New subsection (f)(5) provides that the committee will not be involved in rulemaking. This will permit the committee to concentrate on the broader policy issues set forth in Transportation Code, §201.114, and in new §1.84(f)(3).

New subsection (f)(6) sets a sunset date of December 31, 2005, for the committee.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Richard D. Monroe, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Richard D. Monroe, General Counsel, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to continue to provide a forum to facilitate communication among the department, other governmental agencies, and the public regarding transportation issues and to enhance the efficiency of advisory committees. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Al Luedecke, Director, Transportation Planning and Programming, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 10, 2001.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation. In addition, the amendments are proposed under Government Code, Chapter 2110, which provides that a state agency that is advised by an advisory committee shall adopt rules that state the purpose of the committee, describe the task of the committee, state the manner in which the committee will report to the agency, and establish a date on which the committee is abolished unless the governing body of the agency affirmatively votes to continue the committee in existence. The amendments are also proposed under Transportation Code, §201.114(b), which authorizes the adoption of rules with respect to the Border Trade Advisory Committee.

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

§1.84. Statutory Advisory Committees.

(a) Aviation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §21.003, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Membership. The commission will appoint the members of the Aviation Advisory Committee to staggered terms of three years with two members' terms expiring August 31 of each year. A committee member must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator.

(3) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(5) Rulemaking. Section 1.83 of this subchapter does not apply to the Aviation Advisory Committee.

(b) Household Goods Carriers Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §643.155, the Household Goods Carriers Advisory Committee provides a forum for household goods carriers and the general public to provide input into modernizing and streamlining department rules adopted under Transportation Code, §643.153, which are designed to protect customers of household goods movers from deceptive or unfair practices and unreasonably hazardous activities on the part of movers. The committee, with representation from the regulated community, the general public, and the department, helps ensure effective communication among interested parties and valuable input into modernizing and streamlining department rules affecting household goods carriers and their customers.

(2) Membership. Pursuant to Transportation Code, §643.155(a), the executive director or the executive director's designee shall appoint to the Household Goods Carrier Advisory Committee:

(A) three members as representatives of the general public;

(B) one member as a representative of the department; and

(C) one member each as representatives of motor carriers transporting household goods using small equipment, motor carriers transporting household goods using medium equipment, and motor carriers transporting household goods using large equipment.

(3) Duties. The committee shall:

(A) examine the rules adopted under Transportation Code, §643.153(a) and (b) and advise the department on methods of modernizing and streamlining such rules;

(B) conduct a study of the feasibility and necessity of requiring vehicle liability insurance for household goods carriers required to register under Transportation Code, §643.153(c);

(C) recommend a maximum level of liability for loss or damage of household goods carriers required to register under Transportation Code, §643.153(c), not to exceed 60 cents per pound; and

(D) perform other duties as assigned by the Motor Carrier Division Director.

(4) Meetings. The committee shall meet at the request of the Motor Carrier Division Director.

(5) Rulemaking. Section 1.83 of this subchapter does not apply to the Household Goods Carrier Advisory Committee.

(c) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission; and

(C) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet:

(A) at least quarterly, at the call of its chair, but not exceeding once each month;

(B) at the request of the commission; and

(C) as required by §1.83 of this subchapter.

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(d) Vehicle Storage Facility/Tow Truck Rules Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §643.202, the purpose of the Vehicle Storage Facility/Tow Truck Rules Advisory Committee is to advise the department on the development of rules concerning the registration of tow trucks under Transportation Code, Chapter 643, and the administration of the Vehicle Storage Facility Act, Texas Civil Statutes, Article 6687-9a. The committee, with representation from the regulated community, law enforcement, and the general public, helps ensure effective communication among

interested parties and valuable input into the development of rules affecting the tow truck industry.

(2) Membership. The executive director or the executive director's designee will appoint to the Vehicle Storage Facility/Tow Truck Rules Advisory Committee two members who represent the general public and one member each to represent the following:

(A) tow truck operators;

(B) vehicle storage facility operators;

(C) owners of property having parking facilities;

(D) law enforcement agencies or municipalities; and

(E) insurance companies.

(3) Duties. The committee shall advise the department on the adoption of rules regarding:

(A) the application of Transportation Code, Chapter 643 to tow trucks; and

(B) the administration by the department of the Vehicle Storage Facility Act.

(4) Meetings. The committee shall meet:

(A) at the request of the Motor Carrier Division Director; and

(B) as required by §1.83 of this subchapter.

(e) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §53.001, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the port industry in Texas and others who have an interest in ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding ports and transportation-related matters to be considered in formulating department policies concerning the Texas port system.

(2) Membership.

(A) The commission will appoint five members to staggered three-year terms unless removed sooner at the discretion of the commission.

(B) The commission will appoint:

(i) one member from the Port of Houston Authority of Harris County;

(ii) two members from ports located north of the Matagorda/Calhoun County line and excluding the Port of Houston Authority; and

(iii) two from ports located south of the Matagorda/Calhoun County line.

(C) The commission will consider nominees for the five members from:

(i) Texas Ports Association;

(ii) other port associations;

(iii) Texas ports; and

(iv) the general public.

(D) Officers. The Port Authority Advisory Committee shall elect a chair and a vice-chair for two-year terms. The department encourages the committee to rotate the chair among the members from the different geographic areas represented.

(3) Duties. The committee shall:

(A) advise the commission and the department on matters relating to port authorities, including:

(i) intermodal and multimodal transportation issues relating to Texas waterways, ports, and port improvements, including other issues affecting port access and infrastructure needs; and

(ii) the identification, development, and implementation of potential funding mechanisms, including the state infrastructure bank, for addressing the issues described by clause (i) of this subparagraph; and

(B) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meeting. The committee shall meet at least once a calendar year and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

(5) Subcommittees.

(A) The Port Authority Advisory Committee may appoint one or more subcommittees to provide advice on specific issues.

(B) A subcommittee shall report any findings and recommendations to the Port Authority Advisory Committee chair.

(f) Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, and committee members representing border trade interests. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The commission will appoint seven members to staggered three-year terms expiring on August 31 of each year. The initial membership of the committee will consist of two members whose terms expire on August 31, 2002; two members whose terms expire on August 31, 2003; and three members whose terms expire on August 31, 2004. In appointing members, the commission may consider all relevant facts, including the desirability of geographic and occupational diversity.

(3) Duties. The committee shall:

(A) define and develop a strategy for identifying and addressing the highest priority border trade transportation challenges;

(B) make recommendations to the commission regarding ways in which to address the highest priority border trade transportation challenges;

(C) advise the commission on methods for determining priorities among competing projects affecting border trade; and

(D) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meetings. The committee shall meet at least once a calendar year. The dates and times of meetings shall be set by the committee. The committee shall also meet at the request of the department.

(5) Rulemaking. Section 1.83 of this subchapter does not apply to the Border Trade Advisory Committee.

(6) Duration. The Border Trade Advisory Committee is abolished December 31, 2005, unless the commission amends its rules to provide for a different date.

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 July 27, 2001.

TRD-200104353
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 463-8630

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CHAPTER 3. PUBLIC INFORMATION
SUBCHAPTER B. ACCESS TO OFFICIAL RECORDS

43 TAC §§3.10 - 3.14

The Texas Department of Transportation proposes amendments to §§3.10-3.14, concerning access to official records.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 1922, 77th Legislature, 2001, created a right for an individual to request that government-held information about that individual be corrected. It required each state agency to establish reasonable procedures allowing information to be corrected.

House Bill 1544, 77th Legislature, repealed Transportation Code, Chapter 731 concerning the disclosure of personal information from motor vehicle records. It also clarified that statutory provisions relating to the release of accident reports apply only to certain legally required accident reports filed under Transportation Code, Chapters 550 and 601. In addition, House Bill 1544 conformed Transportation Code, Chapter 730 more closely to federal law by eliminating the requirement that a motorist elect not to release personal information contained in motor vehicle records.

Sections 3.10-3.14 are amended throughout to conform to the provisions of House Bills 1922 and 1544. Amendments are also made to conform the rules more closely to current language and to eliminate unnecessary language that merely duplicates statutory provisions. Additional nonsubstantive changes are made to enhance clarity and to improve grammar.

Section 3.10 is amended to clarify that the release of public information is governed by other laws, in addition to the Public Information Act.

Section 3.11 is amended to eliminate definitions of words that will no longer be used in the rules. The definition of personal information is amended to conform to the language of HB 1544 with regard to accident reports. The definition of programming is amended to eliminate the requirement that programming be performed in computer code to reflect the greater flexibility of current computers.

Section 3.12(a)(3)(B)(iii) is amended to eliminate the condition that a person must request that the department restrict the release of personal information. House Bill 1544 removed this condition.

Section 3.12(a)(4) and (5) are eliminated because they relate to the substantive law governing release of information, which is set forth more completely in Government Code, Chapter 552. In addition, §3.12(a)(5) is no longer accurate because the law governing accident reports was restricted by House Bill 1544 to certain legally required accident reports filed under Transportation Code, Chapters 550 and 601.

Section 3.12(e)(1)(A) is eliminated because it relates to the substantive law governing release of information, which is set forth more completely in Government Code, Chapter 552.

Section 3.12(e)(1)(B) is eliminated because House Bill 1544 repealed the statutory provisions requiring a person to request that personal information in motor vehicle records not be disclosed.

Section 3.12(f)(5) is amended to add General Counsel as a certifying official to conform to subsection (a)(1)(A) of this section.

Under §3.12, subsection (i) is added in response to House Bill 1922, which requires the department to establish a procedure for correcting information without imposing undue burdens. The procedure set forth in this subsection is designed to be flexible and decentralized so it can be molded to conform to the widely varying operations of different districts, divisions, and offices of the department. The procedure is also designed to avoid abuse by precluding undefined requests to correct all records without further specificity and by clarifying that official documents, such as vehicle titles and registrations, overweight permits, and occupational licenses, may not be changed without following procedures that are already established.

Section 3.13(a) is amended to eliminate the reference to the cost of weekly motor vehicle record updates when the tape is provided by the requestor. The department no longer permits requestors to provide their own tapes.

Section 3.13(f)(1) is amended to clarify that costs of public information will be waived for employees who file grievance proceedings only to the extent that requested information is relevant to those proceedings. This conforms to current practice, under which fees are not waived to subsidize broad fishing expeditions of no direct relevance to grievance proceedings. The determination of relevance is made by the Office of General Counsel, which has general responsibility for advising the department with regard to the Public Information Act.

Section 3.13(f)(2) is amended to conform to current practice, under which district engineers, division directors, and office directors are permitted to waive public information fees if waiver is in the public interest or if the fees would be minimal.

Section 3.14 is amended to removed reference to Transportation Code, Chapter 231 and to improve readability.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for the first five-year period the amended sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated costs for persons required to comply with the amendments as proposed.

Richard Monroe, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Monroe has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be enhanced public knowledge of the procedures followed by the department in responding to requests for information and reduced public confusion from apparent inconsistencies between the rules and the applicable statutes. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Richard Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 10, 2001.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

No statutes, articles, or codes are affected by these proposed amendments.

§3.10. Purpose and Scope.

It is the policy of the Texas Department of Transportation to provide the public complete information regarding the affairs of the department in a manner that will facilitate and maximize public access. In compliance with the Public Information Act, Government Code, Chapter 552, and other statutes relating to the availability of public information, the sections under this subchapter provide policies and procedures governing public access to official department public records.

§3.11. Definitions.

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

[(1) Code - Government Code, Chapter 552.]

(1) [(2)] Commission - Texas Transportation Commission.

(2) [(3)] Department - Texas Department of Transportation.

[(4) Disadvantaged business enterprise (DBE) - A business concern certified as a DBE by the department.]

(3) [(5)] District engineer - The chief administrative officer of a district of the department.

(4) [(6)] Division director - The chief administrative officer of a division or office of the department.

[(7) Historically underutilized business (HUB) - A business concern certified as a HUB by the General Services Commission.]

[(8) Internet - The international computer network of federal and nonfederal interoperable packet switched data networks or a similar computer bulletin board or computer network accessible to the public.]

(5) [(9)] Manipulation - The process of modifying, reordering, or decoding information with human intervention.

(6) [(10)] Personal information - Information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, personal identification certificate number, name, address other than the postal routing code, telephone number, and medical or disability information. The term does not include information contained in an accident report prepared under Transportation Code, Chapters 550 or 601, [information on vehicular accidents,] driving or equipment-related violations, or driver's license or registration status.

[(11) Processing - The execution of a sequence of coded instructions by a computer producing a result.]

(7) [(12)] Programming - The process of producing a sequence of [coded] instructions that can be executed by a computer.

(8) [(13)] Political subdivision - A county, municipality, local board, or other governmental body of this state having authority to provide a public service.

(9) [(14)] Service agreement - A contractual agreement that allows individuals, businesses, or state governmental agencies or institutions to access the department's vehicle registration records.

(10) [(15)] Special district - A political subdivision of the state established to provide a single public service within a specific geographical area.

(11) [(16)] Vehicle registration record - Information contained in the department's files that reflects, but is not limited to, the make, vehicle identification number, year, model, body style, and license number of a motor vehicle, and the name, address, and social security number of the registered owner.

(12) [(17)] Written request - A request made in writing, including electronic mail, electronic media, and [or] facsimile transmission.

§3.12. Public Access.

(a) Request for records.

(1) Submittal of request. A person seeking public information shall submit a request in writing to the department.

(A) A request made by other than electronic mail shall be submitted to:

(i) the department's General Counsel;

(ii) the department's Director of Public Information; or

(iii) the district engineer or division director of the district or division [department] responsible for the information.

(B) A request made by electronic mail shall be sent via the department's World Wide Web site, located at http://www.dot.state.tx.us/.

(2) Information required. A request for official records shall include the name, address, and telephone number of the requestor, and a description of the records in sufficient detail to permit efficient gathering of the requested items. The request shall also include the preferred mailing, facsimile transmission, or electronic mail address at which the requestor wishes to receive a cost itemized statement provided pursuant to Government Code, §552.2615(a) and §3.13(d) of this subchapter;

(3) Vehicle title and registration information.

(A) The department will provide certain vehicle registration information by telephone or upon receipt of a written request. Requested information will be released in accordance with

18 U.S.C. §2721, Transportation Code, §502.008, and Transportation Code, Chapter 730 [~~Chapters 730 and 731~~].

(B) The department will provide a written form for requests for motor vehicle registration information. A completed and properly executed form must include, at a minimum:

(i) the name and address of the requestor;

(ii) the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(iii) a statement that [~~if a person who is a subject of the record has requested the department to restrict the release of the information,~~] the requested information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for one of the permitted uses indicated on the form;

(iv) a statement that the information is requested for a lawful and legitimate purpose in accordance with Transportation Code, §502.008[~~, and that, in accordance with Transportation Code, §731.002, the requestor will not disseminate or publish the information on the Internet or permit another to do so~~];

(v) a certification that the statements made on the form are true and correct; and

(vi) the signature of the requestor.

(C) The department will provide vehicle registration information by license number by telephone only in accordance with 18 U.S.C. §2721, Transportation Code, §502.008, and Transportation Code, Chapter 730 [~~Chapters 730 and 731~~], and only if requested by:

(i) a peace officer acting in an official capacity; or

(ii) an official of the state, city, town, county, special district, or other political subdivision, utilizing the obtained information for tax purposes or for the purpose of determining eligibility for a state public assistance program.

~~[(4) HUB/DBE applicant information. The department will not release information submitted by a vendor or contractor in connection with an application for certification as a HUB or DBE unless requested by:]~~

~~[(A) a state or local governmental agency for a use permitted by Government Code, §552.128; or]~~

~~[(B) a person with the express written permission of the HUB/DBE or the HUB/DBE's agent.]~~

~~[(5) Accident information. The department will not release information about the date of an accident, the name of a person involved in an accident, or the specific location of an accident unless requested by:]~~

~~[(A) the Department of Public Safety;]~~

~~[(B) a governmental agency that uses the information for accident prevention purposes;]~~

~~[(C) the law enforcement agency that employs the peace officer who investigated the accident and reported it to the Department of Public Safety; or]~~

~~[(D) a person who provides the name of a person involved in the accident and:]~~

~~*[(i)* the date of the accident; or]~~

~~*[(ii)* the specific location where the accident occurred.]~~

(b) Production of records. Except as provided in subsections (a), (d), (e), and (f) of this section, the department will provide copies or promptly produce official department records for inspection, duplication, or both. If the requested information is unavailable for inspection at the time of the request because it is in active use or otherwise not readily available, the department will certify this fact in writing within 10 business days after the date the information is requested to the applicant and specify a date [~~and hour~~] within a reasonable time when the record will be available for inspection or duplication.

(c) Examination of information.

(1) A person requesting to examine official records in the offices of the department must complete the examination without disrupting the normal operations of the department and not later than the 10th day after the date the records are made available to the person. Upon written request, the department will extend the examination period by increments of 10 days, not to exceed a total of 30 days.

(2) The inspection of records may be interrupted by the department if the records are needed for use by the department. The period of interruption will not be charged against the requestor's 10-day period to examine the records.

(3) A person may not remove an original copy of an official department record from the offices of the department.

(d) Request for opinion. If the department considers that requested records fall within an exception under the Government Code, and that the records should be withheld, the department will ask for a decision from the attorney general about whether the records are within that exception if there has not been a previous determination about whether the records fall within one of the exceptions. The request for a decision from the attorney general will be made by the 10th business day after the date of receiving the written request.

(e) Confidential information and privacy protection.

(1) The department will not provide records considered to be confidential by law or otherwise prohibited from release under the Government Code or other provisions of law [~~, and will not provide copies of information subject to intellectual property protection~~].

~~[(A) The department will not provide access to social security numbers contained in the department's records except to governmental agencies that demonstrate authority to obtain the information.]~~

~~[(B) Upon receipt of a request from an individual to restrict release of that person's personal information in a motor vehicle registration record, the department will only release the information in accordance with 18 U.S.C. §2721, Transportation Code, §502.008, and Transportation Code, Chapters 730 and 731. The department will provide a form for such a request. A completed and properly executed form must include, at a minimum:]~~

~~*[(i)* the printed name and address of the requestor;]~~

~~*[(ii)* a description of the motor vehicle to which the request applies;]~~

~~*[(iii)* a designation that the requestor chooses to restrict disclosure of personal information in response to individual requests for information;]~~

~~*[(iv)* a designation that the requestor chooses to restrict disclosure of personal information in response to requests for information to be used for bulk distribution for surveys, marketing, or solicitations; and]~~

~~*[(v)* the signature of the requestor.]~~

~~[(C) Upon receipt of a court order preventing release of information, the department will prevent access to any information pertaining to an individual's specific motor vehicle record.]~~

(2) A legislative member, agency, or committee may request confidential information if the public information requested is for legislative purposes. The department may require the requesting legislative agency or committee, or the member or employee of the requesting entity, to sign a confidentiality agreement that requires the following provisions.

(A) The information shall not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received.

(B) The information shall be labeled confidential.

(C) The information shall be kept securely.

(D) The number of copies of the information or the notes taken from the information that are not destroyed or returned to the department remain confidential and subject to the confidentiality agreement.

(f) Repetitious or redundant requests. The department may elect not to provide records if the department has previously furnished the same copies or made the same information available to the requestor. In the event that the department elects not to provide records under this subsection, the department will provide the requestor with a certification that includes:

(1) a description of the information previously made available to the requestor;

(2) the date that the department received the requestor's previous request for the information;

(3) the date that the department previously made the information available to the requestor;

(4) a statement that no subsequent additions, deletions, or corrections have been made to that information; and

(5) the name, title, and signature of the department's General Counsel or Director of Public Information or the district engineer or division director for the district or division [~~of the department~~] responsible for the information.

(g) Certified records. In accordance with Transportation Code, §201.501, the following officials shall serve as the executive director's authorized representatives for the purpose of certifying official department records.

(1) The department's [~~Department's~~] chief minute clerk may certify commission minute orders. In the absence of the chief minute clerk, minute orders may be certified by the executive assistant to the executive director. The executive director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(2) Other official records of the department may be certified by the district engineer, division director, or other department official having official custody of the records. A district engineer or division director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(h) Programming and manipulation of data.

(1) If responding to a request for information will require programming or manipulation of data and compliance with the request is not feasible or will result in substantial interference with the department's ongoing operations, or if the information could be made available in the requested form only at a cost that covers the programming and manipulation of data, the department will provide a written statement within 20 days after the date of the receipt of the request. The statement will include:

(A) a statement that the information is not available in the requested form;

(B) a description of the form in which the information is available;

(C) a description of any contract or services that would be required to provide the information in the requested form;

(D) a statement of the estimated cost of providing the information; and

(E) a statement of the anticipated time required to provide the information.

(2) If the department gives written notice within 20 days after the date of receipt of the request to the person making the request that additional time is needed, the department may have an additional 10 days to issue the statement in paragraph (1) of this subsection.

(3) The department will not provide the information until the person making the request states in writing that the requestor wants:

(A) the department to provide the information according to the cost and time parameters set out in the statement; or

(B) the information in the form in which it is available.

(i) Correction of Information. An individual may request the correction of information about that individual in the following manner:

(1) A request to correct information may be submitted in writing or through the department's World Wide Web site, located at http://www.dot.state.tx.us/. The request must be directed to the district engineer or division director of the district or division responsible for the information.

(2) The request must include the individual's name, address, and telephone number.

(3) The request must identify the record to be corrected with as much specificity as reasonably possible. The department will not process requests that do not identify particular records.

(4) This subsection applies only to a request to correct information that relates directly to an individual, including the individual's name, address, telephone number, and similar information.

(5) The department may contact the individual or take other steps as necessary to verify the individual's identity. The department may also contact the individual or take other steps as necessary to obtain additional information with regard to the record to be corrected, the nature of the correction to be made, the reasons that the current information maintained by the department is incorrect, or other relevant matters.

(6) The district engineer or division director of the district or division responsible for the information will determine if the current information maintained by the department is incorrect.

(A) If the current information maintained by the department is determined to be incorrect, the department's records will be

corrected. The district engineer or division director of the district or division responsible for the information will determine the manner in which the correction will be made.

(B) If the current information maintained by the department is determined to be correct, the request for correction will be noted in connection with the relevant record.

(C) The department may refuse to alter records that were correct at the time they were first prepared, but are no longer correct. If the department refuses to alter a record that was correct at the time it was first prepared, but is no longer correct, the request for correction will be noted in connection with the relevant record.

(7) This subsection does not authorize the cancellation, issuance, or alteration of any official record, including a title, a license, or a permit. Application for a new official record must be made in the manner required by law.

§3.13. Cost of Copies of Official Records.

(a) Standard costs. The following table lists charges for copies and related services.
Figure: 43 TAC §3.13(a)

(b) Personnel and overhead charge. A personnel charge of $15 per hour plus an overhead charge of 20% of the personnel charge will be added to the costs of any request involving the:

(1) copying of more than 50 pages;

(2) copying of information located in two or more buildings that are not physically connected with each other;

(3) copying of information located in a remote storage facility;

(4) retrieval of information that is older than five years and will require more than five hours to make available for inspection; or

(5) retrieval of information that will completely fill six or more archival boxes and will require more than five hours to make available for inspection.

(c) Document inspection. If editing of confidential information is required in order to obtain access to a record for inspection, the department may charge for the cost of making copies to edit.

(d) Estimated charges.

(1) If a request will result in the imposition of a charge that exceeds $40, the department will provide the requestor:

(A) an itemized statement detailing all estimated charges; and

(B) an identification of any less costly alternative that is available.

(2) If a less costly alternative is specified, the itemized statement will inform the requestor of the need to contact the department regarding the alternative and will inform the requestor:

(A) that the request will be considered to be automatically withdrawn if the requestor does not, within 10 days of the date of the notice and in writing, accept the charges or modify the request; and

(B) that the requestor may respond by mail, in person, by facsimile transmission, or by electronic mail.

(3) If, before the requested information is made available, it is determined that actual charges will exceed the charges identified in paragraph (1) of this subsection by 20% or more, the department will send the requestor an updated itemized statement detailing all estimated charges that will be imposed.

(4) If an itemized or updated itemized statement is provided under paragraphs (1) or (3) of this subsection and the requestor does not accept the estimated charges in writing or modify the request in writing within 10 days of the date of the notice, the request will be considered to have been withdrawn by the requestor.

(5) Actual charges will not exceed the estimated charges in the itemized statement provided under paragraph (1) of this subsection by more than 20%, or if an updated itemized statement is provided under paragraph (3) of this subsection, actual charges will not exceed the estimated charges in the updated itemized statement.

(e) Payment.

(1) Payment of charges is due prior to release of copies of records.

(2) Upon release of copies of records, the department will provide to the requestor a statement describing all charges, including the amount of time required for retrieval and copying, when personnel and overhead charges are included. The statement will be signed by an authorized employee with that employee's name typed or printed below the signature.

(f) Waiver.

(1) When an employee files an internal employee grievance, the department will provide copies of relevant records free of charge to an official party to the proceeding. The department's General Counsel will determine which records are relevant under this subsection.

(2) The department may waive or reduce the fees charged under subsections (a) and (b) of this section if the executive director, the district engineer with jurisdiction over the records, or the division director with jurisdiction over the records [~~or the executive director's designee~~] determines a waiver to be in the public interest because providing the records primarily benefits the general public or because the records can be produced at a minimal expense to the public.

§3.14. Electronic Access to Department Records.

(a) Electronic on-line delivery systems. The department will provide certain information [~~via the Internet~~] through a departmental World Wide Web Site (http://www.dot.state.tx.us). Information concerning doing business with the department, news about the department, tourism and travel information, public transportation information, and other transportation-related information will be provided through this web site.

(b) Electronic access to vehicle title and registration information.

(1) Information available. The department will make motor vehicle registration, title, and vehicle ownership information available electronically to an individual, agency, or business in accordance with 18 U.S.C. §2721, Transportation Code, §502.008, and Transportation Code, Chapter 730 [~~Chapters 730 and 731~~] under the terms of a written service agreement.

(2) Agreement with business or individuals. The written service agreement with a business or individual must contain:

(A) the specified purpose of the agreement;

(B) an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in the amount of:

(i) $200 for an on-line access account; or

(ii) $1,000 for a prepaid account for batch purchase of motor vehicle registration information;

(C) notification regarding the charges provided in §3.13 of this subchapter;

(D) termination and default provisions;

(E) service hours for access to motor vehicle records for on-line access;

(F) the contractor's signature;

(G) a statement that the use of registration information obtained by virtue of a service agreement is conditional upon its being used:

(i) in accordance with 18 U.S.C. §2721, Transportation Code, §502.008, and Transportation Code, Chapter 730 [~~Chapters 730 and 731~~]; and

(ii) only for the purposes defined in the agreement; and

(H) the statements required by §3.12(a)(3)(B) of this subchapter.

(3) Agreements with governmental agencies.

(A) The written service agreement with an agency must contain:

(i) the specified purpose of the agreement;

(ii) method of payment;

(iii) notification regarding the charges provided in §3.13 of this subchapter;

(iv) a statement that the use of registration information obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721, Transportation Code, §502.008, and Transportation Code, Chapter 730 [~~Chapters 730 and 731~~], and only for the purposes defined in the agreement;

(v) the statements required by §3.12(a)(3)(B) of this subchapter;

(vi) the signature of an authorized official; and

(vii) an attached statement citing the agency's authority to obtain social security number information, if applicable.

(B) Texas Law Enforcement Telecommunication System (TLETS) access is exempt from the payment of fees.

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 July 27, 2001.

TRD-200104354
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 463-8630

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CHAPTER 9. CONTRACT MANAGEMENT
SUBCHAPTER B. HIGHWAY IMPROVEMENT CONTRACTS

43 TAC §9.14

The Texas Department of Transportation proposes amendments to §9.14 concerning highway improvement contracts.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, Chapter 223, Subchapter A, prescribes the method by which the Texas Department of Transportation receives competitive bids for the improvement of highways that are a part of the state highway system. Pursuant to this authority, the commission has previously adopted §§9.10-9.20 to specify the process by which the department will award and execute.

House Bill 1138, 77th Legislature, 2001, added Transportation Code, §223.014, to provide that if the department requires a proposal guaranty as a condition of bidding for a contract, the guaranty may be in the form of a cashier's check or money order, a bid bond, or any other method the department determines to be suitable. Section 9.14(d) currently allows a bidder to submit a bid bond only for a project involving less than $300,000. To comply with House Bill 1138, §9.14(d)(2) is amended to allow the use of bid bonds as a proposal guaranty for all highway improvement contracts.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for the first five-year period the amended sections are in effect, there will be fiscal implications to the state. The department may experience a fiscal impact regarding the acceptance of bid bonds. The proposed revisions provide increased flexibility for a bidder to furnish a bid bond in lieu of a guaranty check on all highway improvement contracts. Currently, in the event of default of an awarded contract estimated to involve $300,000 or more, the department is able to deposit a guaranty check immediately. A bid bond will require the department to notify the surety issuing the bond that a default has occurred and payment is sought. By law, the surety has various courses of action that may delay collection or reduce the desired amount sought. The possibility of collection delay, amount reduction, and the additional steps necessary to collect on the bond will increase administrative and other costs for the department.

Use of a bid bond or a guaranty check is the bidder's option. Since submission of a bid bond is currently limited to contracts estimated to involve less than $300,000 and few bid bonds have been received, the number of bidders that will use a bid bond cannot be based on historical information. Consequently, any estimate of the number of bidders submitting a bid bond is speculative. Without the number of bidders that will use bid bonds, the expected increase in costs cannot be determined at this time. Section 9.14(d)(4) presently contains provisions for the collection of the increased administrative and other costs by order of the commission.

Thomas R. Bohuslav, Director, Construction Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amended sections.

PUBLIC BENEFIT

Mr. Bohuslav has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing and administering the amended section will be to increase the working capital of contractors bidding on construction contracts with the department, thereby increasing competition and ultimately lowering contract costs. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Thomas R. Bohuslav, Director, Construction Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is be 5:00 p.m. on September 10, 2001.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §§223.001-223.014, which authorize the Texas Department of Transportation to competitively bid highway improvement contracts.

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

§9.14. Submittal of Proposal.

(a) Delivery. The bidder shall place each completed proposal form in a sealed envelope marked to show its contents. When submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received on or before the hour and date set for the receipt and opening of bids and must be in the hands of the department letting official by that time.

(b) Proposal content. The bidder shall submit the proposal on the form furnished by the department and in compliance with the following requirements.

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the blank spaces for each item as required in the proposal form shall be filled in by writing in words in ink.

(2) The bidder shall submit a unit price for each item for which a bid is requested (including a zero if appropriate), except in the case of a regular bid item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates.

(3) The proposal shall be executed with ink in the complete and correct name of the bidder making the proposal and be signed by the person or persons authorized to bind the bidder.

(4) Except in the case of regular bid item that has an alternate bid item, unit prices shall be stated in dollars and/or cents for each bid item listed in the proposal.

(c) Computer printouts.

(1) In lieu of writing in words in ink, a bidder may submit an original computer printout sheet bearing the authorized signature for the bidder. The unit prices shown on acceptable printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded by the commission.

(2) Computer printouts are not acceptable on building contracts.

(d) Proposal guaranty. A bidder must submit a proposal guaranty with the proposal form.

(1) Except as provided in paragraph (2) of this subsection, the proposal guaranty must be in the amount specified by the proposal form, made payable to the order of the commission, and in the form of a cashier's check, money order, or teller's check drawn by or on a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as a "bank"). The check must be payable at or through the institution issuing the instrument, or must be drawn by a bank on a bank, or by a bank and payable at or through a bank. The form of the instrument must be identified on the instrument's face.

(2) A [~~When the department estimates a project to involve less than $300,000, a~~] bidder may submit a bid bond, in lieu of providing the guaranty required in paragraph (1) of this subsection. The bid bond shall be on the form and in the amount specified by the department. A bid bond will only be accepted from a surety company authorized to execute a bond under and in accordance with state law. The bond must bear the impressed seal of the surety company and be signed by the bidder and an authorized representative of the surety company. Powers of attorney must be attached to the bid bond. The bid bond amount required by the department must be within the surety company's authorized bonding limit.

(3) The department will not accept as a proposal guaranty:

(A) personal checks or certified checks;

(B) other types of money orders; or

(C) checks or money orders more than 90 days old.

(4) The commission will establish by order proposal guaranty and bid bond amounts. The commission may require a greater amount for a bid bond in order to compensate for increased administrative costs associated with bid bonds.

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 July 27, 2001.

TRD-200104355
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 9, 2001
For further information, please call: (512) 463-8630

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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 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305, §401.312

The Texas Lottery Commission has withdrawn from consideration proposed amendments to §401.305 and §401.312 which appeared in the May 11, 2001, issue of the *Texas Register* (26 TexReg 3433).

Filed with the Office of the Secretary of State on July 24, 2001.

TRD-200104280
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: July 24, 2001
For further information, please call: (512) 344-5215

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners has withdrawn from consideration the proposed amendments to §322.1 which appeared in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3690).

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104253
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: July 23, 2001
For further information, please call: (512) 305-6900

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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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER L. FINANCIAL INSTITUTION DATA MATCHES

1 TAC §§55.551 - 55.558

The Office of the Attorney General adopts new §§55.551 - 55.558 regarding the mechanism for a financial institution doing business in Texas to enter into an agreement with the Child Support Division for matching the names of delinquent child support obligors with the names of account holders. The sections are adopted without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3887), and therefore the sections will not be republished.

No comments were received concerning the proposed rules during the comment period.

The new sections are being adopted under the Texas Family Code §231.307.

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 July 26, 2001.

TRD-200104322
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Effective date: August 15, 2001
Proposal publication date: June 1, 2001
For further information regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.101

The Railroad Commission of Texas (Commission) adopts amendments to §3.101, relating to certification for severance tax exemption or reduction for gas produced from high-cost gas wells, without changes to the version published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4015). The adopted amendments will incorporate the Texas Legislature's amendment of Texas Tax Code §201.057 (Acts 1999, 76th Leg., ch. 365, §1), extending the available severance tax exemption or reduction to September 1, 2010. Additionally, the adopted amendments will remove the definition of the first day of production from the rule. The determination of the first day of production for the severance tax exemption or reduction for gas produced from high-cost gas wells is made by the Comptroller of Public Accounts of the State of Texas. The deletion of the unnecessary definition in the Commission's rule will avoid potential conflicting or inconsistent definitions of first day of production and will promote administrative and regulatory efficiency by allowing the Comptroller of Public Accounts to revise its definition of first day of production without engaging in a coordinated rulemaking with the Commission.

The Commission received one comment from the Texas Oil & Gas Association in support of the proposed amendments.

The Commission simultaneously readopts this rule, with the amendments, in accordance with Texas Government Code, §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*) The agency's reasons for adopting this rule continue to exist. The notice of proposed review of §3.101 was filed with the *Texas Register* concurrently with this proposal and published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4224).

The Commission adopts the amendments to §3.101 under Texas Natural Resources Code, §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission.

Texas Natural Resources Code, §§81.051, 81.052, 85.202, 88.011, 91.101, and Texas Tax Code, §201.057 are affected by the adopted amendments.

Issued in Austin, Texas on July 24, 2001.

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

Filed with the Office of the Secretary of State on July 24, 2001.

TRD-200104268
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: August 13, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 475-1295

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 62. CAREER COUNSELING SERVICES

16 TAC §62.80

The Texas Department of Licensing and Regulation (the Department) adopts an amendment to 16 Texas Administrative Code, §62.80 concerning the fees for the Career Counseling Services program. Section 62.80 is adopted without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3890) and will not be republished.

The amendment increases the fees for an original certificate of authority and a renewal certificate of authority from $750 to $1,000 each.

No comments were received regarding adoption of the amendment.

The Department is required by the Texas Occupations Code, Chapter 51, §51.202 to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Career Counseling Services program. The fees currently in place are below the amounts needed to cover program costs in current and future periods.

The amendment should enhance the future administration and enforcement of the Career Counseling Services program.

The amendment is adopted under the Texas Occupations Code, Chapter 51, §51.202. The Department interprets §51.202 as authorizing the Texas Commission of Licensing and Regulation to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction, including the Career Counseling Services program.

The statutory provision affected by the adopted amendment is Texas Occupations Code, Chapter 51, §51.202. No other statutes, articles, or codes are affected by 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.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104255
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 1, 2001
Proposal publication date: June 1, 2001
For further information, please call: (512) 463-7348

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CHAPTER 65. BOILER DIVISION

16 TAC §65.80

The Texas Department of Licensing and Regulation (the Department) adopts amendments to 16 Texas Administrative Code, §65.80 concerning inspection fees for the Boiler Division program. Section 75.80 is adopted without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3891) and will not be republished.

The amendments increase the Certificate of Operation fee from $45 to $50; the inspection fee for all boilers other than heating boilers from $115 to $120; the inspection fee for heating boilers without a manhole from $85 to $90; and the inspection fee for heating boilers with a manhole from $115 to $120.

No comments were received regarding adoption of the amendments.

The Department is required by Texas Occupations Code, Chapter 51, §51.202 and Texas Health and Safety Code, Chapter 755, §755.030, to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Boiler Division program. The fees currently in place are below the amounts needed to cover program costs in current and future periods.

The amendments should enhance the future administration and enforcement of the Boiler Division program.

The amendments are adopted under the Texas Occupations Code, Chapter 51, §51.202 and Texas Health and Safety Code, Chapter 755, §755.030. The Department interprets §51.202 as authorizing the Texas Commission of Licensing and Regulation (the Commission) to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction. The Department interprets §755.030 as authorizing the Commission to set fees for performing its inspections and other functions under Chapter 755 with respect to the Boiler Division program.

The statutory provisions affected by the adopted amendments are Texas Occupations Code, Chapter 51, §51.202 and Texas Health and Safety Code, Chapter 755, §755.030. No other statutes, articles, or codes are affected by 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.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104256
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 1, 2001
Proposal publication date: June 1, 2001
For further information, please call: (512) 463-7348

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CHAPTER 68. ARCHITECTURAL BARRIERS

16 TAC §68.80

The Texas Department of Licensing and Regulation (the Department) adopts amendments to §68.80 regarding the fees for the Architectural Barriers program. Section 68.80 is adopted without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3891) and will not be republished.

The amendments increase the filing fee for inspections from $75 to $100; increase the application fee for variances from $150 to $175; and requires that filing fees for plan reviews and inspections be paid by persons requesting the Department to perform these reviews and inspections. The Department also adopts amendments to change the name of the "Late Review Fee" to "Late Submittal Fee"; to provide that the late submittal fee apply in lieu of the review fee when construction documents are submitted after completion of a construction project; to require that the project filing fee accompany the registration form and be submitted with the construction documents; and to require that the inspection filing fee be paid within 30 days of completion of construction.

No comments were received regarding adoption of these amendments.

The Department is required by Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 9102, §6, to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Architectural Barriers program. The fees currently in place are below the amounts needed to cover program costs in current and future periods.

The amendments should help the enforcement program to increase the level of accessibility in new and renovated buildings and facilities in the state.

The amendments are adopted under the Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 9102, §6. The Department interprets §51.202 as authorizing the Texas Commission of Licensing and Regulation (the Commission) to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction. The Department interprets §6 as authorizing the Commission to set fees for performing its functions under Article 9102 with respect to the Architectural Barriers program.

The statutory provisions affected by the adopted amendments are Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 9102, §6. No other statutes, articles, or codes are affected by 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.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104257

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 1, 2001
Proposal publication date: June 1, 2001
For further information, please call: (512) 463-7348

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

16 TAC §75.22, §75.80

The Texas Department of Licensing and Regulation (the Department) adopts amendments to 16 Texas Administrative Code §§75.22 and 75.80 concerning license periods and fees for the Air Conditioning and Refrigeration (ACR) program. Sections 75.22 and 75.80 are adopted without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3892) and will not be republished.

The amendments change the license periods for all Class A and B licenses from three years to one year and reduces the fees for all Class A and B licenses from $350 to $125 each.

The Department is required by Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 8861, §§3 and 4, to set fees in amounts reasonable and necessary to cover the costs of administering programs, which include the Air Conditioning and Refrigeration Contractor (ACR) program. The fees currently in place are below the amounts needed to cover program costs in current and future periods. While this change in fees will result in a reduction of annual fee revenues for each license issued or renewed during the first three years the amendment is in effect, it also will result in a $25 increase in total fee revenues received over a three-year period for each license issued by the Department. Thus, the net effect of the change in fees is to increase the Department's fee revenues by the amount of $8.33 per ACR license per year. §The amendments should enhance the future administration and enforcement of the ACR program.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 8861, §§3 and 4. The Department interprets §51.202 as authorizing the Texas Commission of Licensing and Regulation (the Commission) to set fees in amounts reasonable and necessary to cover the costs of administering the programs and activities under its jurisdiction. The Department interprets §§3 and 4 as authorizing the Commission to set fees for performing its functions under Article 8861 with respect to the ACR program.

The statutory provisions affected by the adopted amendments are Texas Occupations Code, Chapter 51, §51.202 and Texas Revised Civil Statutes Annotated, Article 8861, §§3 and 4. No other statutes, articles, or codes are affected by 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.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104254
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 1, 2001
Proposal publication date: June 1, 2001
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.8

The Texas Higher Education Coordinating Board adopts amendments to §1.8 of Board rules, concerning Historically Underutilized Business (HUB) Program without changes to the proposed text as published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3594).

The amendments to the rule will incorporate by reference the rules adopted by the General Services Commission in 1 Texas Administrative Code, §§111.11 - 111.28.

The purpose of the amendments to the rule is to comply with the Texas Government Code, Title 10, Subtitle D, Chapter 2161, §21.61.003, which requires state agencies to adopt General Services Commission (GSC) rules governing their HUB program for construction projects and purchases of goods and services paid for with state-appropriated funds. The amendments to the rule conforms to Senate Bill 178, 76th Legislature, which amended Chapter 2161 of the Texas Government Code and directed state agencies to adopt the General Services Commission's rules regarding historically underutilized businesses (HUB) as the agency's own rules.

There were no comments received in response to the proposed amendments.

The amendments to the rule are adopted under the Government Code, §2161.003, which requires the board to adopt the rules promulgated by the General Services Commission under Government Code, §2161.002.

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

Filed with the Office of the Secretary of State on July 25, 2001.

TRD-200104296
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 14, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 427-6162

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CHAPTER 5. PROGRAM DEVELOPMENT
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.11

Texas Higher Education Coordinating Board adopts amendments to §5.11 concerning the Common Admission Application without changes to the proposed text as published in the May 18, 2001 issue of the *Texas Register* (26 TexReg 3595). Specifically, these amendments provide for changing the method of allocating the cost of the electronic common application among the participating institutions.

There were no comments received in response to the proposed amendments.

The amendments to the rule are adopted under the Texas Education Code, §51.763, which provides that the governing board of a university system shall adopt a common admission application form and allow each applicant to apply electronically.

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 July 30, 2001.

TRD-200104385
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 19, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER T. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §5.421

The Texas Higher Education Coordinating Board adopts amendments to §5.421 concerning the Permanent Fund for Minority Health Research and Education without changes to the proposed text as published in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3596).

Specifically, these amendments clarify the legislative intent by expressly including designation as a Historically Black or Hispanic serving institution as a criterion for award of grant funds.

There were no comments received in response to the proposed amendments.

The amendments to the rule are adopted under Texas Education Code §63.302, which directs the Coordinating Board to adopt rules for the award of grants from investment returns of the Permanent Fund.

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 July 25, 2001.

TRD-200104297

Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 14, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 427-6162

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CHAPTER 17. CAMPUS PLANNING
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§17.1 - 17.7

The Texas Higher Education Coordinating Board adopts new §§17.1 - 17.7 concerning Campus Planning (General Provisions). Sections 17.1, 17.3, 17.4, 17.6, and 17.7 are adopted with changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1641). Section 17.2 and §17.5 are being adopted without changes and will not be republished.

Existing Board rules concerning campus planning procedures were developed over a number of years and were amended numerous times. The new rules principally restructure the existing rules to streamline them, increase readability, and document existing practices. Specifically, the new rules establish standards for construction projects, processes for updating space projection models used by the Board, the use of eminent domain in the acquisition of real property, and reporting requirements.

Comments were received during the comment period and changes were made accordingly. Some minor changes were made due to staff comments to clarify the intent and improve the accuracy of the sections. Details of the comments and changes are described in the summary of comments that follow.

Comment: The Campus Planning Committee recommended that the Commissioner be allowed to reapprove projects originally approved by the Commissioner but not other projects that have been approved by the Committee or Board.

Response: The staff agrees and has amended §17.4(b)(1) accordingly. Section 17.4(b)(2) limitations on previously approved projects have been moved to §17.10(b).

Comment: The staff recommends that §17.4(b)(1) and (5), and (c) be renumbered, and the remaining subsections in §17.4 be renumbered for clarity and consistency.

Response: The sections have been amended accordingly.

The following comments were submitted by the University of Texas System:

Comment: Revise §17.1(c) to be consistent with the authority granted by Texas Education Code, §61.0572 to approve lease-purchase arrangements but not lease arrangements.

Response: The staff agrees and has amended the section accordingly.

Comment: Revise §17.2(6) to use the deferred maintenance definition recommended by THECB Building Condition Advisory Committee or specify that preventative maintenance be included only if it is deferred and exceeds $10,000.

Response: The staff disagrees. The definition proposed is in common use. While a dollar limitation is used in reporting requirements, it is not appropriate in the definition. No changes were made as a result of this comment.

Comment: Revise §17.3 to be consistent with the authority granted by Texas Education Code, §61.0572 in regards to lease-purchase arrangements.

Response: The staff agrees and has amended the section accordingly.

Comment: Revise §17.4(a) to include projects specifically approved by the legislature and projects financed by bonds issued under certain statutory provisions.

Response: The staff agrees and has amended the section accordingly.

Comment: Revise §17.4(a)(4) to delete quoted text, "and further that".

Response: The staff agrees and has amended the section accordingly.

Comment: Revise §17.4(b) to specifically recognize certification by the proposing institution's governing board or its duly appointed delegate that Board-approved criteria are met.

Response: The staff disagrees. The proposed change is not necessary. No changes were made as a result of this comment.

Comment: Add a provision to §17.4(b)(1)(D) in regards to eminent domain proceedings that authorizes the institution to pay damages assessed by the special commissioners court without seeking further approval from the Board or its delegate and to promptly report to the Board the amount of damages awarded.

Response: The staff agrees that this would be a desirable change to the current policy and the section was modified accordingly.

Comment: Delete §17.4(b)(5) relating to construction of new E&G space having a value of less than $1 million.

Response: The staff agrees and the section has been deleted accordingly.

Comment: Revise §17.4(b)(6) to be consistent with the provisions of Texas Education Code, §61.058 in regards to the review of projects financed by more than 50% with bonds issued under certain statutory provisions.

Response: The staff agrees. §17.4(b)(6) has been deleted and §17.4 was revised to clarify that the Commissioner shall evaluate these types of projects but not approve them.

Comment: Revise §17.6 to include a statement for flexibility, in appropriate circumstances, if a project does not meet the Board's standards.

Response: The staff disagrees. No changes were made as a result of this comment.

Comment: Revise §17.6(1) and §17.42 to reflect that the Board's space projection models should forecast space needs five years out to allow time for a project's programming, design, and construction.

Response: The staff disagrees. Infrastructure formula funding is based on the space projection model, and funding infrastructure based on future needs would be inappropriate. Forecast growth

is considered in construction needs decisions. No changes were made as a result of this comment.

Comment: Revise §17.6(1) and §17.42 in regards to the Board's standard for space needs to exclude Board review of projects with clinical care facilities to be consistent with Texas Education Code, §61.0572 and the exclusion of clinical and research facilities as in Texas Education Code, §61.0572(d)(2).

Response: The staff agrees and §17.6(1) was revised accordingly and §17.4(a)(5) specifically excludes the Board's approval authority for gifts, grants, or lease-purchase arrangements intended for clinical and research facilities. Section 17.42 relates to the Board's space-planning models not project reviews. No changes were made to §17.42.

Comment: Revise §17.6(2) in regards to the Board's standard for square foot construction cost to be less that the highest cost reported to R. S. Mean's or the 80th percentile of projects approved by the Board (adjusted for inflation), whichever is greater.

Response: The staff agrees and has amended the section accordingly.

Comment: Reconsider the Board's standard set out in §17.6(4). Consider raising the deferred maintenance ratio to replacement cost to 0.10 with a goal of 0.05 or use a building condition assessment in lieu of a ratio.

Response: The staff disagrees. The Board's 0.05 standard for deferred maintenance costs to replacement values follows a national standard. No changes were made as a result of this comment.

Comment: Revise §17.7(5) to remove the sentence that the Board may waive any rule or standard should it determine that a project may be in the best interest of the institution and the State to do so, and place the statement to §17.1 so that it applies to all projects under the Board's consideration.

Response: The staff disagrees. Section 17.7 is a policy that the Board adopted October 2000 that relates specifically to funding the construction of intercollegiate athletic activities. The Board's review, approval, and disapproval of all construction projects and real property acquisitions are based on standards set out in Texas Education Code, §61.0572 to assure the efficient use of construction funds and the orderly development of physical plants and to carry out its duties prescribed in Texas Education Code, §61.058. No changes were made as a result of this comment.

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

§17.1. Authority, Scope, and Purpose.

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

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

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

§17.3. Governing Board Approval Required.

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

§17.4. Delegation of Authority.

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

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

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

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

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

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

(6) New construction or major repair and rehabilitation projects specifically approved by the legislature.

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

(1) Projects previously reviewed or approved by the Commissioner but requiring re-consideration under the provisions of §17.10 (b) of this title (relating to New Construction and Repair and Rehabilitation Projects), providing they continue to be eligible for Commissioner approval.

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

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

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

(5) Projects funded more than 50% with tuition revenue bond proceeds. If the project does not meet Board standards, the Board shall notify the governor, lieutenant governor, the speaker of the House of Representatives, and the Legislative Budget Board.

(c) Board authorized criteria referenced in §17.4(b)(1) of this title (relating to Delegation of Authority) include the following:

(1) Board standards regarding space need are met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Projects previously approved but requiring re-approval under the provisions of §17.10 (b) of this title (relating to New Construction and Repair and Rehabilitation Projects), and not eligible for re-approval by the Commissioner.

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

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

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

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

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

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

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

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

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

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

(2) Cost--The construction building cost per gross square foot shall be less than the highest actual construction cost per gross square foot reported to R. S. Means or the 80th percentile of projects approved by THECB (adjusted for inflation), whichever is greater. The proposed purchase price of real property acquisitions should not exceed the highest appraised amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This agency hereby certifies that the 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 July 25, 2001.

TRD-200104298
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 14, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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

19 TAC §§17.21 - 17.27, 17.31, 17.33

The Texas Higher Education Coordinating Board adopts the repeal of §§17.21 - 17.27, 17.31 and 17.33 concerning Campus Planning (Criteria for Approval of New Construction and Major Repair and Rehabilitation) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1641). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The rules are being repealed to restructure the existing rules to increase readability.

There were no comments on the repeal of the rules.

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

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 July 25, 2001.

TRD-200104303
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER B. NEW CONSTRUCTION AND REPAIR AND REHABILITATION PROJECTS

19 TAC §17.10, §17.11

The Texas Higher Education Coordinating Board adopts new §17.10 and §17.11 concerning Campus Planning (New Construction and Repair and Rehabilitation Projects) with changes to §17.10 of the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1644). Section 17.11 is being adopted without changes and will not be republished. Existing Board rules concerning campus planning procedures were developed over a number of years and were amended numerous times. The new rules principally restructure the existing rules to streamline them, increase readability, and document existing practices. Specifically, the new rules establish standards for construction projects, processes for updating space projection models used by the Board, the use of eminent domain in the acquisition of real property, and reporting requirements.

No comments were received in response to the proposed rules.

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

§17.10. Evaluation Considerations.

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

(b) Previously approved projects must be re-approved if:

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

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

(3) contracts on the project have not been let within 18 months from its final approval date, or

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

(c) The Board's consideration and determination shall be limited to the purpose for which the new or remodeled buildings are to

be used to assure conformity with approved space utilization standards and the institution's approved programs and role and mission if the cost of the project is not more than $2,000,000.

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

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

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

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 July 25, 2001.

TRD-200104299
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER B. APPLICATION FOR APPROVAL OF NEW CONSTRUCTION AND MAJOR REPAIR AND REHABILITATION

19 TAC §§17.41 - 17.46

The Texas Higher Education Coordinating Board adopts the repeal of §§17.41 through 17.46 concerning Campus Planning (Application for Approval of New Construction and Major Repair and Rehabilitation) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1644). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The rules are being repealed to restructure the existing rules to increase readability.

There were no comments received regarding the repeal of the rules

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

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 July 25, 2001.

TRD-200104304
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 14, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER C. REAL PROPERTY ACQUISITION PROJECTS

19 TAC §§17.20 - 17.24

The Texas Higher Education Coordinating Board adopts new §§17.20 - 17.24 concerning Campus Planning (Real Property Acquisition Projects) with changes to §17.24 of the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1645). Sections 17.20 - 17.23 are being adopted without changes and will not be republished. Existing Board rules concerning campus planning procedures were developed over a number of years and were amended numerous times. The new rules principally restructure the existing rules to streamline them, increase readability, and document existing practices. Specifically, the new rules establish standards for construction projects, processes for updating space projection models used by the Board, the use of eminent domain in the acquisition of real property, and reporting requirements.

No comments were received in response to the proposed rules.

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

§17.24. Eminent Domain.

Coordinating Board approval of acquisitions in which eminent domain may be necessary shall be obtained prior to the commencement of eminent domain proceedings. The institution shall provide to the Coordinating Board evidence of efforts made to reach an agreement with the property's owner and an estimate of the projected legal costs associated with the eminent domain proceeding. In the event the court establishes a purchase price 10% higher than that approved by the Board, the institution shall promptly report the amount to the Board, but it is not necessary to seek reapproval.

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 July 25, 2001.

TRD-200104300
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER C. REQUESTING COORDINATING BOARD ENDORSEMENT OF REAL PROPERTY ACQUISITIONS

19 TAC §§17.61 - 17.68

The Texas Higher Education Coordinating Board adopts the repeal of §§17.61 through 17.68 concerning Campus Planning (Requesting Coordinating Board Endorsement of Real Property Acquisitions) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1645). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The rules are being repealed to restructure the existing rules to increase readability.

There were no comments received regarding the repeal of the rules.

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

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 July 25, 2001.

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 14, 2001
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For further information, please call: (512) 427-6162

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SUBCHAPTER D. LEASED SPACE

19 TAC §17.30, §17.31

The Texas Higher Education Coordinating Board adopts new §17.30 and §17.31 concerning Campus Planning (Leased Space) with changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1647). Existing Board rules concerning campus planning procedures were developed over a number of years and were amended numerous times. The new rules principally restructure the existing rules to streamline them, increase readability, and document existing practices. Specifically, the new rules establish standards for construction projects, processes for updating space projection models used by the Board, the use of eminent domain in the acquisition of real property, and reporting requirements.

No comments were received in response to the proposed rules.

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

§17.30. Limitations.

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

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

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

§17.31. Evaluation Considerations.

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

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 July 25, 2001.

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER D. AUDITS OF EDUCATIONAL AND GENERAL FACILITIES

19 TAC §17.81

The Texas Higher Education Coordinating Board adopts the repeal of §17.81 concerning Campus Planning (Audits of Educational and General Facilities) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1647). Existing Board rules concerning campus planning procedures were developed over a number of years with numerous amendments. The rules are being repealed to restructure the existing rules to increase readability.

There were no comments received regarding the repeal of the rules.

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

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 July 25, 2001.

TRD-200104306

Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 14, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER E. INSTITUTIONAL REPORTING

19 TAC §§17.40 - 17.42

The Texas Higher Education Coordinating Board adopts new §§17.40 - 17.42 concerning Campus Planning (Institutional Reporting) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1648). Existing Board rules concerning campus planning procedures were developed over a number of years and were amended numerous times. The new rules principally restructure the existing rules to streamline them, increase readability, and document existing practices. Specifically, the new rules establish standards for construction projects, processes for updating space projection models used by the Board, the use of eminent domain in the acquisition of real property, and reporting requirements.

Comments were received during the comment period.

Comment: Revise §17.6(1) and §17.42 to reflect that the Board's space projection models should forecast space needs five years out to allow time for a project's programming, design, and construction.

Response: The staff disagrees. Infrastructure formula funding is based on the space projection model, and funding infrastructure based on future needs would be inappropriate. Forecast growth is considered in construction needs decisions. No changes were made as a result of this comment.

Comment: Revise §17.6(1) and §17.42 in regards to the Board's standard for space needs to exclude Board review of projects with clinical care facilities to be consistent with Texas Education Code, §61.0572 and the exclusion of clinical and research facilities as in Texas Education Code, §61.0572(d)(2).

Response: The staff agrees and §17.6(1) was revised accordingly and §17.4(a)(5) specifically excludes the Board's approval authority for gifts, grants, or lease-purchase arrangements intended for clinical and research facilities. Section 17.42 relates to the Board's space-planning models not project reviews. No changes were made to §17.42.

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

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 July 25, 2001.

TRD-200104302
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 14, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.3

Texas Higher Education Coordinating Board adopts amendments to §21.3 concerning Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition Loans made under the Texas Education Code, §56.051 without changes to the proposed text as published in the May 18, 2001 issue of the *Texas Register* (26 TexReg 3596). Specifically, these amendments will clarify that the loans are for both tuition and fees and that institutions are required to offer deferrals to students who would otherwise be deprived of an education due to a lack of financial ability. In addition, the amendments will clarify the dates when repayment must begin if a deferral is granted and clarify that institutions are required to forgive emergency loans to individuals who meet the forgiveness criteria outlined in Board rules.

There were no comments received in response to the proposed amendments.

The amendments to the rule are adopted under the Texas Education Code, §56.051, which provides the Coordinating Board with the authority to adopt rules under which each institution of higher education may establish an emergency loan program under which students are loaned money to pay tuition and fees.

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 July 30, 2001.

TRD-200104386
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 19, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 427-6162

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS
SUBCHAPTER A. GENERAL PROVISIONS FOR ALL GRANT AND SCHOLARSHIP PROGRAMS DESCRIBED IN THIS CHAPTER

19 TAC §22.6

Texas Higher Education Coordinating Board adopts amendments to §22.6 concerning the General Provisions for all Grant and Scholarship Programs Described in Chapter 22 without changes to the proposed text as published in the May 18, 2001

issue of the *Texas Register* (26 TexReg 3597). Specifically, these amendments will allow for increased efficiency in awarding grant monies to eligible students by allowing for flexibility in setting reallocation dates and by allowing certain financial aid programs to be administered as campus-based programs whereby all awarding and adjustments would be handled locally at the institution of higher education.

There were no comments received in response to the proposed amendments.

The amendments to the rule are adopted under the Texas Education Code, §56.051, which provides the Coordinating Board with the authority to adopt rules under which each institution of higher education may establish an emergency loan program under which students are loaned money to pay tuition and fees.

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 July 30, 2001.

TRD-200104387
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 19, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER I. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENT SCHOLARSHIP PROGRAM

19 TAC §22.163

Texas Higher Education Coordinating Board adopts amendments to §22.163 concerning the Fifty-Year Accounting Student Scholarship Program without changes to the proposed text as published in the May 18, 2001 issue of the *Texas Register* (26 TexReg 3598). Specifically, these amendments provide for changing the method of allocating the cost of the electronic common application among the participating institutions.

There were no comments received in response to the proposed amendments.

The amendments to the rule are adopted under the Texas Education Code, §61.751, which provides the Coordinating Board with the authority to establish and administer scholarships for fifth-year accounting students.

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 July 30, 2001.

TRD-200104388
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: August 19, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 427-6162

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 321. DEFINITIONS

22 TAC §321.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §321.1, concerning Definitions, without changes to the proposed text as published in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3690). The text of the rule will not be republished. The amendment will clarify the meaning of a term.

This amendment changes the definition of "asymptomatic".

No comments were received regarding this section.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this 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 July 26, 2001.

TRD-200104337
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: August 15, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

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CHAPTER 325. ORGANIZATION OF THE BOARD

22 TAC §325.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §325.1, concerning Elections, without changes to the proposed text as published in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3690). The text of the rule will not be republished. The amendment will increase administrative efficiency and eliminate indecision about the appropriate time for board elections.

The amendment eliminates confusion by changing the text of the rule to match the wording of the law more closely.

No comments were received regarding this section.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this 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 July 26, 2001.

TRD-200104336
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: August 15, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 305-6900

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CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners adopts amendments to §329.2, Licensure by Examination, with a change to the proposed text as published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3691). The change deletes the old text which is being replaced by new text in the amendment.

The amendments modify the additional education requirements for re-examination.

The amendments change the procedure for notifying the board about additional education, which has to be complete before an applicant can take the exam for the third or subsequent time. It also allows a PTA to be a tutor under certain circumstances, and adds exam review courses as an option.

No comments were received regarding this section.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§329.2. License by Examination.

(a) Requirements. An applicant applying for licensure by examination must:

(1) meet the requirements as stated in §329.1 of this title (relating to General licensure requirements and procedures); and

(2) pass the National Physical Therapy Exam (NPTE) for physical therapists or physical therapist assistants with the score set by the board. Score reports must be sent directly to the board by the authorized score reporting service.

(b) Notification of exam score. The board will notify applicants in writing of the exam score.

(1) If an applicant passes the exam, the board will include a permanent license with the score notification.

(2) If an applicant fails the exam, a re-examination application and fee is required for a subsequent examination.

(c) An applicant may take the examination for PT or PTA licensure only after the application process is complete and all requirements are met.

(d) Applying for licensure in more than one state. An applicant who applies for licensure by exam in another state, but does not receive a license from any other state, may apply for licensure by exam in Texas. The applicant must meet all other requirements for licensure in Texas, and must have the score report sent directly to the board from the authorized score reporting service.

(e) If an examinee has failed the physical therapy examination and wishes to take the physical therapist assistant examination, the examinee may apply under the Act, §453.203.

(f) Re-examination.

(1) First re-examination. An applicant who fails the exam the first time is eligible to take the examination a second time after submitting a re-exam application and fee.

(2) Second or subsequent re-examination. An applicant who fails the exam twice or more must complete additional education before taking the exam again. The amount of additional education is set forth in the attached chart. To be eligible to register for the exam again, the applicant must submit a letter that identifies the area(s) of weakness and describes the plan that addresses the weakness(s). The letter must be accompanied by proof that the additional education has been successfully completed. Additional education may be one or more of the following:

(A) A commercial review course.

(B) An individual tutorial. The completed tutorial must be signed by the tutor and notarized, and include the tutor's curriculum vitae. If the applicant is applying for a PT license, the tutor must be a licensed PT. If the applicant is applying for a PTA license, the tutor must be a licensed PT, or a licensed PTA who is associated with a Texas PTA program.
Figure: 22 TAC §329.2(f)(2)(B) (No change.)

(C) Board-approved continuing education.

(g) Failure of PT exam. An applicant who fails the physical therapy examination may apply for licensure as a PTA and take the physical therapist assistant examination if he meets all other requirements for licensure.

(h) License upgrading. An applicant who was licensed under the grandfather clause may take the NPTE to upgrade his or her score. The applicant must submit a written request and the examination registration materials and the appropriate fee.

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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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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22 TAC §329.5

The Texas Board of Physical Therapy Examiners adopts amendments to §329.5, concerning Licensing Procedures for Foreign-trained Applicants, without changes to the proposed text as published in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3692). The text of the rule will not be republished. These

amendments will eliminate delays in the licensure of qualified foreign-trained physical therapists and increase administrative efficiency.

The amendments will allow an exception to the English language proficiency exam requirement for foreign-trained applicants who are citizens or lawful permanent residents of the United States, and who can prove to the Board's satisfaction that they attended no less than four years of secondary or post-secondary schooling in the United States. The amendments will also allow the board to distinguish between foreign-trained applicants for licensure by exam and by endorsement, so that applicants by endorsement have to prove that they were licensed to practice in the country of education when they received their first U.S. license, and not that they are currently licensed in the country of education. Further, the amendments will remove incorrect references to other rules and procedures, which have been updated, renumbered, or changed; and clarify that applicants must have received a passing grade on coursework required for licensure.

No comments were received regarding this section.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this 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.

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For further information, please call: (512) 305-6900

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CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §341.1, concerning Requirements for Renewal, without changes to the proposed text as published in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3693). The text of the rule will not be republished. The amendment will ensure that licensees who are not subject to the CE audit are meeting the continuing education requirements.

The amendment establishes that licensees who are more than 90 days late in renewing a license are not included in the continuing education audit, and must submit documentation of continuing education at time of renewal.

No comments were received regarding this section.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this 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.

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For further information, please call: (512) 305-6900

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22 TAC §341.2

The Texas Board of Physical Therapy Examiners adopts an amendment to §341.2, concerning Continuing Education Requirements, as published in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3693) without changes. The text of the rules will not be republished. The amendment will ensure that licensees who are not subject to the CE audit are meeting the continuing education requirements.

The amendment establishes that licensees who are more than 90 days late in renewing a license are not included in the continuing education audit, and must submit documentation of continuing education at time of renewal.

No comments were received regarding this section.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this 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.

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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22 TAC §341.8

The Texas Board of Physical Therapy Examiners adopts amendments to §341.8, concerning Inactive Status, without changes to the proposed text as published in the May 25, 2001, issue of the *Texas Register* (26 TexReg 3694). The text of the rule will not be republished. The amendments will ensure that licensees returning to active practice will be familiar with the Board's rules and will have continued to take continuing education courses on a regular basis.

These amendments establish the requirement that licensees complete and pass the jurisprudence exam when going inactive

and renewing the inactive status, and that the continuing education required is subject to the Board's CE audit.

No comments were received regarding this section.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this 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.

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. CERTIFICATION AS A CPA
SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.70

The Texas State Board of Public Accountancy adopts the repeal of §511.70 concerning Processing Suspected Irregularities Involving Candidates for the Uniform CPA Examination without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3902).

The repeal allows the board to write a new, more responsive rule on this topic.

The repeal will function by repealing the old board rule so it can be rewritten and replaced by new §511.70.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

Filed with the Office of the Secretary of State on July 27, 2001.

TRD-200104371
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 16, 2001
Proposal publication date: June 1, 2001
For further information, please call: (512) 305-7848

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22 TAC §511.70

The Texas State Board of Public Accountancy adopts new §511.70 concerning Grounds for Disciplinary Action of Candidates without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3903).

The new rule allows the Board to combine former §511.70 and §511.101 and to re-write these rules to allow the Board to take action against CPA candidates who display specific behavior at the CPA examination as well as misrepresent information on official Board applications.

The new rule will function by listing activities that are prohibited and for which the Board may take disciplinary action against examination candidates.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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TRD-200104372
William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER E. EXAMINATION INVESTIGATION AND BOARD ACTION

22 TAC §511.101

The Texas State Board of Public Accountancy adopts the repeal of §511.101 concerning Action Relating to Violations of Rules Governing Conduct During the Examination without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3904).

The repeal allows the board to write a new, more responsive rule on this topic.

The repeal will function by repealing the old board rule so it can be rewritten and replaced by new §511.70.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.2

The Texas State Board of Public Accountancy adopts an amendment to Section 521.2 concerning Examination Fees without changes to the proposed text as published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3904).

The amendment allows the board to increase the initial examination fees and the fees for taking one, two and four examination subjects on the Uniform CPA Examination.

The amendment will function by raising the initial examination fee by $34.00, raising the examination fee for one subject by $8.50, for two subjects by $17.00, and for four subjects by $34.00.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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Executive Director
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §§65.101, 65.103, 65.107, 65.109, 65.111

The Texas Parks and Wildlife Commission adopts amendments to §§65.101, 65.103, 65.107, 65.109, and 65.111, concerning Permits for the Trapping, Transporting, and Transplanting of Game Animals and Game Birds, also known as Triple T permits, with changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3137). The change to §65.101, concerning Definitions, alters the definition of 'recruitment' to specify exactly what is meant by the term 'fawn.' The change to §65.103, concerning Trap, Transport, and Transplant Permit rewords subsection (a) for grammatical sense and adds language to subsection (a)(2) to clarify that the release of deer without a site inspection on properties for which Level III MLD permits have been issued is contingent upon the property being in compliance with all requirements of the wildlife management plan for the property. The change also alters language in paragraph (2) to prevent misunderstandings as to the total number of deer that can be trapped without a site inspection, and adds the word 'doe' to subparagraph (B) for consistency's sake. The change further alters subsection (a)(2)(C) to clarify that the reduction to 50 percent of recruitment applies to the population goal size. The change to §65.107, concerning Permit Application and Fees, alters the composition of the appeals panel to include the Director of the Wildlife Division and allows denied appeals to be reviewed by the Hunting Advisory Board in addition to the Private Lands Advisory Board, clarifies that the 10-day period for resolution of appeals is ten working days, and replaces the word 'necessary' with the word 'appropriate' to better convey that the intention of the appeals process is to identify anomalies and address them, rather than to periodically alter the regulations to eliminate complaints. The change to §65.109, concerning Issuance of Permit, identifies department employees who are authorized to approve permit applications. The change to §65.111 alters subsection (b) to eliminate the 14-day window for appeals, which conflicts with the provisions for contested cases contained in Government Code.

The amendment to §65.101, concerning Definitions, is necessary because the terms 'fawn' and 'recruitment' are used in another section to establish criteria for releases without site inspections. The amendment to §65.103, concerning Trap, Transport, and Transplant Permit, is necessary to address requests by the regulated community to establish criteria under which site inspections by the department are not required prior to release of deer. The amendment will also function by preventing deer held under a Deer Management Permit from being trapped under a Triple T permit. The amendment to §65.107, concerning Permit Applications and Fees, is necessary to create a mechanism for review when members of the regulated community feel that a department decision needs to be reconsidered. The amendment to §65.109, concerning Issuance of Permit, is necessary to accurately reflect changes made to department functional titles under the State Position Classification Plan. The amendment to §65.111, concerning Permit Conditions and Period of Validity, is necessary to accurately reflect that contested case procedure is set forth in Government Code and need not be recapitulated in regulation.

The amendment to §65.101 will function by adding a definition for the term 'recruitment,' which will then be used to establish criteria for releases without site inspections. The amendment to §65.103 will function by establishing additional criteria under which site inspections by department personnel are not required prior to release and by specifying that deer held under a Deer Management Permit cannot be trapped under a Triple T permit. The amendment to §65.107 will function by creating an appeals process for persons dissatisfied with the decisions of the department with respect to permit issuance. The amendment to §65.109 will function by removing inaccurate references to job titles and replacing them with accurate references. The change

to §65.111 will function by correcting an obsolete legal citation concerning contested cases.

The department received eight comments opposing adoption of the rules. One commenter stated that the regulations do nothing to address the sale of deer. The department disagrees with the comment and responds that the sale of wildlife resources is unlawful and the department will cite and prosecute any person it discovers to be engaging in the practice. No changes were made as a result of the comment. One commenter stated opposition to the practice of moving deer at all. The department disagrees with the comment and responds that in certain instances it is appropriate to relocate deer to enhance existing populations. No change was made as a result of the comment. One commenter stated that there is no reason to move deer to improve genetics because the genetics are already there. The department disagrees with the comment and responds that although the agency stresses habitat management and population control as the best regimes for deer management, there is evidence to suggest that in certain circumstances the introduction of deer can have a beneficial impact on the quality of a deer herd. No changes were made as a result of the comment. One commenter stated that the department had no statutory authority to move deer to Mexico, especially without remuneration. The department disagrees with the comment and responds that Parks and Wildlife Code, Chapter 43, Subchapter E, does not prohibit transportation of deer to Mexico, and that such activities are governed by a treaty between the State of Texas and the Republic of Mexico. No changes were made as a result of the comment. The department received 28 comments supporting adoption of the proposed rules.

Texas Deer Association and Texas Wildlife Association supported adoption of the proposed rules.

The rules are adopted under Parks and Wildlife Code, Chapter 43, Subchapter E, which requires the commission to adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds.

§65.101. Definitions.

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

(1) Amendment--A specific alteration or revision of currently permitted activities, the effect of which does not constitute, as determined by the department, a new trapping, transporting and transplanting operation.

(2) Certified Wildlife Trapper--An individual who receives a department-issued permit pursuant to this section.

(3) Natural Habitat--The type of site where a game animal or game bird normally occurs and existing game populations are not dependent on manufactured feed or feeding devices for sustenance.

(4) Nuisance Squirrel--A squirrel that is causing damage to personal property.

(5) Overpopulation--A condition where the habitat is being detrimentally affected by high animal densities, or where such condition is imminent.

(6) Permittee--Any person authorized by a permit to perform activities governed by this subchapter.

(7) Recruitment - the Fall survey estimate of the number of fawns (any deer less than one year of age) on a property.

(8) Release Site--The specific destination of game animals or game birds to be relocated pursuant to a permit issued under this subchapter.

(9) Stocking Policy--The policy governing stocking activities made or authorized by the department as specified in §§52.101-52.105, 52.201, 52.202, 52.301 and 52.401 of this title (relating to Stocking Policy).

(10) Supervisory permittee--A person who supervises the activities of permittees authorized to conduct activities.

(11) Trap Site--The specific source of game animals or game birds to be relocated pursuant to a permit issued under this subchapter.

§65.103. Trap, Transport, and Transplant Permit.

(a) For the purposes of this subchapter, the content of a wildlife stocking plan for a release site shall be the same as that required for a wildlife management plan under the provisions of §65.25 of this title (relating to Wildlife Management Plan). Applications may be approved without an inspection, provided:

(1) the release will not exceed a ratio of one white-tailed deer per 200 acres at the release site; however, when the accumulated releases on a tract result in a ratio of one deer to 200 acres, no further releases shall take place unless a site inspection has been performed by the department; or

(2) the property has been issued Level III MLD permits within the three years immediately preceding the release, is in compliance with all requirements of the wildlife management plan for the property and the activities involve only doe deer; and

(A) the number of doe deer to be trapped is not greater than the number of unused antlerless MLD permits from the hunting season coinciding with the current trapping period;

(B) the number of doe deer to be released does not cause the total population of deer on the release site to exceed the total population size specified in a management plan under the provisions of §65.25 of this title; and

(C) the harvest quota under §65.26 of this title (relating to Managed Lands Deer Permits) for the release site would not result in a population reduction of greater than 50% of recruitment below the total population size specified under the provisions of §65.25 of this title.

(b) Applications received by the department between September 1 and November 15 in a calendar year shall be approved or denied within 45 days of receipt.

(c) The department may deny a permit application if the department determines that:

(1) the removal of game animals or game birds from the trap site may be detrimental to existing populations or systems;

(2) the removal of game animals or game birds may detrimentally affect the population status on neighboring properties;

(3) the release of game animals or game birds at the release site may be detrimental to existing populations or systems;

(4) the release site is outside of the suitable range of the game animal or game bird;

(5) the applicant has misrepresented information on the application or associated wildlife stocking plan;

(6) the activity identified in the permit application does not comply with the provisions of the department's stocking policy; or

(7) the trapping activity would involve deer held under a Deer Management Permit.

(d) A buck deer transported under the provisions of this subchapter shall have its antlers removed prior to transport, unless:

(1) the transport takes place between February 10 and March 31 of a calendar year; or

(2) the trap site and the release site are owned by the same person. The sites shall be contiguous, but may be separated by a water body or public roadway.

(e) The department may establish trapping periods, based on biological criteria, when the trapping, transporting, and transplanting of game animals and game birds under this section by individuals will be permitted.

(f) The department may, at its discretion, require the applicant to supply additional information concerning the proposed trapping, transporting, and transplanting activity when deemed necessary to carry out the purposes of this subchapter.

(g) Game animals and game birds killed in the process of conducting permitted activities shall count as part of the total number of game animals or game birds authorized by the permit to be trapped.

§65.107. Permit Applications and Fees.

(a) Permit applications.

(1) Application for permits authorized under this subchapter shall be on a form prescribed by the department.

(2) A single application may specify multiple trap and/or release sites.

(3) A single application may not specify multiple species of game birds and/or game animals.

(4) The application must be signed by:

(A) the applicant;

(B) the landowner or agent of the trap site(s) ; and

(C) the landowner or agent of the release site(s).

(5) The applicant may designate certain persons and/or companies that will be involved in the permitted activities, including direct handling, transport and release of game animals or game birds. In the absence of the permittee, at least one of the named persons and/or companies shall be present during the permitted activities.

(b) Appeals. An applicant for a permit under this subchapter may appeal the decisions of the department concerning the stipulations of a permit. All appeals involving the provisions of paragraphs (1) and (2) of this subsection shall be resolved within 10 working days of notification of the department by the person making the appeal.

(1) An applicant seeking to appeal the decisions of the department with respect to permit issuance under this subchapter shall first contact the immediate in-line supervisor of the TPW employee responsible for authorizing the permitted activities.

(2) If the determination of the immediate in-line supervisor is unsatisfactory to the applicant, the applicant is entitled to have the appeal presented to a appeals panel. The decision of the appeals panel is final. The appeals panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director and District Leader with jurisdiction; and

(C) the White-tailed Deer Program Leader and the Game Branch Chief.

(3) If the determination of the panel is unsatisfactory to the applicant, the applicant is entitled to have the appeal presented to the Private Lands Advisory Board and the Hunting Advisory Board for the purpose of determining if regulatory revision is appropriate.

(c) Permit fees.

(1) The department shall charge a nonrefundable application processing fee of $150 for permits authorized pursuant to this subchapter.

(2) The department shall charge a nonrefundable application processing fee of $25 for amendments to existing permits.

(3) The department will not process any permit application unless the application fee has been received by the department.

(4) Applications to trap, transport, and transplant nuisance squirrels are exempt from application fees.

(5) Applications for urban white-tailed deer removal permits that specify trap sites consisting solely of property owned by a political subdivision or institution of higher education of this state are exempt from application fees.

§65.109. Issuance of Permit.

Permits authorized under this subchapter:

(1) will be issued only if the activities identified in the application are determined by the department to be in accordance with the department's stocking policy;

(2) will be issued only if the application and any associated materials are approved by a Wildlife Division technician or biologist assigned to write wildlife management plans;

(3) shall not be issued to individuals who are not in compliance with the reporting requirements specified in §65.115 of this title (relating to Reports) ;

(4) shall not be issued to applicants who have been finally convicted, during the two-year period immediately preceding the date of application, of any violation of the provisions of this subchapter; and

(5) do not exempt an applicant from the requirements of §§55.142-55.152 of this title (relating to Aerial Management of Wildlife and Exotic Animals).

§65.111. Permit Conditions and Period of Validity.

(a) A permittee may distribute the cost of permitted activities by entering into cost-sharing agreements with other parties involved, but such cost-sharing arrangements shall not violate the provisions of §65.117 of this title (relating to Prohibited Acts).

(b) If it is determined by the department that any condition listed on the permit has been violated, the department may suspend the permit after notifying the supervisory permittee that a violation has occurred. All contested cases shall be conducted pursuant to the provisions of Government Code, Chapter 2001.

(c) Permits issued pursuant to this subchapter shall expire at the end of the specified trapping period for that species. The maximum period of validity for a permit issued under this subchapter shall not exceed one year.

(d) Unattended trapping equipment and devices at trap sites within incorporated areas shall be labeled with the owner's name, complete address, and telephone number; the date of trap site establishment; and the date the trap site was last visited.

(e) Unattended trap sites that may pose a human health and safety hazard shall be clearly marked as such.

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-200104327
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER D. DEER MANAGEMENT PERMIT

31 TAC §65.131, §65.133

The Texas Parks and Wildlife Commission adopts amendments to §65.131 and §65.133, concerning Deer Management Permit, with changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3140). The change to §65.131, concerning Deer Management Permit, rewords subsection (c) to clarify that the activities authorized under a Deer Management Permit are not affected by other laws and regulations governing the possession of live white-tailed deer, and removes language that could be construed to imply that a hunting license or aerial management permit is unnecessary. The change to §65.133 specifies that only buck deer may be relocated from a scientific breeder facility to a facility permitted under this subchapter.

The amendment to §65.131, concerning Deer Management Permit, is necessary to maintain accurate cross-references and to prevent conflicts with other amendments that would allow deer from a scientific breeder's facility to be temporarily relocated into a Deer Management Permit facility. The amendment to §65.133, concerning General Provisions, is necessary to implement a mechanism to allow buck deer held under a scientific breeder's permit to be temporarily introduced to a pen containing deer held under a deer management permit.

The amendment to §65.131 will function by updating an internal reference. The amendment to §65.133 will function by allowing deer held under a scientific breeder's permit to be temporarily introduced to a pen containing deer held under a deer management permit, and would allow the deer to be recaptured.

The department received eight comments opposing adoption of the proposed rules. Three commenters stated that the rules effectively amounted to privatization of a public resource. The department responds that under Parks and Wildlife Code, Chapter 43, Subchapter R, deer held under a Deer Management Permit remain the property of the people of the state. No changes were made as a result of the comments. One commenter opposed any regulation that would allow deer to be kept behind high fences. The department responds that Parks and Wildlife Code, §1.013 provides that the code does not prohibit or restrict the owner or occupant of land from constructing or maintaining a fence of any height. No changes were made as a result of the comment. One commenter stated that the regulations were tantamount to encouraging domestication of wild animals. The department responds that the legislative intent of Chapter 43, Subchapter R, is to allow persons to manage wild white-tailed deer on acreage enclosed by a fence capable of segregating the deer from other wild white-tailed deer.

The department received 28 comments supporting adoption of the proposed rules.

The Gillespie County Commissioners Court opposed adoption of the proposed rules. Texas Deer Association and Texas Wildlife Association supported adoption of the proposed rules.

The rules are adopted under Parks and Wildlife Code, §43.603, which authorizes the commission to establish conditions governing a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter R.

§65.131. Deer Management Permit (DMP).

(a) The department may issue a Deer Management Permit to a person who has met the requirements of §65.132 of this title (relating to Permit Application and Fees).

(b) A person who possesses a valid Deer Management Permit may trap and detain wild deer according to the provisions of this subchapter and Parks and Wildlife Code, Chapter 43, Subchapter R. A permittee shall abide by the terms of an approved deer management plan.

(c) The provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, and L do not apply to deer lawfully being held in possession under authority of a valid DMP.

(d) Changes to an approved Deer Management Plan shall be considered as a new application.

§65.133. General Provisions.

(a) Deer detained under a DMP shall not be commingled with deer held under any other license or permit, except as provided under this subchapter.

(b) Except as provided in subsection (c) of this section, any deer introduced into a pen containing deer detained under a DMP become wild deer and must be released according to the provisions of §65.136 of this title (relating to Release).

(c) If approved under the deer management plan, buck deer held under the provisions of Subchapter T of this chapter (relating to Scientific Breeder's Permit) may be introduced into a pen containing deer detained under a DMP. Such deer remain private property and may be recaptured; however, any such deer within the pen when wild deer are released under the provisions of §65.136 of this title (relating to Release) become wild deer.

(d) The holder of a DMP is entitled to the issuance of Managed Lands Deer Permits subject to the provisions of §65.26 of this title (relating to Managed Lands Deer (MLD) Permits).

(e) A DMP authorizes the permittee to detain deer for natural breeding only.

(f) No deer, parts of deer, or by-products of any deer held under a DMP may be sold, bartered, or traded for any consideration.

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 July 26, 2001.

TRD-200104328
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: August 15, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 389-4775

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SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMIT

31 TAC §§65.601 - 65.603, 65.605, 65.607 - 65.610

The Texas Parks and Wildlife Commission adopts amendments to §§65.601 - 65.603, 65.605, and 65.607 - 65.610, concerning Scientific Breeder's Permits. Sections 65.601 - 65.603 and §65.610 are adopted with changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3145). Section 65.605 and 65.607 - 65.609 are adopted without changes and will not be republished. The change to §65.602 clarifies the various provisions under which live white-tailed deer may be possessed and stipulates that only buck deer may be temporarily relocated and recaptured from a deer management permit facility. The change to §65.603 rewords the notification requirement in subsection (e) for clarity's sake. The change to §65.610 alters subsection (b) to broaden the applicability of the requirement for a transport permit in order to accommodate persons who may be transporting deer into the state from another state, alters the applicability of subsection (e) to include persons who are transporting deer during the time periods specified in the subsection but who are not scientific breeders, changes subsection (i) to correct a typographical error and clarify that no person may transport deer under the provisions of the subchapter unless the trailer or vehicle used to transport the deer has been marked in accordance with the provisions of the subsection.

The amendment to §65.601, concerning Definitions, is necessary to, respectively: make definitions consistent with those in other departmental regulations, to provide greater flexibility for permittees to employ personnel as the situation dictates, to eliminate the term 'fawn' because it will no longer be used in the rules, and to allow permittees to use customized marking conventions. The amendment to §65.602, concerning Permit Requirement and Permit Privileges, is necessary for the department to address requests from the regulated community to be allowed to temporarily relocate buck deer from a scientific breeder facility to a deer management facility. The amendment to §65.603, concerning Application and Permit Issuance, is necessary to eliminate unnecessary language and to provide greater flexibility for permittees to employ personnel as the situation dictates. The amendment to §65.605, concerning Holding Facility Standards and Care of Deer, is necessary to restructure the provisions of the subchapter for enhanced usability. The amendment to §65.607, concerning Marking of Deer, is necessary to, respectively: eliminate stress on deer by deferring tagging activity until absolutely necessary; allow permittees to employ customized marking conventions, so long as each deer in their possession is uniquely identified; and to ensure accurate records of the ownership of deer bought and sold. The amendment to §65.608, concerning Annual Reports and Records, is necessary for the department to be able to determine that the permittee's activities are consistent with the provisions of the subchapter and the applicable provisions of Parks and Wildlife Code. The amendment to §65.609, concerning Purchase of Deer and Purchase Permit, is necessary to make the process of using purchase permits more user-friendly. The amendment to §65.610, concerning Transport of Deer and Transport Permit, is necessary to address requests from the regulated community; make the process of using purchase permits more user-friendly; and ensure that vehicles and trailers used to transport deer can easily be identified by law enforcement personnel.

The amendment to §65.601 will function by replacing the term 'designated agent' with 'authorized agent' and altering the definition to remove the requirement that such persons be named on the application for a permit; removing the definition for 'fawn'; and providing for an optional marking convention. The amendment to §65.602 will function by creating an exception to the applicability of other regulations in order to allow deer held under a scientific breeder's permit to be temporarily relocated for nursing or breeding purposes. The amendment to §65.603 will function removing an obsolete provision for the proration of fees and by providing a mechanism for expedited permit amendments to add or remove persons from the permittee's list of people authorized to perform permit activities. The amendment to §65.605 will function by removing provisions for temporary relocation of fawns for nursing purposes, which are being revamped and installed in another section. The amendment to §65.607 will function by allowing scientific breeders to defer the tattooing of deer until such time as they leave a breeding facility; providing for an optional marking convention; requiring all deer within a facility to be ear-tagged by March 31 of each year; and mandating, as a consequence of purchase, the replacement of the seller's ear tags with the buyer's ear tags prior to the introduction of deer from another facility. The amendment to §65.608 will function by specifying the contents of a required annual report, and requiring permittees and persons temporarily accepting deer from permittees to maintain specified records for inspection by department personnel. The amendment to §65.609 will function by simplifying provisions for the acquisition and use of purchase permits by: eliminating the requirement for possession of a return fax from the department prior to transport and replacing it with a more flexible notification and reporting procedure; allowing purchase permits to be obtained in bulk, to be used as necessary during the span of a scientific breeder permit's validity; and providing a mechanism for expedited amendments to permits. The amendment to §65.610 will function by providing a more user-friendly mechanism for the temporary movement of deer for breeding or nursing purposes by implementing a more flexible notification requirement for such activities; implementing provisions for the expedited amendment of permits; and creating an identification requirement for vehicles and trailers used to transport deer.

The department received nine comments opposing adoption of the proposed amendments. One commenter stated that the rules, in conjunction with changes to 31 TAC Chapter 65, Subchapter D (Deer Management Permit) constitute privatization of a public resource. The department responds that legislative intent, as articulated in Parks and Wildlife Code, Chapter 43, Subchapter R, stipulates that deer held under a deer management permit remain the property of the people of the state. No changes were made as a result of the comment. One commenter stated concern about the sale of deer. The department responds that the regulations, reporting requirements, and provisions for inspection of scientific breeder

facilities are intended to provide a means for the department to detect unlawful sale or purchase of deer. No changes were made as a result of the comment. One commenter stated that the regulations were tantamount to encouraging domestication of wild animals. The department responds that the legislative intent of Chapter 43, Subchapter L, is to allow persons to possess deer for scientific, management, and propagation purposes. No changes were made as a result of the comment. One commenter stated concerns that deer in scientific breeder facilities posed a disease threat to wild populations. The department responds that although the regulations require certain health certifications for deer entering the state, the Texas Animal Health Commission and the Texas Department of Health are the agencies with primary responsibility for addressing disease potential. No changes were made as a result of the comment. One commenter stated absolute opposition to the importation of deer from out of state. The department responds that until data indicate a problem or another agency finds cause to intervene, importation will continue to be allowed. No changes were made as a result of the comment. One commenter stated that §65.601(10) made no mention of tattoos, yet §65.607(b) states that deer must be permanently tattooed. The commenter also stated that breeding and nursing deer should not be hunted. The department disagrees with the comment and responds that §65.601(10) is a definition of the marking conventions available to facility operators and does not conflict with or negate other provisions requiring scientific breeder deer to be permanently marked, and that the regulations are quite clear in prohibiting the hunting of scientific breeder deer unless they have been liberated to the wild. No changes were made as a result of the comment.

The department received 28 comments supporting adoption of the proposed rules.

The Gillespie County Commissioners Court opposed adoption of the proposed rules. Texas Deer Association and Texas Wildlife Association supported adoption of the proposed rules.

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

§65.601. Definitions.

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

(1) Authorized agent--An individual designated by the permittee to conduct activities on behalf of the permittee. For the purposes of this subchapter, the terms 'scientific breeder' and 'permittee' include authorized agents.

(2) Certified Wildlife Biologist--A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or a related educational field; and

(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past 10 years.

(3) Common Carrier--Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service or any vehicle employed in such transportation service.

(4) Deer--White-tailed deer of the species Odocoileus virginianus or mule deer of the species Odocoileus hemonius.

(5) Facility--One or more enclosures, in the aggregate and including additions, that are the site of scientific breeding operations under a single scientific breeder's permit.

(6) Propagation--The holding of captive deer for reproductive purposes.

(7) Sale--The transfer of possession of deer for consideration and includes a barter and an even exchange.

(8) Scientific--The accumulation of knowledge, by systematic methods, about the physiology, nutrition, genetics, reproduction, mortality and other biological factors affecting deer.

(9) Serial Number--A permanent number assigned to the scientific breeder by the department.

(10) Unique number--A four-digit alphanumeric identifier used by the department to track the ownership of a specific deer. Unique numbers may be assigned by the department or by the permittee. If the permittee chooses to assign the unique numbers, each deer must be tattooed with the permittee's serial number in one ear and the unique number in the other ear. No two deer shall share a common unique number.

§65.602. Permit Requirement and Permit Privileges.

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

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

(1) possess deer within the permitted facility for the purpose of propagation;

(2) engage in the business of breeding legally possessed deer within the facility for which the permit was issued;

(3) sell deer that are in the legal possession of the permittee;

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

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

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

(7) temporarily relocate and recapture buck deer under the provisions of Subchapter D of this chapter (relating to Deer Management Permit).

§65.603. Application and Permit Issuance.

(a) An applicant for a scientific breeder's permit shall submit the following to the department:

(1) a completed notarized application on a form supplied by the department;

(2) a breeding plan which identifies:

(A) the activities proposed to be conducted; and

(B) the purpose(s) for proposed activities;

(3) a letter of endorsement by a certified wildlife biologist which states that:

(A) the certified wildlife biologist has reviewed the breeding plan;

(B) the activities identified in the breeding plan are adequate to accomplish the purposes for which the permit is sought; and

(C) the facility identified in the application is adequate to conduct the proposed activities;

(4) a diagram of the physical layout of the facility;

(5) the application processing fee specified in §53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits); and

(6) any additional information that the department determines is necessary to process the application.

(b) A scientific breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department; and

(2) the department has received the fee as specified in §53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits).

(c) A scientific breeder's permit shall be valid from the date of issuance until the immediately following March 31.

(d) A scientific breeder's permit may be renewed annually, provided that the applicant:

(1) is in compliance with the provisions of this subchapter;

(2) has submitted a notarized application and associated materials required by this section;

(3) has filed the annual report in a timely fashion, as required by §65.608 of this title (relating to Annual Reports and Records); and

(4) has paid the permit renewal fee as specified in §53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits).

(e) An authorized agent may be added to or deleted from a permit at any time by faxing or mailing an agent amendment form to the department. No person added to a permit under this subsection shall participate in any activity governed by a permit until the department has received the agent amendment form.

(f) The department may, at its discretion, refuse to issue a permit or permit renewal to any person finally convicted of any violation of Parks and Wildlife Code, Chapter 43.

§65.607. Marking of Deer.

(a) Each deer held in captivity by a permittee under this subchapter shall be permanently marked by an ear tag that shows the letters "TX" followed by the serial number assigned to the scientific breeder. All deer within a scientific breeder facility shall be ear-tagged by March 31 of the year immediately following their birth.

(b) No person shall remove or knowingly allow the removal of a deer held in a facility by a permittee under this subchapter unless it has been permanently tattooed in one or both ears with a unique number.

(c) No person shall introduce deer into a facility under the provisions of a purchase permit unless the ear tag identifying the seller has been removed from the deer and replaced with an ear tag bearing the TX number of the purchaser.

§65.610. Transport of Deer and Transport Permit.

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

(1) to another scientific breeder when a valid purchase permit has been issued for that transaction;

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

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

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

(5) to and from an accredited veterinarian for the purpose of obtaining medical attention; and

(6) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a DMP facility, which invoice shall accompany all deer to the receiving facility. The DMP permittee or authorized agent receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the facility of origin, the invoice shall be dated and signed by both the person holding the deer under a DMP permit and the scientific breeder, and the invoice shall accompany the deer to the facility of origin. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title.

(b) The department may issue a transport permit to an individual who does not possess a scientific breeder's permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from:

(1) a scientific breeder; or

(2) a lawful out-of-state source.

(c) All deer entering the boundaries of this state shall:

(1) be accompanied by a certificate of health, signed by an accredited veterinarian, which bears the purchaser's name and address, specifies the destination of the deer, and certifies that the deer:

(A) have been inspected by the veterinarian named on the certificate within 10 days prior to the time of transport;

(B) are free of external parasites;

(C) are free of evidence of contagious and communicable diseases; and

(D) have been tested in accordance with any applicable regulations of the Texas Animal Health Commission; and

(2) be accompanied by a permit or document from the government agency authorizing the exportation of the deer from the state or country of origin, if such permit or document was required as a condition for export from the state or country of origin.

(d) Except as provided in this subchapter, no person may transport deer during any open season for deer or during the period beginning 10 days immediately prior to an open season for deer unless the person notifies the department by contacting the Law Enforcement Communications Center in Austin no less than 24 hours before actual transport occurs.

(e) During an open season for deer or during the period beginning 10 days immediately prior to an open season for deer, deer may be transported for the purposes of this subchapter without prior notification of the department; however, deer transported under this subsection shall be transported only from one scientific breeder facility to another scientific breeder facility. Deer transported under this subsection shall not be liberated unless the scientific breeder holding the deer notifies the Law Enforcement Communications Center no less than 24 hours prior to liberation.

(f) Transport permits shall be effective for 30 days from the date that the scientific breeder has completed (to include the unique number of each deer being transported), dated, signed, and faxed the permit to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The transport permit shall also be signed and dated by the other party to a transaction (or their authorized agent) upon the transfer of possession of any deer.

(g) A transport permit is valid for only one transaction, and expires after one instance of use.

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

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

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

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

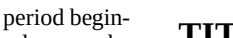
(i) A one-time, 30-day extension of effectiveness for a transport permit may be obtained by notifying the department prior to the original expiration date of the transport permit.

(j) No person may possess, transport, or cause the transportation of deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a scientific breeder, the inscription shall be "TXD". If the person is a scientific breeder, the inscription shall be the scientific breeder serial number issued to the person.

This agency hereby certifies that the 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 July 26, 2001.

TRD-200104329
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: August 15, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 389-4775



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 15. MEDICAID ELIGIBILITY

SUBCHAPTER F. BUDGETS AND PAYMENT PLANS

40 TAC §15.503

The Texas Department of Human Services (DHS) adopts amendment §15.503 without changes to the proposed text published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3696) and will not be republished.

If a client or his responsible party refuses to provide information needed to make an eligibility decision, DHS denies the application for benefits. The justification for this amendment is to make an exception to this policy in spousal cases when there is a possibility of abuse or neglect by the community spouse so that the client is not disadvantaged. Medicaid eligibility field staff requested this policy change following a case worked with the Adult Protective Services Division of the Texas Department of Protective and Regulatory Services.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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.

Filed with the Office of the Secretary of State on July 23, 2001.

TRD-200104251

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: September 1, 2001
Proposal publication date: May 25, 2001
For further information, please call: (512) 438-3734

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

The Commissioner of Insurance, at a public hearing under Docket No. 2491 scheduled for September 18, 2001 at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2001 and 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0701-08-I), was filed on July 30, 2001.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2001 and 2002 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0701-08-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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

TRD-200104410
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 31, 2001

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Review

Texas Funeral Service Commission

Title 22, Part 10

The Texas Funeral Service Commission files this notice of intention to review Texas Administrative Code, Title 22, Part 10, Chapters 201 and 203, relating to Licensing and Enforcement--Practice and Procedures and Licensing and Enforcement--Specific Substantive Rules, pursuant to the Appropriations Act of 1997, House Bill, Article IX, §167. The commission initiated rule review with a committee made up of a representative of the licensed funeral industry practitioners, a representative of the consumer advocacy community, a representative of the accredited mortuary schools in Texas, members of the Board of Commissioners of the Texas Funeral Service Commission, members of the commission staff, including the Executive Director of the Commission. Meetings of this committee to review rules were held January 23, 2001, March 20, 2001, and June 26, 2001. The commission will accept comments for 20 days following publication of this notice in the *Texas Register* as to whether reasons for adopting these chapters continue to exist. Final consideration of the review of these chapters is scheduled for the Commission's meeting on August 28, 2001.

The Texas Funeral Service Commission which administers these rules, believes that the reasons for adopting the rules contained in these chapters continues to exist. The commission has, within the last year, submitted four rules for amendment. At the Commission's regularly scheduled meeting on August 28, 2001, the staff will submit to the Commission 19 rules for revision and update.

Any questions or written comments pertaining to this notice of intention to review should be directed to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress, Suite 206, Austin, Texas 78704-1716, or by e-mail to chet.robbins@tfsc.state.tx.us.

TRD-200104381
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Filed: July 27, 2001

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Adopted Rule Review

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission) readopts §3.101, relating to certification for severance tax exemption or reduction for gas produced from high-cost gas wells. The notice of review was published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4224). The Commission received no comments regarding the proposed rule review. The Commission did receive one comment in support of the proposed amendments to §3.101 which were also published in that issue. After review, the Commission readopts this section, as amended.

The Commission has determined that the reason for adopting this rule, with the adopted amendments, continues to exist.

Issued in Austin, Texas, on July 24, 2001.

TRD-200104318
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: July 26, 2001

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 43 TAC §3.13(a)

Service Rendered	Charge
Standard-size paper copies (up to 8 1/2 inches x 14 inches)	$ .10 per page (Each side of original document printed on both front and back considered a single copy for a total of $ .20)
Paper copies produced on high-resolution color copier	$ .65 per page (Each side of original document printed on both front and back considered a single copy)
Charges for certified copies	Charges as applicable, plus $1.00 for sealed certification page
Nonstandard-size paper copy	$ .50 per page
Paper copy from microfilm or microfiche: standard size	$ .10 per page
Title and registration verification (record search)	$2.30
Title history	$5.75
Online access to motor vehicle records database	$23.00 per month plus $ .12 per record entry
Motor vehicle registration and title database	$5,000 plus $ .38 per 1,000 records copied to tape
Weekly updates to motor vehicle registration and title database -- tape provided by the department	$135.00
Batch inquiry to motor vehicle records database	$23.00 per computer run plus $ .12 per record searched
Texas Highways Magazine mailing list	(See charges under 43 TAC §23.28)
Duplicate forms: --microfilm roll, 16mm --microfilm roll, 35mm --microfiche --microfilm jackets	Actual cost (current Texas State Library charge; contact TxDOT Records Management for cost and assistance).
Paper copy (11 inches x 17 inches) from microfilmed construction plans	$ .50 per page
Paper copy (22 inches x 34 inches) from original construction plans (Copy-flo continuous print or Xerox 5080 or 2080 print)	$ .67 per linear foot
Paper copy (11 inches wide) of plan, schematic, cross-section or other roll plot	$ .11 per linear foot
Paper copy (18 inches wide) of plan, schematic, cross-section or other roll plot	$ .13 per linear foot
Paper copy (22 inches wide) of plan, schematic, cross-section or other roll plot	$ .16 per linear foot
Paper copy (24 inches wide) of plan, schematic, cross-section or other roll plot	$ .17 per linear foot
Paper copy (36 inches wide) of plan, schematic, cross-section or other roll plot	$ .27 per linear foot

Service Rendered	Charge
Vellum copies (11 1/2 inches wide) of plan, schematic, cross-section or other roll plot	$ .21 per linear foot
Vellum copies (22 inches wide) of plan, schematic, cross-section or other roll plot	$ .77 per linear foot
Vellum copies (34 inches wide)of plan, schematic, cross-section or other roll plot	$ .83 per linear foot
Vellum copies (36 inches wide)of plan, schematic, cross-section or other roll plot	$ .82 per linear foot
Diazo prints (11 inches x 17 inches)	$ .32 per sheet
Diazo prints (22 inches x 34 inches)	$1.02 per sheet
Mylar copies (18 inches wide) of plan, schematic, cross-section or other roll plot	$ .80 per linear foot
Mylar copies (22 inches wide) of plan, schematic, cross-section or other roll plot	$ .91 per linear foot
Mylar copies (24 inches wide) of plan, schematic, cross-section or other roll plot	$1.07 per linear foot
Mylar copies (36 inches wide) of plan, schematic, cross-section or other roll plot	$1.61 per linear foot
Photographic prints	$3.89 per square foot
Diskettes	$1.00 each
Computer magnetic tape --4mm --8mm --9-track	 $13.50 each $12.00 each $11.00 each
Data cartridge --2000 Series --3000 Series --6000 Series --9000 Series --600A	 $17.50 each $20.00 each $25.00 each $35.00 each $20.00 each
Tape cartridge --250MB --525MB	 $38.00 each $45.00 each
VHS video cassette	$2.50 each
Audio cassette	$1.00 each
Other, such as CD-ROM, including miscellaneous supplies, postage and shipping	Actual cost
Remote document retrieval charges	Actual cost
Computer resource charge (mainframe; prorated to actual time used; charges not assessed for printout time)	$10.00 per minute
Computer resource charge (mid-size/mini; prorated to actual time used; charges not assessed for printout time)	$1.50 per minute
Computer resource charge (client/server; prorated to actual time used; charges not assessed for printout time)	$2.20 per hour

Service Rendered	Charge
Computer resource charge (PC or LAN prorated to actual time used; charges not assessed for printout time)	$1.00 per hour
Programming (time charge; to be prorated to actual time used)	$26.00 per hour
Outside/Contracted Services	Actual Cost

Publication	Charge
County general highway maps (charges based on the sheet as a unit for all department maps); Colored maps available in selected counties only	Actual cost: Contact Map Sales at (512) 486-5014
Official department state map: (3 x 3 feet: 1 inch = 22 miles)	Actual cost: Contact Map Sales at (512) 486-5014
Traffic maps: Half scale (18 x 25 inches) only	Actual cost: Contact Map Sales at (512) 486-5014
State outline maps	Actual cost: Contact Map Sales at (512) 486-5014
Division manuals and subscription services (also available on an annual fee basis are subscription services to provide administrative documents pertaining to appraisal work and utility adjustment work performed for and by the department)	Charges based on cost of printing: Contact Publications Sales at (512) 302-0985

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 Adult Probation Commission

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the *Texas Administrative Code* in 30 days.

Title 37. Public Safety and Corrections

Part 10. Texas Adult Probation Commission

Chapter 321. Standards

Chapter 323. Fund Distribution

Government Code §2002.058, House Bill 1430, 77th Legislature, directs the secretary of state to remove a state agency's rules from the administrative code after the agency has been abolished. Before September 9, 2001, the text of the obsolete rules is available in the Texas Administrative Code, http://www.sos.state.tx.us/tac. After that date the text will continue to be available in the Texas Register office, 1019 Brazos, Room 245, Austin, Texas.

Written comments regarding removal of the rules may be addressed to Office of the Secretary of State, Texas Register Section, P.O. Box 13824, Austin, TX 78711-3824 or e-mail: subadmin@sos.state.tx.us.

TRD-200104309
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 25, 2001

♦ ♦ ♦

Advisory Council for Technical Vocational Education in Texas

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the *Texas Administrative Code* in 30 days.

Title 19. Education

Part 4. Advisory Council for Technical-Vocational Education in Texas

Chapter 185. Public Hearings

Government Code §2002.058, House Bill 1430, 77th Legislature, directs the secretary of state to remove a state agency's rules from the administrative code after the agency has been abolished. Before September 9, 2001, the text of the obsolete rules is available in the Texas Administrative Code, http://www.sos.state.tx.us/tac. After that date the text will continue to be available in the Texas Register office, 1019 Brazos, Room 245, Austin, Texas.

Written comments regarding removal of the rules may be addressed to Office of the Secretary of State, Texas Register Section, P.O. Box 13824, Austin, Texas 78711-3824 or e-mail: subadmin@sos.state.tx.us.

TRD-200104294
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 25, 2001

♦ ♦ ♦

Texas Amusement Machine Commission

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the *Texas Administrative Code* in 30 days.

Title 16. Economic Development

Part 5. Texas Amusement Machine Commission

Chapter 81. Practice and Procedure

Chapter 83. Licenses and Registration Certificates

Chapter 85. Coin Operated Machines

Government Code §2002.058, House Bill 1430, 77th Legislature, directs the secretary of state to remove a state agency's rules from the administrative code after the agency has been abolished. Before September 9, 2001, the text of the obsolete rules is available in the Texas Administrative Code, http://www.sos.state.tx.us/tac. After that date the text will continue to be available in the Texas Register office, 1019 Brazos, Room 245, Austin, Texas.

Written comments regarding removal of the rules may be addressed to Office of the Secretary of State, Texas Register Section,

P.O. Box 13824, Austin, Texas 78711-3824 or e-mail: subadmin@sos.state.tx.us.

TRD-200104292
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 25, 2001

♦ ♦ ♦

Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: State of Texas v. Sonics International, Inc., et al., Number GV-002838, in the 201st Judicial District Court of Travis County, Texas.

Background: The Texas Natural Resource Conservation Commission ("TNRCC"), issued an administrative order identifying the Sonics International, Inc., Site ("the Site"), a former hazardous waste disposal well facility in Eastland County, as a State Superfund Site. Certain responsible parties agreed with the order and completed the remedial action for the Site in accordance with the order. The TNRCC approved the completion of the remedial action. Certain other parties did not participate in the remediation, and have been sued for recovery of the State's oversight costs.

Nature of the Settlement: The case is to be settled by an agreed final judgment.

Proposed Settlement: The agreed final judgment gives the State a money judgment for $188,362.67 in response costs and $15,000 in attorneys' fees, and finds that the judgment has been satisfied by payment in full.

The Office of the Attorney General will accept written comments relating to the proposed settlement for thirty (30) days from the date of publication of this notice. Copies of the proposed agreed final judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed agreed final judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment, and written comments on same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

For information regarding this publication, please call A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200104383
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: July 27, 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 project(s) during the period of July 20, 2001, through July 26, 2001. The public comment period for these projects will close at 5:00 p.m. on August 31, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: David H. Gisselberg; Location: The project is located on Sabine Pass, at a marina located on a former U.S. Coast Guard station, approximately 0.5-mile south of the Texas Bayou Bridge, east of 1st Street, in Sabine Pass, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Texas Point, Texas-Louisiana. Approximate UTM Coordinates: Easting: 417500; Northing: 3286400. CCC Project No.: 01-0266-F1; Description of Proposed Action: The applicant has revised his project plans to more clearly identify the work that he proposes to perform. The applicant's proposed project consists of filling 24,000 square feet of tidal wetlands to provide recreational vehicle parking and improved access to an existing sport fishing marina. He has also revised his proposed mitigation to compensate for the wetland impacts. The applicant now proposes to provide mitigation in the form of in-lieu fees to J. D. Murphree Wildlife Management Area to be used to help perform necessary and beneficial work on the management area. Type of Application: U.S.A.C.E. permit application #21969(revised) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Lake Cove Joint Adventure; Location: The project is located on the northern tip of Taylor Lake in Seabrook, Harris County, Texas. From the State Highway 146 intersection with NASA Road 1 in Seabrook go west on NASA Road 1. Turn north on Lakeside Drive and proceed to the project site. Approximate UTM Coordinates: Zone 15; Easting: 303200; Northing: 3272500. CCC Project No.: 01-0268-F1; Description of Proposed Action: The applicant is requesting an additional five years to complete the project. In addition, the applicant is requesting to modify the proposed canal design on the eastern half of the project site as well as the required mitigation. The applicant is proposing to create an addition of 1.05 acres of wetlands within the subdivision and 0.75 acre of intertidal wetlands at the mouth of Pine Gully where it intersects with Galveston Bay. Type of Application: U.S.A.C.E. permit application #19664(02) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: U.S. Fish and Wildlife Service; Location: The project is located at Pond 13 on the McFaddin National Wildlife Refuge in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Clam Lake, Texas. Approximate UTM Coordinates: Zone 15; Easting: 394340; Northing: 3286745. CCC Project No.:

01-0269-F1; Description of Proposed Action: The applicant proposes to rehabilitate the levee surrounding Pond 13 on the McFaddin National Wildlife Refuge by plugging four washouts and constructing two water control structures. The applicant proposes these measures to allow better regulation of the exchange of saltwater in Pond 13. The purpose for proposing this project is wetland enhancement to be accomplished by reestablishing Pond 13 as a freshwater marsh management subunit. The goal for this project is to reestablish and provide long-term protection of marsh habitat along the upper Texas coast. Type of Application: U.S.A.C.E. permit application #22412 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Bass Enterprises Production Company; Location: The project is located in Corpus Christi Bay in State Tract 391, west of Coyote Island, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Ingleside, Texas. Approximate UTM Coordinates: Zone 14; Easting: 683026; Northing: 3075895. CCC Project No.: 01-0270-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and also shell and gravel pads. Type of Application: U.S.A.C.E. permit application #22424 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Bass Enterprises Production Company; Location: The project is located in Corpus Christi Bay in State Tract 401, west of Coyote Island, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Ingleside, Texas. Approximate UTM Coordinates: Zone 14; Easting: 683333; Northing: 3075157. CCC Project No.: 01-0271-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and also shell and gravel pads. Type of Application: U.S.A.C.E. permit application #22426 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Vintage Petroleum; Location: The project will originate in state tract 224 and extend through Galveston Bay to the existing platform in state tract 86, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 318496; Northing: 3273430. CCC Project No.: 01-0272-F1; Description of Proposed Action: The applicant proposes to install an 8-inch pipeline 25,900 linear feet from an existing well to an existing production platform. Type of Application: U.S.A.C.E. permit application #09160(10)/128 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The Coastal Management Consistency Review for this project may be conducted by the Railroad Commission as part of its certification under section 401 of the Clean Water Act.

Applicant: Aspect Resources L.L.C.; Location: The project is located between Dollar Bay and Galveston Bay, on the west side of the levee road in Texas City, Galveston County, Texas. CCC Project No.: 01-0273-F1; Description of Proposed Action: The applicant has submitted a revised mitigation proposal. The applicant now proposes to compensate for the wetland impacts by providing an in-lieu-fee to the Texas Nature Conservancy's Texas City Prairie Chicken Preserve. Remediation will be on an as needed basis. In addition, they will conduct a pre-impact plant density analysis on the 2-acre project site. Treatment areas will be monitored for three years following completion of restoration activities. If the proposed well is non-productive, the entire 2-acres will be restored to the original vegetative composition and as near as practicable contours. Type of Application: U.S.A.C.E. permit application #22265 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Cowboy Pipeline Service Company; Location: Construction of a pipeline originating at Celanese Chemical Bayport Terminal, 11807 Port Road, Pasadena, Harris County, Texas, and terminating at Valero Refinery Corporation, 1301 Loop 197 South, Texas City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled League City, Texas. Approximate UTM Coordinates: Zone 15; Easting: 315378; Northing: 3253331. CCC Project No.: 01-0274-F1; Description of Proposed Action: The applicant proposes to construct a single 10.75-inch pipeline for the transportation of synthetic hydrogen gas. The pipeline would transverse approximately 8.2 miles on land and 14.8 miles offshore for a total of 23 miles. The applicant proposes to restore the trenched portion of the project site to pre-construction contours and revegetate to as near original conditions as possible. The pipeline has been rerouted to avoid and minimize impacts to oyster reefs. During construction, actual impacts to oyster reefs will be monitored. Type of Application: U.S.A.C.E. permit application #22270 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Lamar Smith; Location: The project is located in tidal mangrove wetlands of the Laguna Madre on Lot 5 and Lot 6 on Saturn Lane, South Padre Island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Isabel, Texas. Approximate UTM Coordinates: Zone 14; Easting: 682747; Northing: 2889606. CCC Project No.: 01-0275-F1; Description of Proposed Action: The applicant proposes to fill 0.6 acre of mangrove wetlands for the purpose of constructing a foundation pad and driveways for two vacation/rental single-family homes. The area of total impact would be 2,280 square feet and would require 146 cubic yards of fill below the ordinary high water mark. Type of Application: U.S.A.C.E. permit application #22314 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Houston Exploration Company; Location: The project is located in the Gulf of Mexico in State waters of the Galveston Anchorage Area in the southwest corner of Block 104-L. The project can be located on the U.S.G.S. quadrangle map entitled Galveston, Texas. Approximate UTM Coordinates: Zone 15; Easting: 349133; Northing: 3244108. CCC Project No.: 01-0276-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production. The operator proposes to drill from one to four wells from this location. Additionally, the drilling rig will not require a shell pad. Therefore, no fill material will be placed into jurisdictional waters. Type of Application: U.S.A.C.E. permit application #22419 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Bass Enterprises Production Company; Location: The project is located in Corpus Christi Bay in State Tract 390, west of Coyote Island in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Ingleside, Texas. Approximate UTM Coordinates: Zone 14; Easting: 684293; Northing: 3075537. CCC Project No.: 01-0277-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways and also shell and gravel pads. Type of

Application: U.S.A.C.E. permit application #22425 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Matagorda County Navigation District No. 1; Location: The project is located at 104 Tracey Road at the Port of Palacios in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Palacios, Texas. Approximate UTM Coordinates: Zone 14; Easting: 770900; Northing: 3177500. CCC Project No.: 01-0278-F1; Description of Proposed Action: The applicant proposes to amend Permit #22334 to change the size of an excavated boat slip adjacent to turning Basin 3 in the Port of Palacios on Tres Palacios Bay. A 37-foot wide by 125-foot-long slip will be required to accommodate a 200-ton capacity travel lift. A steel bulkhead would be installed prior to excavation and the slip would be excavated in the dry. Approximately 3,453 cubic yards of material would be excavated and hauled by truck to Placement Area Number 15 located to the west of the proposed boat slip After the slip is excavated, approximately 37 feet of bulkhead would be removed to provide access to the turning Basin. The water depth in the proposed slip would be -12 feet mean high tide. Type of Application: U.S.A.C.E. permit application #22334(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

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-200104424
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 1, 2001

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Comptroller of Public Accounts

Notice of Renewal of Investment Management Services Contract

Notice of Amendment: The Comptroller of Public Accounts (Comptroller) furnishes this notice of renewal of an investment management and related services contract.

The Comptroller issued its Request for Proposals (RFP) from qualified, independent firms to provide investment management and related services to the Comptroller for the investment and management of funds in the Texas Local Government Investment Pool accounts (TexPool). The RFP was issued on December 6, 1996. The notice of request for proposals (RFP 046a) was published in the November 26, 1996 issue of the *Texas Register* at 21 TexReg 11537. A Notice of Delay was published in the December 6, 1996 issue of the *Texas Register* at 21 TexReg 11871. The Notice of Award was published in the February 25, 1997 issue of the *Texas Register* at 22 TexReg 1999.

The contract was awarded to: Texas Commerce Bank, National Association (now Chase Manhattan Bank), 601 Travis Street, P.O. Box 2558, Houston, TX 77252-8315 and First Southwest Asset Management, Inc., 1700 Pacific Avenue, Suite 1300, Dallas, TX 75201-4652.

The term of the original contract was from February 14, 1997 to December 31, 1997. The contract has been extended by prior amendments through August 31, 2001 and is now extended until August 31, 2002.

For further information, contact Thomas H. Hill, Assistant General Counsel for Contracts, 111 E. 17th St., Room G-24, Austin, TX 78774, telephone number (512) 305-8673; fax (512) 475-0973, or by e-mail at contracts@cpa.state.tx.us.

TRD-200104429
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 1, 2001

♦ ♦ ♦

Texas Conservation Foundation

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the *Texas Administrative Code* in 30 days.

Title 31. Natural Resources and Conservation

Part 6. Texas Conservation Foundation

Chapter 221. Procedures of the Board

Government Code §2002.058, House Bill 1430, 77th Legislature, directs the secretary of state to remove a state agency's rules from the administrative code after the agency has been abolished. Before September 9, 2001, the text of the obsolete rules is available in the Texas Administrative Code, http://www.sos.state.tx.us/tac. After that date the text will continue to be available in the Texas Register office, 1019 Brazos, Room 245, Austin, Texas.

Written comments regarding removal of the rules may be addressed to Office of the Secretary of State, Texas Register Section, P.O. Box 13824, Austin, TX 78711-3824 or e-mail: subadmin@sos.state.tx.us.

TRD-200104295
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 25, 2001

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 08/06/01 - 08/12/01 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 08/06/01 - 08/12/01 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 [3] for the period of 08/01/01 - 08/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 08/01/01 - 08/31/01 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200104399
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 31, 2001

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Texas Department of Criminal Justice

Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for Formby Training Facility and Staff Dormitory, Solicitation Number: 696-FD-1-B034.

The Contract was awarded to Denton-Renfroe, Inc., Contract Number: 696-FD-1-2-C0171, as a full award for a dollar amount of $1,843,400. Vendor is not a HUB vendor.

TRD-200104392
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 30, 2001

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Texas Education Agency

Standard Application System Concerning Public Charter Schools, 2001-2002

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications (Standard Application System (SAS)-#A525) from open-enrollment charter schools approved as a result of action taken by the State Board of Education on July 13, 2001, and as established by Texas Education Code, Chapter 12, to increase the understanding of the public charter schools model by providing financial assistance for the design and implementation of public charter schools. Applications will be mailed automatically to each eligible public charter school.

Description. In accordance with the purpose of the federal Public Charter Schools Grant Program, funds may be used for post-award planning and design of the educational program, which may include: (1) refining the desired educational results and methods for measuring progress toward achieving those results; and (2) providing professional development for teachers and other staff who will work in the public charter school. Funds may also be used for the initial implementation of the charter school, which may include: (1) informing the community about the public charter school; (2) acquiring necessary equipment and educational materials and supplies; (3) acquiring or developing curriculum materials; and (4) funding other initial operational costs that cannot be met from state or local sources.

Dates of Project. The federal Public Charter Schools Grant Program will be implemented between September 27, 2001, and May 31, 2002. Applicants should plan for a starting date of no earlier than September 27, 2001, and an ending date of no later than May 31, 2002.

Project Amount. Each project will receive a maximum of $85,000. Project funding in any subsequent year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the State Board of Education and the commissioner of education and appropriations by the U.S. Congress. This project is funded 100% from the Public Charter Schools federal funds.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted. The TEA is not committed to pay any costs before an application is approved. The TEA is not obligated to award a grant or pay any costs incurred in preparing an application.

Requesting the Application. A copy of the complete SAS-#A525 will be mailed to each eligible public charter school. Other interested parties may obtain a complete copy of SAS-#A525 by writing to: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the SAS number in your request.

Further Information. For clarifying information about the SAS, contact Esther Murguia, Division of Charter Schools, Texas Education Agency, (512) 463-9575.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency no later than 5:00 p.m. (Central Time), Thursday, September 27, 2001, and will be effective on the date received by the TEA.

TRD-200104422
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: August 1, 2001

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Texas Energy and Natural Resources Advisory Council

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the *Texas Administrative Code* in 30 days.

Title 31. Natural Resources and Conservation

Part 8. Texas Energy and Natural Resources Advisory Council

Chapter 251. Texas Energy Development Fund

Chapter 253. Innovative Grants for Energy Conservation

Chapter 255. Fuel Allocation

Government Code §2002.058, House Bill 1430, 77th Legislature, directs the secretary of state to remove a state agency's rules from the administrative code after the agency has been abolished. Before September 9, 2001, the text of the obsolete rules is available in the Texas Administrative Code, http://www.sos.state.tx.us/tac. After that date the text will continue to be available in the Texas Register office, 1019 Brazos, Room 245, Austin, Texas.

Written comments regarding removal of the rules may be addressed to Office of the Secretary of State, Texas Register Section, P.O. Box 13824, Austin, TX 78711-3824 or e-mail: subadmin@sos.state.tx.us.

TRD-200104307
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 25, 2001

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Texas Forest Service

Notice of Invitation for Offers of Consulting Services

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Forest Service (TFS) is requesting offers from consulting firms for the study, design, and development of a Texas forest-based economic development assistance model and implementation plan. The primary objectives of the plan are to help create or retain jobs, increase income for rural communities, and strengthen or revitalize local economies through forestry in Texas.

Description of Services: Assessment of East Texas forest industry and forested communities; role assessment of state forestry agency/local US Forest Service in assisting rural economic development through forestry programs and evaluation on whether other existing organizations/entities can more effectively administer and deliver these programs; determination of whether state forestry agency should redirect forest-based economic development assistance efforts to other existing organizations/entities; development of detailed and practical economic development assistance and implementation plan including implementation strategies for state forestry agency to deliver effective economic assistance programs to rural communities.

The selected consultant will be required to enter into a Texas Forest Service Consulting Agreement. It is anticipated that the contract period will be for one year from date of award. The contract amount will be commensurate with services to be provided, but shall not exceed $75,000.

Offers Submission Deadline: Offers must be received no later than 5:00 p.m., August 31, 2001. All offers must be written offers and must be sealed. An original and three copies of the offer must be submitted. Delivery must be by mail or hand delivery (no faxes will be accepted) to the following address: Jimmy Stephens, Purchasing Manager, Texas Forest Service, 707 Texas Avenue, Suite 108 East, College Station, Texas 77840. Offers received after the deadline will not be eligible for consideration. Offers may be requested to make oral presentations of their offer at their own expense.

Selection Process: Pursuant to Texas Government Code Chapter 2254, Subchapter B, §2254.027, a Texas Forest Service selection committee will base its selection of a consultant on "demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services". If all other considerations are equal, preference will be given to a consultant whose principal place of business is in the State of Texas or who will manage the consulting contract wholly from an office in the State of Texas.

To Obtain a Copy of the Invitation For Offer (IFO): A copy of the IFO may be found on the Texas Marketplace at www.marketplace.state.tx.us or request for a copy may be directed to Jimmy Stephens, Purchasing Manager, Texas Forest Service, 707 Texas Avenue, Suite 108 East, College Station, Texas 77840; by phone (979) 458-3300; fax (979) 458-3305; or e-mail jstephens@tfs.tamu.edu.

Agency Contact: Request for additional information on the consultant services requested in the IFO should be directed to Linda Wang, Texas Forest Service, Forest Resource Development Department, John B. Connally Building, 301 Tarrow, Suite 364, College Station, Texas 77840-7896; by phone (979) 458-6650; by fax (979) 458-6655; or by e-mail lwang@tfs.tamu.edu.

The Texas Forest Service reserves the right to accept or reject any or all offers submitted. The Texas Forest Service is under no legal or other obligation to execute a contact on the basis of this notice or the distribution of an IFO. Neither this notice nor the IFO commits the Texas Forest Service to pay for any cost incurred prior to the execution of a contract.

TRD-200104413

James B. Hull
Director and State Forester
Texas Forest Service
Filed: July 31, 2001

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Texas Department of Health

Designation of Killeen Children's Mental Health Clinic of Central Counties Center for Mental Health Mental Retardation Services as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Killeen Children's Mental Health Clinic of Central Counties Center for Mental Health Mental Retardation Services, 420 North Gray, Killeen, Texas 76501. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Office of Policy and Planning, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200104370
Susan Steeg
General Counsel
Texas Department of Health
Filed: July 27, 2001

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Designation of Temple Children's Mental Health Clinic of Central Counties Center for Mental Health Mental Retardation Services as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Temple Children's Mental Health Clinic of Central Counties Center for Mental Health Mental Retardation Services, 317 North 22nd Street, Temple, Texas 76501. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Office of Policy and Planning, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200104369

Susan Steeg
General Counsel
Texas Department of Health
Filed: July 27, 2001

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Notice of Amendment 8 to the Uranium Byproduct Material License of USX, Texas Uranium Operations

The Texas Department of Health (department) gives notice that it has amended uranium by- product material license L02449 issued to USX, Texas Uranium Operations (mailing address: USX, Texas Uranium Operations, Drawer V, George West, Texas 78022). Amendment eight, at the licensee's request, following concurrence survey by Texas Department of Health personnel, releases the licensed areas for unrestricted use while awaiting United States Nuclear Regulatory Commission concurrence on license termination.

The department's Bureau of Radiation Control, Division of Licensing, Registration, and Standards has determined, pursuant to 25 Texas Administrative Code (TAC), Chapter 289, that the licensee has met the standards appropriate to this amendment.

This notice affords the opportunity for a public hearing upon written request by a person affected by the amendment of this license. A written hearing request must be received, from a person affected, within 30 days from the date of publication of this notice in the *Texas Register*. A person affected is defined as a person who demonstrates that the person has suffered or will suffer injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756- 3189. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated. Should no request for a public hearing be timely filed, the license amendment will remain in effect.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, §401.264, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 Texas Administrative Code, §1.21. et seq.), and the procedures of the State Office of Administrative Hearings (1 Texas Administrative Code, Chapter 155).

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189; e-mail: Chrissie.Toungate@tdh.state.tx.us; by calling (512) 834-6688; or by visiting 8407 Wall Street, Austin, Texas.

TRD-200104320
Susan Steeg
General Counsel
Texas Department of Health
Filed: July 26, 2001

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Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Edwin J. Taegel, M.D., FACS, Houston, R06537; Mahan Chiropractic, San Angelo, R11596; Bergeson Chiropractic Clinic, Friendswood, R18543; Desert Veterinary Medicine, Odessa, R23621; Comprehensive Podiatric Care, Houston, R23683; CompreHealth Medical Centers, Incorporated, Lubbock, R24551; Beechnut Dental Group, P.C., Houston, R24628; Memorial Hospital - The Woodlands, The Woodlands, Z00405; Doctors Regional Medical Center, Corpus Christi, Z00529; George P. Amegin, D.O., Edinburg, Z00976.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

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-200104409
Susan Steeg
General Counsel
Texas Department of Health
Filed: July 31, 2001

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Idexx Veterinary Services, Farmers Branch, G01530; Rogers Engineering Services, Brenham, L03733.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30

days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

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-200104408
Susan Steeg
General Counsel
Texas Department of Health
Filed: July 31, 2001

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Texas Health and Human Services Commission

Cancellation of Public Hearing

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) are canceling the joint public hearing that was to be held on August 7, 2001 to receive public comment on proposed payment rates for nursing facilities, swing beds, and hospice-nursing facilities operated by DHS. Notice of the hearing appeared in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5484). If there are any questions concerning this cancellation, contact Carolyn Pratt, Texas Department of Human Services, MC W- 425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4057.

TRD-200104426
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 1, 2001

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Community Planning Forum and Public Hearing

The Health and Human Services Commission (HHSC), in collaboration with the Health and Human Services agencies and the Area Agency on Aging of Southeast Texas, 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 Jasper, Texas on August 21, 2001 at the First United Methodist Church (Wesley Center), at 329 North Bowie. 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 10:00 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 afternoon for members of the community to discuss specific strategic priorities that significantly impact the Jasper (Southeast and Deep East Texas) area. Topics will include children's health insurance needs, access to long-term care, access to information and referral services, transportation, transition services for children and young adults, and business process improvements.

A public hearing to receive public testimony will begin at 11:00 a.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 August 28, 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

10:00 Welcome and introductions

10:15 State and regional progress reports, needs assessments and demographic information

10:45 Regional initiatives

11:00 Public Testimony

12:15 Lunch

Afternoon Session

1:30 Breakout groups

3:15 Report back

4:00 Adjourn

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Roxane Smith-Parks, Area Agency on Aging of Southeast Texas, at phone: 409-727-3284 or email: rsmithparks@setrpc.org by August 14, 2001 so that appropriate arrangements can be made.

TRD-200104427
Marina Henderson
Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 1, 2001

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Joint Public Hearing to Receive Public Comments on Proposed Payment Rates for Nursing Facilities, Swing Beds, and Hospice-Nursing Facilities Operated by DHS

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) will conduct a joint public hearing to receive public comments on proposed payment rates for nursing facilities, swing beds, and hospice-nursing facilities operated by DHS. These payment rates are proposed to be effective September 1, 2001. The joint hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held

on August 22, 2001, at 10:30 a.m. in conference room 4501 of the Brown-Heatly Building at 4900 North Lamar, Austin, Texas. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Mr. Arreola at DHS, MC W-425, 701 West 51st Street, Austin, Texas 78751-2312. Hand-delivered written comments addressed to Mr. Arreola will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 438-2165. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, DHS, MC W- 425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438- 4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by August 15, 2001, so that appropriate arrangements can be made.

TRD-200104425
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 1, 2001

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Notice of Proposed Medicaid Nursing Facility Pediatric Care Facility Provider Payment Rates

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) will conduct a joint public hearing to receive public comment on a payment rate for the Truman W. Smith Children's Care Center, a nursing facility which specializes in the care of high-need children. The joint hearing will be held in compliance with Title 1 of the Texas Administrative Code §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The public hearing will be held on August 22, 2001, at 9:00 a.m. in Room 450C, of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas (fourth floor, West Tower). Written comments regarding payment rates set by the HHSC may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Carolyn Pratt, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Ms. Pratt at DHS, MC W-425, 701 West 51st Street, Austin, Texas 78751-2312. Hand-delivered written comments addressed to Ms. Pratt will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Ms. Pratt at (512) 438-2165. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rate by contacting Carolyn Pratt, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4057.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Carolyn Pratt, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4057, by 4:00 p.m., August 15, 2001, so that appropriate arrangements can be made.

TRD-200104379
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: July 27, 2001

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting a Medicaid state plan amendment to establish the reimbursement methodology for state owned veterans nursing facilities. The veterans nursing facility per diem payment rates are facility specific, prospective rates with a retrospective reconciliation. This reimbursement methodology is proposed pursuant to House Bill Number 1, 77th Legislature, Article II, §56, which instructs HHSC to establish Medicaid reimbursement rates for Medicaid- eligible veterans who reside in state veterans nursing facilities.

The proposed rates for state veterans nursing facilities for state fiscal year 2002 are as follows: Big Spring, $125.44; Bonham, $127.24; Floresville, $121.43; and Temple, $105.78. The proposed rates were determined in accordance with the proposed rate setting methodology for state veterans nursing facilities to be codified at 1 Texas Administrative Code (TAC) Chapter 355, subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.309.

If the proposed methodology and rates are approved, the increase to the nursing facility program in aggregate annual expenditure for state fiscal year 2002 resulting from these changes is estimated to be $366,664.

To obtain copies of the draft reimbursement methodology, interested parties may contact Pam McDonald, Rate Analysis Department, Texas Department of Human Services, Mail Code W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4086.

The draft reimbursement methodology is available for public review at local offices of the Texas Department of Human Services. For further information, contact Pam McDonald at (512) 438-4086.

TRD-200104380
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: July 27, 2001

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Texas Health and Human Services Coordinating Council

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the *Texas Administrative Code* in 30 days.

Title 40. Social Services and Assistance

Part 13. Texas Health and Human Services Coordinating Council

Chapter 391. General Provisions

Chapter 392. Officers and Meetings

Chapter 393. Committees

Chapter 394. Amendment of Rules

Government Code §2002.058, House Bill 1430, 77th Legislature, directs the secretary of state to remove a state agency's rules from the administrative code after the agency has been abolished. Before September 9, 2001, the text of the obsolete rules is available in the Texas Administrative Code, http://www.sos.state.tx.us/tac. After that date the

text will continue to be available in the Texas Register office, 1019 Brazos, Room 245, Austin, Texas.

Written comments regarding removal of the rules may be addressed to Office of the Secretary of State, Texas Register Section, P.O. Box 13824, Austin, TX 78711-3824 or e-mail: subadmin@sos.state.tx.us.

TRD-200104310
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 25, 2001

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Texas High-Speed Rail Authority

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the *Texas Administrative Code* in 30 days.

Title 43. Transportation

Part 4. Texas High-Speed Rail Authority

Chapter 81. Administrative Procedures

Chapter 83. Franchise Application and Award Procedures

Chapter 85. Rules of Practice and Procedure-Franchise Award

Government Code §2002.058, House Bill 1430, 77th Legislature, directs the secretary of state to remove a state agency's rules from the administrative code after the agency has been abolished. Before September 9, 2001, the text of the obsolete rules is available in the Texas Administrative Code, http://www.sos.state.tx.us/tac. After that date the text will continue to be available in the Texas Register office, 1019 Brazos, Room 245, Austin, Texas.

Written comments regarding removal of the rules may be addressed to Office of the Secretary of State, Texas Register Section, P.O. Box 13824, Austin, TX 78711-3824 or e-mail: subadmin@sos.state.tx.us.

TRD-200104311
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 25, 2001

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Texas Department of Insurance

Insurer Services

Application for incorporation to the State of Texas by FIRST AMERICAN LLOYDS INSURANCE COMPANY, a domestic lloyds company. The home office is in Austin, Texas.

Application to change the name of EAST FUNERAL BENEFIT INSURANCE COMPANY to GOOD SAMARITAN LIFE INSURANCE COMPANY, a domestic life company. The home office is in Richardson, 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-200104324
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 26, 2001

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Insurer Services

Application for admission to the State of Texas by NATIONAL SECURITY LIFE AND ANNUITY COMPANY, a foreign life, accident and /or health. The home office is in Binghamton, New York.

Application to change the name of BLUEPAW FAMILY PET INSURANCE COMPANY to TRUEPAWS FAMILY PET INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Portland, Oregon.

Application to change the name of PHOENIX HOME LIFE MUTUAL INSURANCE COMPANY to PHOENIX LIFE INSURANCE COMPANY, a foreign life, accident and /or health company. The home office is in East Greenbush, NY.

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-200104428
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 1, 2001

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Notice

The Commissioner of Insurance will hold an open meeting under Docket No. 2492 on September 5, 2001 at 10:00 a.m., in Room 100 of the William B. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the manual rate filing for commercial risks and classes of risks written by the Texas Windstorm Insurance Association (TWIA) and submitted by TWIA pursuant to Article 21.49 §8 (e)(3).

Copies of the TWIA manual rate filing are available for public inspection in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, TX 78701 during regular business hours. For further information or to request copies of the filing, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0701-09.)

Written comments on the filing may be submitted to the Office of the Chief Clerk of the Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, TX 78714-9104. An additional copy of the comments should be submitted to Phil Presley, Chief Actuary, P.O. Box 149104, MC 105-5F, Austin, TX 78714-9104. Interested persons may also present written or oral comments related to the filing at the open meeting.

This notification is made pursuant to the Insurance Code, Article 21.49, which requires notification in the *Texas Register* of the manual rate filing for commercial risks and exempts the proceeding from the provisions of §§ 40.001-40.005 and 40.051-40.060, Insurance Code and Chapter 2001, Government Code.

TRD-200104412
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 31, 2001

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Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2491 scheduled for September 18, 2001 at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2001 and 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0701-08-I), was filed on July 30, 2001.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2001 and 2002 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0701-08-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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

TRD-200104411
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 31, 2001

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission (TNRCC) published a "Notice of Public Hearing on the Publication of a State Registry" in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5703).

Due to an error by TNRCC, the title was incorrect. The correct title should read, "Notice of Public Meeting Regarding the Proposal of the Melton Kelly Site (Navarro County) to the State Superfund Registry and the Proposed Future Land Use for the Site".

TRD-200104394

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Final Notice of Deletion - Thompson Hayward Chemical Company

The executive director of the Texas Natural Resource Conservation Commission (TNRCC or commission) is issuing a notice of deletion (delisting) of the Thompson Hayward Chemical Company (the Site) from the State Registry, the list of State Superfund sites. The State Registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The commission is delisting the Site because the site has been accepted into the TNRCC Voluntary Cleanup Program.

The Site was originally proposed for listing on the State Registry on September 25, 1990. The Site, including all land, structures, appurtenances, and other improvements, is approximately 4.74 acres located at U.S. Route 277 South, in Munday, Knox County, Texas. In addition, the Site includes any areas where hazardous substance(s) came to be located as a result, either directly or indirectly, of releases of hazardous substance(s) from the Site.

From the mid-1950s through the 1960s, the Site was used as a small-scale pesticide formulation and distribution facility. Structures on the site include metal, brick and wood buildings, three pesticide mixing pits, concrete foundations, and a railroad spur. Commercial operations began in 1957 with the formulation and distribution of pesticides. Dry pesticide formulations and blending of liquid pesticides were accomplished in separate pits inside the buildings. Arsenic and organochlorine pesticides have been found at the site.

The Site has been accepted into the TNRCC Voluntary Cleanup Program and therefore is eligible for deletion from the State Registry as provided by 30 TAC §335.344(c).

T. H. Agriculture & Nutrition, L.L.C. (THAN) conducted a remedial investigation and prepared a response action plan (RAP) under an agreed administrative order with the commission. Response actions were developed for soil, debris, and shallow groundwater. THAN plans to remediate the Site under the Texas Risk Reduction Program (TRRP) Remedy Standard B based on a commercial/industrial land use designation.

The response action described in the RAP consists of excavation and disposal of all soils contaminated with arsenic and organochlorine pesticides at concentration exceeding the TRRP protective concentration limits established for the site. Miscellaneous debris will also be excavated and disposed at an appropriate permitted offsite facility. The RAP describes how a deed notice will be filed with the real property records of Knox County to the effect that the site be restricted to commercial/industrial uses. The RAP also includes groundwater monitoring and restrictions on the use of the shallow groundwater. The response action described in the RAP will be conducted under the TNRCC Voluntary Cleanup Program.

After the response action described in the RAP is completed, conditions at the site will be appropriate for commercial/industrial uses, but will not be appropriate for residential uses. In accordance with Texas Health and Safety Code (THSC), §361.188(d), a notice will be filed in the real property records of Knox County, Texas stating that the Site has been deleted from the State Registry.

In accordance with §335.344(b), the commission held a public meeting to receive comments on the intended deletion of the Site on May 25, 2001, at 10:00 a.m., located at Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building C, Room 131E, Austin, Texas. There were no comments at the public meeting. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Because the Site has been accepted into the TNRCC Voluntary Cleanup Program, it may now be delisted from the State Registry as provided by THSC, §361.189(a) and 30 TAC §335.344(c).

All inquiries regarding the deletion of the Site should be directed to Mr. Jeffrey E. Patterson, Project Manager, Remediation Division, telephone numbers (800) 633-9363 or (512) 239-2489.

TRD-200104319
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 26, 2001

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Notice of District Petition

TNRCC Internal Control No. 04172001-D03; Alliance 288, Ltd. (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District Number 25 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the petition states that there is only one lien holder on the property to be included in the proposed district; (3) the proposed District will contain approximately 399.3693 acres located within Brazoria County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Manvel, Texas, and is not within such jurisdiction of any other city. By Resolution No. R2001-R-08, effective February 22, 2001, the City of Manvel passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $20,500,000.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TNRCC Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, 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-200104421
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 31, 2001

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Notice of Opportunity to Comment and Request a Hearing on Draft Oil and Gas General Operating Permits and Draft Bulk Fuel Terminal General Operating Permit

The Texas Natural Resource Conservation Commission (TNRCC) is providing an opportunity for public comment and to request a hearing (hearing) on the following draft General Operating Permits (GOPs): Oil and Gas GOP for Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties (GOP #511); Oil and Gas GOP for Gregg, Nueces, and Victoria Counties (GOP #512); Oil and Gas GOP for Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties (GOP #513); Oil and Gas GOP for all Texas Counties except for Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, San Patricio, Tarrant, Travis, Victoria, and Waller Counties (GOP #514); and Bulk Fuel Terminal GOP (GOP #515).

Upon issuance, these draft GOPs will serve as the five-year renewal of, and are based on, the Oil and Gas GOPs and BFT GOP that currently reside in 30 TAC Chapter 122, Subchapter F. The draft GOPs also contain revisions to codified applicable requirements and new applicable requirements (i.e., minor New Source Review) as a result of amended regulations or the adoption of new regulations. Once the draft GOPs are issued by the executive director, the GOPs residing in 30 TAC Chapter 122, Subchapter F are expected to be proposed for repeal.

The draft GOPs are subject to a 30-day comment period. During the comment period, any person who may be affected by the emission of air pollutants from emission units that may be authorized to operate under the GOP is entitled to request, in writing, a hearing on the draft GOPs. If requested, a hearing will be held September 12, 2001, at 10:00 a.m. in Room 131E of TNRCC Building C, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the draft GOPs 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Copies of the draft GOPs may be obtained from the TNRCC Internet site at **http://www.tnrcc.state.tx.us/air/opd** or by contacting the TNRCC Office of Permitting, Remediation and Registration, Air Permits Division at (512) 239-1334. Written comments may be mailed to Eduardo Acosta, Office of Permitting, Remediation and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the draft GOPs. Comments must be received by 5:00 p.m., September 10, 2001. To inquire about the submittal of comments or for further information, contact Eduardo Acosta with the Office of Permitting, Remediation and Registration, Air Permits Division, at (512) 239-0450.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200104423
Ramon Dasch
Interim Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 1, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of July 20, 2001 through July 27, 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.

DUKE ENERGY HIDALGO, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04138, to authorize the discharge of cooling tower blowdown and previously monitored effluent at a daily average flow not to exceed 530,000 gallons per day via Outfall 001. The applicant proposes to operate an electrical power generation plant utilizing combined cycle combustion turbines. The plant site is located at 4001 North Seminary Road, at the northwest corner of the intersection of Monte Cristo Road (Farm- to-Market Road 1925) and Seminary Road, in the City of Edinburg, Hidalgo County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 71 has applied for a major amendment to TNRCC Permit No. 11917-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 450,000 gallons per day to a daily average flow not to exceed 700,000 gallons per day. The proposed amendment requests to include two interim flows of 375,000 gallons per day and 490,000 gallons per day. The facility is located on the south bank of South Mayde Creek approximately 4000 feet east of the intersection of Elrod and Morton Roads in Harris County, Texas.

JOSE JESUS SAMPOGNA has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14277-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 1.25 miles west of Hardy Toll Road and approximately 1,300 feet south of the intersection of Gulf Bank Road and the Aldine Oaks Mobile Home Community entrance in Harris County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a new permit, Proposed Permit No. 14247-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 8,200 gallons per day via subsurface drainfields. This permit will not authorize a discharge of pollutants into waters in the State. The Amphitheater facility and disposal site are located approximately 1500 feet east of Goodnight Peak on Park Road 5 (Palo Duro Drive) in Randall County, Texas. The Sagebrush system is located approximately 2000 feet east of Goodnight Peak on Park Road 5 (Palo Duro Drive) in Randall County, Texas. The facility and disposal site are located in the drainage basin of Prairie Dog Town Fork in Segment No. 0207 of the Red River Basin.

W-INDUSTRIES, INC. has for a new permit, Proposed Permit No. 14250-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 900 gallons per day via evaporation on 0.54 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at 11500 Charles Road, approximately 3000 feet northwest of the intersection of Farm-to-Market Road 529 (Jersey Road) and U.S. Highway 290; northwest of Houston within the ETJ of Jersey Village in Harris County, Texas. The facility and disposal site are located in the drainage basin of Buffalo Bayou Above Tidal in Segment No. 1013 of the San Jacinto River Basin.

TRD-200104420
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 31, 2001

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Texas Department of Public Safety

Request for Proposal for Local Emergency Planning Committee Hazardous Materials Emergency Preparedness Grants

INTRODUCTION: The Governor's Division of Emergency Management (DEM), acting for the State Emergency Response Commission (SERC), is requesting proposals for Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to Cities/Counties representing LEPCs to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to chemicals, in their use, storage or transit. The U.S. Department of Transportation has made grant money available to enhance communities' readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC in various ways, depending on a community's needs.

ELIGIBLE APPLICANTS: Each proposal must be developed by an LEPC, the membership of which is recognized by the SERC, in cooperation with county and/or city governments. The proposal must be approved by a vote of the LEPC. Each LEPC shall arrange for a city or county to serve as its fiscal agent for management of any and all money awarded under this grant.

CERTIFICATION: The fiscal agent must provide certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or authorization to commit funds from the city as appropriate.

BUDGET LIMITATIONS: Total funding for these grants is dependent on the amount granted to the state from the U.S. Department of Transportation. No less then seventy-five percent of the money granted to

the state for planning will be awarded to LEPCs. This is the fifth of a series of annual grant awards, which will be issued through FY 2002. Grants will be awarded based upon population, Hazardous Materials risk, need, and cost-effectiveness as judged by DEM. DEM will fund eighty percent of the total project cost. Twenty percent of the project cost must be borne by the grantee. Approved in-kind contributions may be used to satisfy this contribution. LEPCs must maintain the same level of spending for planning as an average of the past two years, in addition to the grant.

EXAMPLES OF PROPOSALS:

Development, improvement, and implementation of the emergency plans required under the Emergency Planning and Community Right-to-Know Act (EPCRA), as well as exercises, which test the emergency plan. Improvement of emergency plans may include hazard analysis as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.

An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian Country, and development and maintenance of a system to keep such information current.

An assessment of the need for regional hazardous materials emergency response teams.

An assessment of local response capabilities.

Conducting emergency response drills and exercises associated with emergency response plans.

Technical staff to support the planning effort. (staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)

Public outreach about hazardous materials training issues such as community protection, chemical emergency preparedness, or response.

Any other planning project related to the transportation of hazardous materials approved by DEM.

CONTRACT PERIOD: Grant contracts begin as early as November 1, 2001, and end August 30, 2002.

FINAL SELECTION: The DEM shall review the proposals. SERC Subcommittee on Planning will make the final selection. The State is under no obligation to award grants to all applicants.

APPLICATION FORMS AND DEADLINE: The "Request for Proposals and Application Package" should be sent via certified/registered mail or other private mail delivery service, requiring a signature, to the Texas Department of Public Safety, Division of Emergency Management, P.O. Box 4087, Austin, Texas 78773-0225. An application may be requested by calling DEM at 512/424-5985. The original and four copies of the completed application must be received at above address by 5:00 P.M. on October 31, 2001. For more information, please call 512/424-5985.

TRD-200104393
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: July 30, 2001

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 26, 2001, Eagle Communications, Inc. doing business as TX Eagle Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60165. Applicant intends to relinquish its certificate.

The Application: Application of Eagle Communications, Inc. doing business as TX Eagle Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24254.

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 August 15, 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 24254.

TRD-200104389
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 30, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 24, 2001, Comm South Companies, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60012. Applicant intends to reflect a *pro forma* restructuring whereby ARBROS Communications, Inc. will acquire all stock of the Applicant with the end result that the Applicant and its subsidiaries will join the existing subsidiaries of ARBROS Communications, Inc. in providing telecommunications service to the public.

The Application: Application of Comm South Companies, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24417.

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 August 15, 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 24417.

TRD-200104315
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2001

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Notice of Application for Authority to Recover Lost Revenues and Cost of Implementing Expanded Local Calling Service Pursuant to P.U.C. Substantive Rule §26.221

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 26, 2001,

for authority to recover lost revenues and costs of implementing expanded local calling service pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§55.041-55.048 and P.U.C. Substantive Rule §26.221. A summary of the application follows.

Project Title and Number: Application of Sugar Land Telephone Company to Recover Lost Revenues and Costs of Implementing Expanded Local Calling Service. Project Number 24430 before the Public Utility Commission of Texas.

Sugar Land Telephone Company's application encompasses costs and lost toll revenues for petitioned exchanges and petitioning exchanges where costs and lost toll revenues are in excess of the $3.50 or $7.00 maximum monthly expanded local calling service fee. Sugar Land Telephone Company's total toll revenue losses and additional costs to be recovered through this proceeding are $409,303. Currently, there are 79,948 Sugar Land Telephone Company customers, of which 55,544 are residential customers; 24,339 are business customers; and 65 are Tel-Assistance customers. Sugar Land Telephone Company proposes an additional monthly surcharge rate of $0.33 per residential line; $0.66 per business line; and $0.12 for Tel-Assistance.

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 Project Number 24430.

TRD-200104396
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 30, 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 July 25, 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 Telephonos De Tejas, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24423 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

Applicant's requested SPCOA geographic area includes the area served by all incumbent local exchange companies throughout the 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 August 15, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104390
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 30, 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 July 25, 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 Integrated Communications Consultants, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24424 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company and Verizon Southwest, Inc.

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 August 15, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104391
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 30, 2001

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Notice of Application for Transfer of Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for transfer of a certificate of convenience and necessity on July 24, 2001, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101 (Vernon 1998 & Supplement 2001).

Docket Style and Number: Application of the Lower Colorado River Authority (LCRA) to Transfer its Certificate of Convenience and Necessity to the LCRA Transmission Services Corporation, Docket Number 24419.

The Application: The Lower Colorado River Authority requests approval to transfer its entire Certificate of Convenience and Necessity Number 30110 to the LCRA Transmission Services Corporation.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200104316
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2001

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Notice of Application to Amend Certificate of Convenience and Necessity for a Service Area Boundary Change

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed by Central Telephone Company of Texas doing business as Sprint on July 25, 2001, to amend its certificate of convenience and necessity (CCN) for a minor boundary change in Humble and Atascocita exchanges and Southwestern Bell Telephone Company (SWBT) Houston and Lake Houston exchanges pursuant to P.U.C. Substantive Rule §26.101(b)(4). A summary of the application follows:

Docket Style and Number: Application of Central Telephone Company of Texas doing business as Sprint to Amend Certificate of Convenience and Necessity for Service Area Boundary Change, Docket Number 24426.

The Application: Sprint has requested an amendment to its CCN for a minor boundary change in Humble and Atascocita exchanges and Southwestern Bell Telephone Company's (SWBT) Houston and Lake Houston exchanges.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200104414
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2001

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an Application of TXU Electric Company (TXU) to Amend Certificated Service Area Boundaries within Williamson County, Texas filed on July 29, 2001, pursuant to §§14.001, 37.051, 37.053, 37.054 and 37.056 of the Texas Utilities Code, Public Utility Regulatory Act (PURA), and P.U.C. Substantive Rule §25.101. A summary of the application follows:

Docket Style and Number: Application of TXU Electric Company to Amend Certificated Service Area Boundaries within Williamson County, Texas - Docket Number 24437.

The Application: The application concerns a proposed service area boundary change to provide service to the remainder of the residential development in The Preserve at Stone Oak Phase 3 in Williamson County. A portion of the development is located in the singly certificated service area of TXU while the remainder is located in the singly certificated service area of Pedernales Electric Cooperative, Inc. (PEC). Approval of the amendment would enable TXU to service the entire Phase 3 subdivision.

The Public Utility Commission of Texas (commission) has jurisdiction over this matter pursuant to §§14.001, 37.051, 37.053, 37.054 and 37.056 of the Texas Utilities Code, Public Utility Regulatory Act (PURA), and P.U.C. Substantive Rule §25.101. Pursuant to P.U.C. Substantive Rule §25.101(c)(5)(B), the presiding officer must enter a final order in this docket within 45 days of the filing of the application, if the Applicant's request is deemed a minor boundary change. TXU stated in the application that PEC has agreed to this proposed boundary change.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200104415
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2001

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Notice of Petition of Entergy Gulf States, Inc. to Abolish Fuel Factor

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition of Entergy Gulf States, Inc. to Abolish Fuel Factor Formula filed on July 27, 2001.

Docket Style and Number: Petition of Entergy Gulf States, Inc. to Abolish Fuel Factor Formula. Docket Number 24440.

The Application: Entergy Gulf States, Inc. (EGSI) stated it is requesting the commission abolish the formula approach and relieve EGSI of the obligation to revise its fuel factor in September 2001 so that EGSI can retain its current fuel factor through the end of 2001.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200104416
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2001

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Notice of Proceeding to Establish ERCOT Transmission Charges for 2001 Pursuant to P.U.C. Substantive Rule §25.192

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on July 25, 2001, of an application by the Staff of the Public Utility Commission of Texas to establish the Electric Reliability Council of Texas (ERCOT) wholesale transmission charges for 2001 pursuant to P.U.C. Substantive Rule §25.192.

Docket Title and Number: Docket Number 24418, *Commission Staff's Application to Set 2001 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*.

The Proceeding: The commission's rule on transmission pricing calls for transmission rates to be based on the most-recent peak loads. Entities serving load in ERCOT are to file peak load information with the Electric Reliability Council of Texas Independent System Operator (ERCOT ISO), and it is to compile this information and reconcile discrepancies. The ERCOT ISO has received information on 2000 peak loads from the entities that serve load and has filed it with the commission. Based upon this filing and input solicited from interested parties, the Applicant developed and filed an initial calculation of the 2001 charges. This proceeding will determine transmission rates and charges for transmission customers for 2001, in the manner provided in P.U.C. Substantive Rule §25.192.

Persons who wish to intervene in the proceeding, or comment upon the action sought, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936- 7120 no later than August 17, 2001. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200104323
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 2001

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Public Notice of Amendment to Interconnection Agreement

On July 26, 2001, Southwestern Bell Telephone Company and Brooks Fiber Communications of Texas, 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 24431. 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 24431. 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 August 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 24431.

TRD-200104397
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 30, 2001

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Public Notice of Amendment to Interconnection Agreement

On July 26, 2001, Southwestern Bell Telephone Company and MCImetro Access Transmission Services, LLC, 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 24432. 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 24432. 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 August 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 24432.

TRD-200104398
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 30, 2001

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Public Notice of Interconnection Agreement

On June 24, 2001, SBC Advanced Solutions, Inc. and IG2, 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 24421. 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 24421. 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 August 22, 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 24421.

TRD-200104314
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2001

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State Depository Board

Obsolete Rules

The Office of the Secretary of State intends to remove the following rules from the *Texas Administrative Code* in 30 days.

Title 34. Public Finance

Part 8. State Depository Board

Chapter 171. Collateral Transactions

Chapter 172. Qualifications of State Depositories

Government Code §2002.058, House Bill 1430, 77th Legislature, directs the secretary of state to remove a state agency's rules from the administrative code after the agency has been abolished. Before September 9, 2001, the text of the obsolete rules is available in the Texas Administrative Code, http://www.sos.state.tx.us/tac. After that date the text will continue to be available in the Texas Register office, 1019 Brazos, Room 245, Austin, Texas.

Written comments regarding removal of the rules may be addressed to Office of the Secretary of State, Texas Register Section, P.O. Box 13824, Austin, TX 78711-3824 or e-mail: subadmin@sos.state.tx.us.

TRD-200104308
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 25, 2001

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Texas Department of Transportation

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-200104313
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 25, 2001

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Texas A&M University, Board of Regents

Request for Proposal

Texas A&M University seeks proposals from consulting firms to assist in conducting negotiations for Air Carrier Use and Lease agreements for the university-owned and operated airport.

Information can be obtained by contacting Rex Janne, Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-0013 or e-mail at r-janne@tamu.edu.

Selection criteria will include competence, experience knowledge, qualification and reasonableness of price. Historically Underutilized Businesses are encouraged to participate in this request for proposal. All things being equal, a preference will be given to a consultant firm whose principal place of business is within the State of Texas. Proposals must be received on or before 2:00 p.m., August 16, 2001.

TRD-200104406
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: July 31, 2001

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The University of Texas System

Notice of Intent to Procure Consulting Services

Certain medical and dental units of The University of Texas System (collectively, the "University") intend to enter into one or more major consulting contracts for consulting services in connection with the implementation of the Health Insurance Portability and Accountability Act of 1996.

Selection Process

In accordance with §51.9335, *Education Code*, the University intends to procure such consulting services through the University Health System Consortium ("UHC"), a group purchasing organization, having determined that the University will obtain "best value" through this group purchasing organization. UHC has entered into master agreements with Science Application International Corporation and Cap Gemini Ernst & Young for consulting services related to the implementation of HIPPA. On or about September 1, 2001, the University intends to contract with one or both of these firms for the consulting services.

Scope of Work

The consulting services to be procured by the University shall produce, among other things, the following deliverables:

Assistance with documenting the flow of patient information within an academic medical center.

Assistance in interpreting HIPPA regulations.

Development of a methodology for assessing the current degree of compliance with the requirements of HIPPA.

Assistance with the development of administrative, technical, and physical security policies and procedures for both paper and paperless environments.

Provision of training to educate administrators and health care service providers on how to effectively comply with the requirements of HIPPA.

Questions

Any questions regarding this notice should be directed to:

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

TRD-200104317
Francie Frederick
Counsel and Secretary to the Board of Regents
The University of Texas System
Filed: July 25, 2001

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Crosby Municipal Utility District, 107 West Wahl, Crosby, Texas, 77532, received June 1, 2001, application for financial assistance in the amount of $4,000,000 from the Texas Water Development Funds.

City of Alvin, 216 West Sealy Street, Alvin, Texas, 77511, received June 29, 2001, application for financial assistance in the amount of $6,650,000 from the Clean Water State Revolving Fund.

City of Angleton, 121 South Velasco, Angleton, Texas, 77515, received July 2, 2001, application for financial assistance in the amount of $645,000 from the Clean Water State Revolving Fund.

Kleinwood Municipal Utility District, 7827 Kleingreen Lane, Spring, Texas, 77379, received July 2, 2001, application for financial assistance in the amount of $3,215,000 from the Texas Water Development Funds.

City of Mexia, 101 S. McKinney Street, P.O. Box 207, Mexia, Texas, 76667, received July 6, 2001, application for financial assistance in the amount of $560,000 from the Drinking Water State Revolving Fund.

City of Magnolia, P.O. Box 396, Magnolia, Texas, 77353, received July 2, 2001, application for financial assistance in the amount of $2,825,000 from the Clean Water State Revolving Fund.

Thunderbird Bay Water Systems, 14755 Preston Road, Suite 405, Dallas, Texas, 75240, received March 1, 2001, application for financial assistance in the amount of $1,200,000 from the Drinking Water State Revolving Fund.

City of Raymondville, 142 South 7th Street, Raymondville, Texas, 78580-2591, received June 29, 2001, application for financial assistance in the amount of $3,245,343 from the Drinking Water State Revolving Fund.

City of Eagle Pass, P.O. Box 808, Eagle Pass, Texas, 78853-0808, received June 29, 2001, application for financial assistance in the total amount of $57,465,000 from the Drinking Water State Revolving Fund (Disadvantaged Community Program) and the Texas Water Development Funds.

Harris County Flood Control District, 9900 Northwest Freeway, Suite 220, Houston, Texas, 77092, received March 30, 2000, application for grant assistance in an amount not to exceed $328,140 from the Research and Planning Fund.

Director of Environmental Resources, P.O. Box 5888, Arlington, Texas, 76005-5888, received March 29, 2000, application for grant assistance in an amount not to exceed $232,765 from the Research and Planning Fund.

TRD-200104430
Gail L. Allan
Director of Project-Related Legal Services
Texas Water Development Board
Filed: August 1, 2001

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

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❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

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